



ASIC

Australian Securities & Investments Commission

Updated statement on Fincorp

23 August 2007

This statement updates the statement about Fincorp made by Mr Tony D'Aloisio, Chairman, Australian Securities and Investments Commission to the Senate Standing Committee on Economics on 30 May 2007.

Background

1. The Fincorp group of companies is made up of 21 corporate entities. The group specialised in property development and property investments raising funds from the public to carry out these activities.
2. The key legal aspects of the structure are as follows:

Fincorp Investments Ltd (Administrators Appointed) (Fincorp) raised moneys from the public through 'first ranking notes' and 'unsecured notes'. First ranking notes were notes issued by Fincorp secured over its assets by a floating charge. Unsecured notes were notes issued by Fincorp but not backed by any charge or other security.

Fincorp lent the moneys it raised from the public to other companies in the group. Fincorp's main asset is 'loans receivables' from those companies. This asset is the asset subject to the floating charge which secures the first ranking notes. Those companies in turn used the borrowings from Fincorp to develop properties and make property investments. The floating charge did not extend over the assets of those companies.

Companies in the group which were engaged in property development and investment also raised first mortgages against those properties (e.g. from banks) to a limit set by Fincorp. Those mortgages have priority over repayment of borrowings from those companies to Fincorp. In effect, those first mortgages rank ahead of the first ranking notes and the unsecured notes.

3. Administrators (KordaMentha) were appointed on 23 March 2007.
4. KordaMentha summarised amounts owing on that date as follows:
 - (a) amounts owing to secured note holders \$178m;
 - (b) amounts owing to unsecured noteholders \$23m.

There were 8,102 investors in Fincorp in first ranking notes and unsecured notes.

Update since 30 May 2007

5. ASIC has taken a number of steps designed to achieve its investigation objectives of:
 - (a) maximising returns to noteholders; and
 - (b) assessing the availability of potential third-party claims for compensation and other remedies in respect of wrongdoing, including criminal prosecution.
6. In working towards these objectives, ASIC has continued to work closely with KordaMentha. This has enabled ASIC to be briefed on matters such as the continuing status of the administration and issues of concern identified by the Administrators. This work has assisted ASIC to obtain evidence and helped it to prepare material to seek asset preservation orders.
7. ASIC has also issued notices to various parties requiring production of records to assist its investigation.

Maximising returns to noteholders

8. On 25 July 2007 a statutory meeting of Fincorp creditors was held with KordaMentha at which the creditors approved the process for the sale of Fincorp's property assets totalling approximately \$204m to Becton and AV Jennings which was estimated by the administrator to produce a return to secured noteholders of \$0.50 in the dollar and up to an equivalent return of \$0.55 in the dollar for those noteholders who elected to invest some or all of their return in the Becton Office Fund.

9. KordaMentha confirmed in its statutory report that it was estimating a nil return to unsecured noteholders absent any successful recovery action resulting from their continuing investigations and subsequent litigation.
10. In pursuit of the objective of maximising returns to noteholders, ASIC has successfully applied for a number of freezing orders to ensure the assets of various individuals and companies associated with Fincorp are not shifted or dissipated to the detriment of creditors and investors.
11. On 5 July 2007 ex-parte asset preservation orders were obtained by ASIC in the Supreme Court of New South Wales in relation to the former directors of Fincorp Investments Limited, the spouses of some of the directors and companies associated with those individuals and certain entities, including Macarthur Investments Group Pty Ltd.
12. The orders restrain the defendants from removing any assets from NSW or Australia, and from selling, charging or mortgaging any assets or otherwise disposing or dealing with their assets save for reasonable living and other expenses.
13. On 16 July 2007, the Supreme Court continued the asset preservation orders for varying periods.
14. On 24 July 2007, the Supreme Court made orders by consent for the proceeds of the proposed sale by Macarthur Investments Group Pty Ltd of a Camden property to be placed in a separate interest-bearing account. The funds will be held until agreement is reached between ASIC and Macarthur regarding the proper distribution of those funds or a further court order is made.
15. On 13 August 2007 the Supreme Court continued the orders, by consent, against a number of the defendants.
16. On 14 August 2007, following application by former Fincorp directors Mr Graeme Byers and Mr Craig Stubbs, the Supreme Court refused to overturn the freezing orders already made in relation to their assets and made further orders continuing the asset preservation orders against each of them until 15 October 2007.

Potential third-party claims for compensation and other remedies

17. ASIC has undertaken a review of the Statutory Report to Creditors released by KordaMentha on 18 July 2007. The Administrators have identified a number of potential actions in their report. The asset preservation orders obtained by ASIC will assist in any action against the former directors.
18. ASIC is examining (as is KordaMentha) any potential wrongdoing by former directors and officers of Fincorp in their management of the group of companies and compliance with prior court orders and undertakings. In addition, ASIC is examining the role and conduct of related parties and advisers.
19. This will facilitate ASIC's determination of whether actions for compensation are available.