

4 September 2017

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Dear Sir/Madam

About your investment in Realestate Equity Investment Trust

ASIC is an independent government organisation that regulates financial markets and services in Australia. Our role includes protecting the interests of investors when things may have gone wrong.

We understand you are an investor in Realestate Equity Investment Trust (also known as **REIT**), which owns land at **490 Flinders Avenue, Lara**.

ASIC has commenced Court proceedings against REIT and a company called Timeline Project Management Pty Ltd (**Timeline**). We tell you more about this, and the opportunity for you to have your say in those proceedings, below.

Why are we sending you this letter and how can we help?

We have concerns about REIT and the way in which part of the investors' money may have been used. As an investor, we want you to be aware of these issues and what could happen next.

If you have any questions you can talk to me or my colleague Jessica Zarkovic:

ASIC Contact details:

Naomi Johnston: (03) 9280 3588 or naomi.johnston@asic.gov.au

Jessica Zarkovic: (03) 9280 4608 or jessica.zarkovic@asic.gov.au

If you need an interpreter, call the Telephone Interpreting Service on 131 450 first and they will then call us.

ASIC can't tell you what to do next but we can help by discussing your situation.

Enclosed with this letter is a copy of Court orders, a copy of ASIC's Submissions and some Frequently Asked Questions (**FAQs**). We have also enclosed copies of this letter (dated 1 September 2017), the Court orders and the FAQs in Arabic and Somali. We refer to these documents below.

What has happened already?

ASIC has started proceedings to ask the Court to decide what should happen next with REIT and your investment. The Court made some initial orders at a hearing on Friday 18 August 2017 and we have included a copy of those orders with this letter.

What will happen next?

The Court orders require ASIC and the other parties to make written submissions to the Court about the issues that have been raised. ASIC's Submissions are attached.

The Submissions of REIT and Timeline were filed at the Court on 4 September 2017.

Another Court hearing will then be organised for a date **after** 6 October 2017.

What can you do?

As an investor you can **participate in the Court proceeding if you want to**. Order number 6 says that if you want to be heard by the Court, then you need to write to the Court and to all the parties to let them know before **22 September 2017**.

You may want to discuss this with other investors and to talk to a lawyer who can give you independent legal advice about what these proceedings could mean for your investment. Your local Community Legal Centre may be able to provide you with **free assistance**. You can search for your local centre at this website: http://www.fclc.org.au/find_a_clc.php.

You do not have to participate in the Court proceedings, unless the Court requires this at a later time.

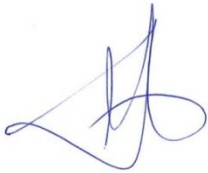
Want more information?

Contact Jessica or me using the details above if you would like more information.

We have also put more information about why ASIC has taken this action in the FAQs included with this letter.

ASIC will provide updates on this matter, including future hearing dates, on its website at <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-252mr-asic-acts-to-wind-up-a-land-banking-scheme/>.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'N. Johnston', with a stylized, cursive script.

Naomi Johnston
Senior Lawyer, Financial Services Enforcement
Australian Securities and Investments Commission

Encl.

Frequently Asked Questions – Information for investors in REIT

1. What are ASIC's concerns about the Realestate Equity Investment Trust (REIT) scheme?

ASIC is like the police for companies and investment schemes. ASIC's role is to regulate the conduct of these entities. We believe that the Defendants should be prevented by the Court from operating because they have not operated fairly and their management is not doing the right thing.

ASIC has investigated the REIT scheme by interviewing people involved with the scheme (including its management), and reviewing many documents.

Following our investigation, we are concerned that:

- The REIT scheme appears to have no prospect of providing a return to investors either in the short term or the long term.
- Some investors are continuing to pay money into the REIT scheme despite the likelihood of the development not proceeding.
- Investors' money has been paid to a company called Timeline Project Management Pty Ltd (**Timeline**) that has no formal connection with the REIT scheme.
- A large amount of the money paid to Timeline has been withdrawn and the balance of that account is now approximately \$45,000. It is not clear to ASIC where or why most of that money has gone.
- Contrary to its legal obligations, no financial statements have been prepared for the REIT scheme for 5 years.
- Contrary to its legal obligations, the REIT scheme has not had a 'responsible entity' to run the scheme for a year. This is because the previous responsible entity, Lotus Securities Pty Ltd (a company associated with John Isaacs), had its financial services licence removed by ASIC because it did not comply with various legal obligations. The role of a responsible entity is to protect the interests of investors.

ASIC says it is just and equitable to stop the scheme from operating for the reasons set out above. This is something that the Court will have to decide.

2. What is ASIC seeking in these court proceedings?

ASIC's is seeking to protect the interests of the investors.

ASIC wants the Court to appoint an independent person (a liquidator) to manage the REIT scheme and its property at 490 Flinders Avenue, Lara.

ASIC also wants the Court to appoint a liquidator to Timeline.

3. Where has investors' money gone?

ASIC understands that some of the investors' money has been paid into a bank account held in the name of Timeline which does not appear to be linked in any way to the REIT scheme. It is not clear to ASIC why Timeline is being paid investors' money when it appears to have

no connection to REIT. The directors of Timeline are Sharmarke Ahmed and Natalie McKeown.

Timeline has also received “management fees” but it is not clear to ASIC what management services it has provided to the REIT scheme.

The REIT scheme has not lodged financial statements with ASIC since 2012, even though it is required to do so by law. This means neither you nor ASIC can know what is happening with REIT's finances.

4. What has happened to develop the Lara property?

ASIC is concerned that no steps have been taken to develop the Lara property and on current information it appears that the development of the property cannot go ahead.

ASIC has been told by the Greater Geelong Council that:

- the Lara property is located in a farming zone;
- the Council does not support the rezoning of the property for development; and
- the Council has not had any discussions (including with REIT) in relation to rezoning the property.

5. What does ASIC want to do with the Lara property?

ASIC wants the Court to appoint an independent person (a liquidator) to the REIT scheme and Timeline so they can take control of the Lara property, investigate the affairs of the REIT scheme and sell the property in order to return available money to investors. ASIC is not trying to take the property away from investors. ASIC wants investors to recover as much of their money as possible, given the unlikelihood of the scheme being able to take place as planned.

6. What do the Federal Court orders made on 21 August 2017 mean for investors?

You have the opportunity to be represented in the Court proceedings.

If you want to be heard in Court, you must give a written notice to the Court, ASIC and the Defendants by no later than **4pm on 22 September 2017**. This is set out in paragraph 6 of the Orders made by the Court.

If this is a step you may want to take then you should seek your own legal advice and, if you want, you can do this with other investors. If you consult a lawyer then you should provide them with this document and the Orders of the Court of 21 August 2017 which are enclosed.

7. What will happen in the case?

The Court will ask ASIC to make its arguments and it will ask the Defendants to make their arguments.

ASIC or the Defendants might ask you to give evidence about what happened to you in this matter. The Court will listen to what you say in deciding what to do.

8. What do I have to do?

You do not have to give any evidence or write any documents in relation to this case if you do not want to do so, unless the Court tells you that you must. You do not have to assist either ASIC or the Defendants if you prefer not to.

If the Defendants (or their lawyers) ask you to sign any documents, you do not have to do so and we recommend that you obtain legal advice before you do.

9. What do I do if I have questions?

ASIC's guide on how a liquidation works may also assist you. You can find this guide at: http://download.asic.gov.au/media/1340240/Liquidation_guide_for_creditors.pdf.

If you have difficulty speaking or understanding English, call the interpreting service, TIS National, on **131 450**. They will call us so we can help you with your query.

If you still need more information you can contact Naomi Johnston on (03) 9280 3588 or Jessica Zarkovic on (03) 9280 4608 or via email at naomi.johnston@asic.gov.au or jessica.zarkovic@asic.gov.au.

If you need legal advice you can consult a lawyer. If you think you may qualify for Legal Aid then please contact Victoria Legal Aid on 1300 792 387 or access information from their website at <http://www.legalaid.vic.gov.au/>.

Your local Community Legal Centre may also be able to provide you with assistance and you can search for your local centre at this address: http://www.fclc.org.au/find_a_clc.php.



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID820/2017

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

REALESTATE EQUITY INVESTMENT TRUST (ARSN 094 623 515) and another
named in the schedule
Defendants

ORDER

JUDGE: JUSTICE MOSHINSKY

DATE OF ORDER: 21 August 2017

WHERE MADE: Melbourne

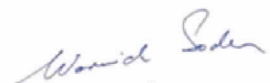
THE COURT ORDERS BY CONSENT THAT:

1. Exhibits NMJ-1 to NMJ-9 to the affidavit of Naomi Margaret Johnston sworn on 17 August 2017 be kept confidential and not be disclosed to any person without the express written consent of all parties, or by order of the Court.
2. Paragraph 1 of these orders is made on the ground that it is necessary to prevent prejudice to the proper administration of justice, so as to preserve confidentiality over the personal information of individual investors in the Realestate Equity Investment Trust (**REIT**) scheme.
3. The plaintiff (**ASIC**) file and serve written submissions in support of its application by 4.00 pm on 1 September 2017.
4. ASIC send, by mail and/or email, a copy of its written submissions and these orders to each of the investors in the REIT scheme by 4.00 pm on 1 September 2017. It is sufficient compliance with this order if ASIC sends or emails the investors at the last known address available to ASIC.
5. The defendants file and serve any affidavits in opposition to ASIC's application by 4.00 pm on 15 September 2017.
6. Any investor in the REIT scheme who seeks to be heard by the Court on ASIC's application give notice in writing to the Court and the parties by 4.00 pm on 22 September 2017.
7. ASIC file and serve any affidavits in reply by 4.00 pm on 2 October 2017.



8. ASIC file and serve any supplementary written submissions by 4.00 pm on 2 October 2017.
9. The defendants file and serve any written submissions by 4.00 pm on 6 October 2017.
10. The proceeding be listed for trial, on a date after 6 October 2017, on an estimate of one day.
11. There be liberty to apply.
12. Costs be reserved.

Date that entry is stamped: 21 August 2017


Registrar

- 3 -



Schedule

No: VID820/2017

Federal Court of Australia

District Registry: Victoria

Division: General

Second Defendant **TIMELINE PROJECT MANAGEMENT PTY LTD**
(ACN 145 830 851)

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 4/09/2017 2:20:28 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Submissions
File Number:	VID820/2017
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v REALESTATE EQUITY INVESTMENT TRUST & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 4/09/2017 2:20:31 PM AEST

A handwritten signature in blue ink, which appears to read "Warwick Soden".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



No. VID 820 of 2017

Federal Court of Australia
District Registry: Victoria
Division: General

**IN THE MATTER OF REALESTATE EQUITY INVESTMENT TRUST AND TIMELINE
PROJECT MANAGEMENT PTY LTD**

Australian Securities and Investments Commission

Plaintiff

and

Realestate Equity Investment Trust (ARSN 094 623 515)

First Defendant

Timeline Project Management Pty Ltd (ACN 145 830 851)

Second Defendant

SUBMISSIONS ON BEHALF OF THE PLAINTIFF

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INTRODUCTION

1. It is in the best interests of the investors in the First Defendant (**REIT**) to wind up REIT and the Second Defendant (**Timeline**) and to distribute any net salvageable value of the assets of REIT and Timeline (if any) back to the investors.
2. It is also in the interests of the public generally that REIT and Timeline be prohibited from continuing to operate in future.
3. The Plaintiff, ASIC, relies on the following affidavits filed in this proceeding:
 - a. Affidavit of John Andrew Newby, of Perpetual Nominees Ltd (**Perpetual**) affirmed on 21 July 2017 (**Newby Affidavit**);
 - b. Affidavit of Naomi Margaret Johnston of ASIC sworn on 25 July 2017 (**Johnston Affidavit**); and
 - c. Affidavit of Jessica Zarkovic of ASIC sworn on 25 July 2017 (**Zarkovic Affidavit**).
4. ASIC submits that its evidence establishes the following:
 - a. the only property of REIT is the property at 490 Flinders Avenue, Lara, Victoria (**Lara Property**),¹ the legal title of which is held by Perpetual as custodian;²
 - b. in breach of section 601FB of the *Corporations Act 2001* (Cth) (**Act**), REIT has not had a validly appointed responsible entity since 21 September 2016, the most recent responsible entity, Lotus Securities Pty Ltd (ACN 121 418 317) (**Lotus**), having had its Australian

¹ Newby Affidavit, [13]-[15].

² Newby Affidavit, [8]-[11]; Johnston Affidavit, [19]; [23]-[25].

Financial Services Licence (AFSL) cancelled on that date³ and Lotus having then been placed into liquidation on 14 December 2016;⁴

- c. there is no realistic prospect of a replacement responsible entity being appointed;⁵
- d. there is no realistic prospect of REIT achieving its purpose, as the only asset of REIT, namely the Lara Property, is not able to be developed because the Geelong City Council does not support the rezoning of farming land for rural living purposes and there is no strategic support in the applicable Planning Scheme to rezone the land for urban or residential use;⁶
- e. the Lara Property was purportedly mortgaged in favour of a Shariah law lender known as Equitable Financial Solutions Pty Ltd (EFSOL) without the consent of the custodian of the Lara Property, Perpetual, and without that mortgage being registered with the land titles office;⁷
- f. Perpetual does not have any bank accounts open for REIT;⁸
- g. investor monies were received from more than 100 investors⁹ and in an amount of at least \$800,000,¹⁰ on the basis of the Product Disclosure Statement dated 25 August 2010 (REIT PDS)¹¹ which appears to contain misleading representations in that they were made without reasonable grounds;¹²
- h. investor monies have been paid and continue to be paid into a bank account maintained by Timeline,¹³ which has never been the responsible entity of REIT, in a manner which was not authorised by investors or contemplated in the REIT PDS;¹⁴
- i. investor monies have not been used to develop the Lara Property;¹⁵
- j. investor monies have not been retained by the Defendants in accordance with the 'savings plan' contemplated in the REIT PDS nor used to pay legitimate or justified costs in accordance with the REIT PDS,¹⁶ but instead have been disbursed,¹⁷ for unrelated and unjustified reasons;¹⁸

³ Johnston Affidavit, [64]-[69].

⁴ Johnston Affidavit, [70]-[74].

⁵ Johnston Affidavit, [97]-[99].

⁶ Johnston Affidavit, [26].

⁷ Johnston Affidavit, [51]; [60].

⁸ Newby Affidavit, [40].

⁹ Johnston Affidavit, [29]-[35].

¹⁰ Johnston Affidavit, [33].

¹¹ Johnston Affidavit, exhibit NMJ-7.

¹² Johnston Affidavit, [15].

¹³ Zarkovic Affidavit, [19]; Johnston Affidavit, [44]-[48].

¹⁴ Johnston Affidavit, [15]; [27]; [48] and REIT PDS exhibited as NMJ-7 to the Johnston Affidavit.

¹⁵ Johnston Affidavit, [25].

¹⁶ Johnston Affidavit, [90]-[92].

¹⁷ Johnston Affidavit, [58], [93]-[96]; [111]-[112]; Zarchovic Affidavit.

¹⁸ Johnston Affidavit, [15].

- k. investor funds appear to have been paid to entities connected with the management of REIT and Timeline (including EFSOL) and to individuals associated with the scheme, in a manner which demonstrates a mismanagement of investor funds;¹⁹
- l. investor funds were being disbursed from the bank account maintained by Timeline until Lotus' AFSL was cancelled by ASIC in September 2016,²⁰ and continued to be disbursed until the Commonwealth Bank of Australia put a stop on the accounts on 10 March 2017 at the request of ASIC;²¹
- m. Timeline was deregistered by ASIC on 25 January 2015 due to non-payment of outstanding fees and it was reregistered administratively by ASIC on 24 July 2017 for the purposes of this proceeding;²²
- n. land tax in the amount of \$16,271.28 was outstanding on the Lara Property as at 5 June 2017;²³
- o. council rates and charges in the amount of \$1,586.70 were outstanding on the Lara Property as at 7 June 2017;²⁴ and
- p. custodian fees for REIT (in relation to the Lara Sub-Trust) are due to Perpetual, in the amount of \$76,904 as at 21 July 2017.²⁵

5. ASIC submits that on the basis of the above matters:

- a. there is evidence of non-arm's length dealings between the Defendants and individuals associated with the management of the Defendants and others;
- b. the affairs and management of the Defendants are being conducted in a manner that appears prejudicial to the interests of its investors and where investor funds are at risk; and
- c. ASIC has a justifiable lack of confidence in the Defendants and considers that it is appropriate in all the circumstances that an independent insolvency practitioner be appointed to wind up both Defendants in accordance with the Act.

¹⁹ Johnston Affidavit, [77]-[88]; Zarchovic Affidavit.

²⁰ Zarchovic Affidavit, Table 6.

²¹ Johnston Affidavit, [21]; [36]-[37].

²² Johnston Affidavit, [45].

²³ Newby Affidavit, [41]-[47];

²⁴ Newby Affidavit, [48].

²⁵ Newby Affidavit, [49]-[53].

WINDING UP REIT

Applicable provisions

19. ASIC has brought its application for winding up REIT under sections 601ND and 601NF of the Act. It relies primarily on section 601NF, and brings its application under section 601ND only to the extent necessary.
20. Part 5C.9 of the Act provides for the winding up of a registered scheme in accordance with its constitution and any order the Court might make under section 601NF(2).
 - a. Section 601ND(1)(a) of the Act empowers the Court to direct the responsible entity of a registered scheme to wind up the scheme if the Court thinks it is just and equitable to make the order.
 - b. Section 601ND(2) provides that the application for a winding up order may be made by the responsible entity, a director thereof, a member of the scheme or ASIC.
 - c. Section 601NF(1) states that the Court may, by order, appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under sub-section (2) if the Court thinks it necessary to do so (including for the reason that the responsible entity has ceased to exist or is not properly discharging its obligations in relation to the winding up).
 - d. Section 601NF(2) provides that the Court may, by order, give directions about how a registered scheme is to be wound up if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme's constitution are inadequate or impracticable).
 - e. Section 601NF(3) provides that an order may be made under sub-section (1) or (2) on the application of the responsible entity, a director thereof, a member of the scheme or ASIC.
21. Winding up a scheme or a trust is different from winding up a company. The provisions in the Act concerning liquidation of a company are not applicable to the winding up of a scheme: *Stacks Managed Investments Limited* [2008] FCA 12 (*Stacks*) at [46].
22. A scheme is not a legal entity: *Re Environinvest Ltd; Shepard v Downey* [2009] VSC 33 (*Environinvest*) at [76]. The relevant entity to consider is therefore the responsible entity. The expression "scheme creditors" is at best a shorthand expression for those creditors of the responsible entity in respect of whose debts the responsible entity is entitled to be indemnified out of the scheme assets: *Stacks* at [44]. It will be necessary to identify what is the scheme property to be wound up: *Environinvest* at [76].

Application under section 601NF(1) as a stand-alone power

23. Technical and practical issues arise are because REIT does not have a responsible entity.
24. Section 601ND presumes the existence of a responsible entity. This is because it is unlawful for a scheme to operate without a responsible entity under Part 5C.2 of the Act. REIT has operated without a responsible entity since the AFSL of the previous responsible entity, Lotus, was cancelled by ASIC on September 2016 and it has since been placed into liquidation.
25. The legislature has contemplated this scenario in section 601NF.
26. Accordingly, ASIC relies primarily on section 601NF as a stand-alone power to authorise the Court to effect the winding up.

Requirements of section 601NF(1)

27. The language of section 601NF indicates that the Court's power may be exercised if the Court thinks it necessary. An example stated in the section of circumstances where it might be necessary is that the responsible entity has ceased to exist. An additional finding, including that it would be just and equitable to wind up the scheme, is not necessary.
28. The language of section 601NF(1) is facilitative: it grants the Court power to make an order to appoint a person to take responsibility for ensuring a registered scheme is wound up in accordance with its constitution and any orders under sub-section (2). ASIC submits that section 601NF is therefore a stand-alone power: it authorises the Court to make such an order and the only test is whether "*the Court thinks it is necessary*" to wind up the scheme; this is a different test from "*it is just and equitable to do so*".
29. As a matter of underlying legal principle, the registered scheme itself does not exist as a separate legal entity. Once the responsible entity has been removed, it must be necessary to "wind up" the scheme, in the sense that the registered scheme should cease to exist and its property should be distributed. Without a responsible entity, the notion of a registered scheme is a legal fiction. As indicated by Judd J in *Environinvest* at [71], "managed investment schemes require a functional and solvent responsible entity".
30. In *Environinvest*, Judd J found that the winding up provisions in Part 5C.9 of the Act contemplate a winding up carried out by the responsible entity. While section 601NF(1) authorises the Court

to appoint a person other than a responsible entity to ensure that a registered scheme is wound up in accordance with its constitution, the order contemplated under section 601ND(1) is one directing the responsible entity of a registered scheme to wind up the scheme: *Environinvest* at [65]. According to this line of reasoning, section 601NF(1) is additional to, and not in substitution for, section 601ND. His Honour went on to state, however, that while the Act presupposes a winding up of the scheme by the responsible entity, it recognises the possibility that the responsible entity may be unable to conduct the winding up: at [74].

31. In *Rubicon Asset Management Ltd* [2009] NSWSC 1068 (***Rubicon***), McDougall J expressed section 601ND in conditional terms: “If the Court makes an order under section 601ND(1), then it may make other orders under section 601NF including by sub-section 2” (at [47]). While McDougall J considered in detail the impact of a responsible entity under external administration, his Honour did not consider the operation of the provision in circumstances where the responsible entity had been wound up. At [51], his Honour noted that power under sub-section (2) was ancillary to an established process of (or order for) winding up but did not consider the point regarding section 601NF(1).

Conclusion on section 601NF(1)

32. ASIC submits that section 601NF(1) contains a stand-alone power and that the terms of the section themselves indicate that it is necessary to wind up a registered scheme where the responsible entity has ceased to exist. In this case it is clear that there is no responsible entity and therefore the Court should wind up the scheme.
33. In the alternative, if the Court does not accept this interpretation, ASIC also relies on section 601ND and submits that it is just and equitable to wind up REIT for the reasons set out below.

Application under both section 601ND and section 601NF

34. There is precedent for making an application in reliance on both powers. In *ASIC v Knightsbridge Managed Funds Ltd & Another* [2001] WASC 339 (***Knightsbridge***), ASIC applied to wind up a scheme pursuant to both sections 601ND(1) and 601NF(1). In that case, the responsible entity was under administration, its agent was in liquidation, and it no longer qualified as a responsible entity because its dealer’s licence had been revoked (at [61]-[64]) – a very similar situation to the present.

35. In those circumstances, the Court granted the order appointing the external administrator as the person taking responsibility for ensuring that the scheme was wound up. However, prior to doing so, the Court satisfied itself that the grounds for winding up had been established under section 601ND(1)(a).

When a scheme can be wound up on just and equitable grounds under section 601ND

36. If the Court considers it necessary wind the scheme up on the just and equitable ground, ASIC submits that this criterion is satisfied.
37. The phrase ‘just and equitable’ is broad and is designed to accommodate a multiplicity of situations. It is not possible to define the phrase in exhaustive terms. In each case it will be a question of fact for determination upon the evidence relating to the scheme put before the Court. A determination of whether or not it is just and equitable to wind up the entity will not depend on particular factual consequences: *Environinvest* at [114].
38. The test is not whether the winding up is in the [members’] best interest and not to their disadvantage; that is far too narrow: *Environinvest* at [114]. In *Rubicon*, McDougall J expressed the view that the only discretionary factor tending against the making of an order for winding up or the giving of directions sought under section 601NF(2) was that the funds available to creditors would be diminished.
39. Similarly in this case, the funds available to creditors may be diminished. However, the key scheme creditors in this case are in fact investors, and ASIC submits that this discretionary factor should not tend against the making of the winding up order.
40. The case law on the winding up of corporations on the just and equitable ground informs the application of section 601ND(1)(a), as section 601ND(1)(a) is derived from a traditional ground for winding up in corporations law: *Capelli v Shepard* (2010) 264 ALR 167 (*Capelli*) at [102]-[104].
41. ASIC submits that, while winding up a scheme is technically different from winding up a company for the reasons set out above, if a Court has found that it can wind up a company under section 461(1)(k) for reasons such as a lack of commercial morality or the public interest, then those grounds can also be the basis of a winding up of a scheme for just and equitable reasons.
42. Although the just and equitable ground in corporations law originally tended to be confined to categories established by precedent, the House of Lords in *Ebrahimi v Westbourne Galleries Ltd*

[1973] AC 360 (*Ebrahimi*) established its broad and ambulatory character. That ground confers a very wide discretionary power, which is applicable both in established and novel contexts. The situations which have characteristically invoked the application of the just and equitable ground in corporations law include the breakdown of the parties' fundamental trust and confidence in a corporate quasi-partnership; the exercise of powers in a way entirely outside the parties' original contemplation; deadlock; and the failure of the substratum of the enterprise in the sense of conduct entirely outside the general intention and common understanding of the members when they became members: *Capelli* at [102].

Insolvency

43. Insolvency is often a key ground for winding up. The test for solvency is set out in section 95A of the Act and states that a person is solvent if, and only if, the person is able to pay all the person's debts as and when they become due and payable. Under section 95A(b), a person who is not solvent is insolvent.
44. The traditional concept of insolvency presumes a legal personality (being the 'person' referred to in section 95A), and considers the person's inability to pay debts as they fall due (commercial insolvency), and/or an excess of liabilities over assets (balance sheet insolvency). However, assessment of insolvency for schemes is not as straightforward as it may be for corporations.
45. In *ASIC v Plymin* [2003] VSC 123 (*Plymin*) Mandie J referred at [386], to expert evidence on the very common features in insolvency situations, which included overdue Commonwealth and State taxes, and an inability to produce timely and accurate financial information to display the company's trading performance and financial position, and make reliable forecasts.
46. A key justification for winding up a scheme is often insolvency of the responsible entity or the scheme itself (see *Re PWL ACN 084 252 488 Ltd; Ex parte PWL Ltd (formerly Palandri Wines Ltd (Administrators Appointed)* [No 2] [2008] WASC 232 (*Re PWL*), at [89]). This can include consideration of the inability to raise capital for necessary expenditure (at [85]) and whether the scheme can achieve its stated purpose (at [90]).
47. In *Capelli*, the Victorian Court of Appeal noted that the traditional assessment of insolvency is strictly speaking inapplicable to managed investment schemes. Schemes are not in themselves legal persons, and they cannot own property or sue or be sued, and scheme property is held by the responsible entity.

48. Debts are incurred by the responsible entity and it is to that entity that creditors must look for payment. The “scheme” itself is a network of obligations and relations between various entities: *Capelli* at [89]-[92]. Accordingly, it is the solvency or insolvency of the responsible entity that is usually considered in determining a scheme’s solvency.
49. Although in this case the scheme property is held by a custodian on behalf of the responsible entity, there is still no legal concept of the scheme itself which could be strictly analysed in terms of solvency. The solvency of Perpetual as custodian or the legal proprietor of REIT’s assets is not relevant to the solvency or otherwise of REIT as a scheme.
50. A managed investment scheme may be colloquially characterised as insolvent in the sense that the liabilities referable to it cannot be satisfied as they fall due from its income or readily realisable assets, notwithstanding that such schemes cannot properly be considered insolvent in the strict and technical sense: *Capelli* at [92].
51. In the circumstances of a scheme, insolvency may be considered to be a short-hand expression for a number of interrelated factors, including the non-viability of the scheme, the related insolvency of the responsible entity, its inability to fund the continued operation of the scheme, the unavailability of any replacement entity and the consequent breakdown of the original scheme arrangements set out in the prospectuses: *Capelli* at [95].

Lack of viability

52. Where it is not possible to demonstrate insolvency, or even insolvency of the responsible entity, “lack of viability” is the next most appropriate consideration.
53. A registered scheme may be wound up on the just and equitable ground where there is unchallenged evidence that the scheme as a whole is not viable and that the purposes and arrangements contemplated in its prospectus have broken down: *Capelli* at [75]-[95], citing *Ebrahimi*. Similarly, a registered scheme may be wound up where it has “failed” and is “insolvent”: *Environinvest* at [102]-[114].
54. In *Capelli*, the Court noted the principle stated by Young J in *Strong v J Brough & Son (Strathfield) Pty Ltd* (1991) 5 ACSR 296 at 300, that if a company is formed for one purpose and one purpose alone, and that purpose is accomplished, or alternatively its accomplishment has become impossible, then the shareholders are entitled to a winding up and a return of their investment. Reasoning by analogy, it appears that the Court of Appeal also endorses the approach that a scheme may be wound up where accomplishment of its objective has become impossible.

55. In *Knightsbridge*, Pullin J ordered the winding up of a registered managed investment scheme on the just and equitable ground because the “whole administration of the scheme”, and the original arrangement as set out in the prospectus, had broken down. This was relied upon by the Court in *Capelli* at [86]. His Honour also held at [64] that intervention was justified on public interest grounds because the investors require protection, relying on *ASIC v Chase Capital Management Pty Ltd* [2001] WASC 27 and the authorities cited therein.
56. A registered scheme may be wound up on the just and equitable ground notwithstanding that an advantageous alternative course might have been available, particularly where that alternative course is not advanced before the primary judge: *Capelli* at [72]-[74]. This includes, for example, the sale for a higher price of the scheme’s assets.
57. In the matter of *Silvia administrators appointed, in the matter of FEA Plantations Ltd (subject to Deed of Company Arrangement) (receivers appointed)* [2013] FCA 1331 (**FEAP**):
- a. the responsible entity was insolvent;
 - b. the scheme did not have any assets of its own to meet the costs of the scheme;
 - c. the scheme did not have any assets other than scheme property (which was charged in favour of the bank);
 - d. if the scheme were wound up, no distribution would be received by ordinary unsecured creditors;
 - e. the scheme did not satisfy material conditions of its AFSL; and
 - f. the scheme was unable to discharge the functions of a responsible entity of any managed investment scheme (at [26]).
58. Gordon J ordered the winding up of the FEAP schemes pursuant to section 601ND(1)(a) of the Act in accordance with its constitution and orders of the Court made pursuant to section 601NF(2) of the Act. Pursuant to section 601NF(2), her Honour also appointed the administrators of the relevant responsible entity to be responsible for ensuring the winding up. The reasons for that order included: the responsible entity was unable to continue to act as the responsible entity; due to a lack of funds the responsible entity was unable to continue to operate the schemes; no viable proposal existed for any willing and able replacement responsible entity; and each scheme was unviable and its purpose could not be accomplished (at [4], [31]).
59. Gordon J noted that ordinarily a solution would be to replace the responsible entity, but no willing and able replacement responsible entity had been identified for any of the schemes, which was not surprising in light of the fact that the cash flow projections were not positive (at [27]), and it was

most improbable that any other responsible entity would be willing to expend the required monies through to the completion of harvest only to suffer the projected loss (at [30]).²⁶

Justifiable lack of confidence in management

60. In the case of winding up a company on the just and equitable ground under section 461(1)(k), the words ‘just and equitable’ are not to be read as *ejusdem generis* with the preceding words of the enactment: *Loch v John Blackwood Ltd* [1924] AC 783 at 792. The question is one of fact and all the circumstances must be considered: *Re Tivoli Freeholds Ltd* [1972] VR 445 at 468 per Menhennitt J. Nevertheless, the foundation for a winding up on the just and equitable ground lies in a “justifiable lack of confidence” in the conduct and management of the company’s affairs. This lack of confidence must be grounded in the directors’ conduct in relation to the company’s business.
61. It is clear that ASIC may seek a winding up based on its justifiable lack of confidence in the control and management of the company, including winding up in the public interest: *Australian Securities Commission v AS Nominees Ltd* (1995) 62 FCR 504 at [354], [387]; *ASIC v Austimber Pty Ltd* (1999) 17 ACLC 893.
62. In *ASIC v Drury Management Pty Ltd* [2004] QSC 68 (**Drury**), a company was wound up where its management was involved in a managed investment scheme which, in breach of the Act, was not registered. The grounds for winding up that company under section 461(1)(k) included that ASIC had lost confidence in the ability of management to comply with the law.
63. The following separate factors have been considered to justify a winding up order of a company:²⁷
 - a. mismanagement, misconduct or lack of confidence in the conduct and management of the affairs of the company;
 - b. breaches of the provisions of the Act;
 - c. where the situation requires a winding up order to ensure investor protection;
 - d. where a company has not carried on its business candidly and in a straightforward manner with the public; or
 - e. where the company has acted fraudulently or entered into sham transactions.

²⁶ By way of further illustration, in *Re Equititrust Ltd* [2011] QSC 353 (**Equititrust**), the factors found to be relevant to the winding up of the schemes included (at [30]): that the administration of the funds had broken down and the funds’ purpose could not be accomplished; repayments to investors had been frozen; disharmony and disputes existed between the board and management and it was extremely unlikely the funds could resume trading; loans were in default; the company was in breach of its conditions of its ASFL, including by failure to lodge audited accounts; members of the recently appointed board were due to resign whereupon the proper administration of the funds would be jeopardised; the appointment of an independent person to take responsibility for ensuring that the fund was wound up appeared to be in the best interests of the members of each fund; the winding up appeared to have received widespread support from members and no member contended that the funds should not be wound up.

²⁷ *ASIC v International Unity Insurance Pty Ltd* [2004] FCA 1059 at [136]-[142] per Lander J (**Australian Unity**).

Interests of investors and the public interest

64. In recent cases the Federal Court has expanded the notion of public interest to include considerations of commercial morality and the public interest at large that may favour liquidation.²⁸
65. Where there has been misconduct in the affairs of a company requiring investigation, it is detrimental to commercial morality to prevent such an investigation.²⁹
66. A winding up will be beneficial from a public policy perspective where investigations and recovery proceedings are likely to be funded and the investigations could lead to at least some of the persons responsible for the company's demise being brought to account: *Midland* at [68]; cited in *Bilkurra* at [107].
67. In *Bilkurra*, the Federal Court exercised the power to wind up two companies on the just and equitable ground under section 461(1)(k) of the Act. Beach J stated (at [107]) that the appropriate course in the case of a prima facie insolvent company is to order its winding up as it is against the public interest and commercial morality to allow a prima facie insolvent company back into the marketplace, and found at [88] that:
- millions of dollars invested in the schemes appear to have been lost; liquidation will allow a full investigation; it will also enable potential recovery proceedings that only a liquidator can pursue; it is in the best interests of creditors involving investors that the winding up orders be made; it is also in the public interest.*
68. The factors which lead Beach J to reach this conclusion and to make the winding up orders included (at [76]-[99]):
- a. the Court had little confidence in the management of the companies;
 - b. financial records of the companies were in an unsatisfactory state and there were clear breaches of section 286(1);
 - c. the companies were, in his Honour's view, insolvent;
 - d. the bank accounts for the companies were in the name of PMA (an associated company which was the project manager and agent) and were controlled by a shadow director of the companies who had been banned by ASIC from providing financial services;
 - e. funds raised from investors were dealt with in disregard of the obligations owed to investors and without proper records or explanations;

²⁸ *ASIC v Midland Hwy Pty Ltd (administrators appointed); in the matter of Midland Hwy Pty Ltd (administrators appointed)* [2015] FCA 1360 (*Midland*) at [68]; cited in *Bilkurra* at [104].

²⁹ *ASIC v Bilkurra* [2016] FCA 371 (*Bilkurra*) at [105].

- f. investors in the schemes may have invested on the basis of misleading representations, with the companies involved in various contraventions of the Act; and
- g. liquidation would allow a full investigation including of transactions.

Just and equitable grounds for winding up REIT

Insolvency

69. As noted above, it is difficult to establish with certainty the solvency of REIT as a scheme on the basis of the available information. It is necessary to look beyond the solvency or insolvency of the responsible entity because the responsible entity no longer exists. However, it is a relevant factor that the responsible entity was wound up in insolvency on 14 December 2016 on the application of a petitioning creditor, and that as at 12 January 2017, Lotus had secured debts totalling \$700,000 and unsecured debts totalling \$150,000.³⁰
70. Bearing in mind the limitation that REIT does not exist as a legal person, in practical terms REIT appears unable to pay its debts as and when they fall due, as the scheme has not paid invoices owing including to Perpetual. In addition, at least two of the factors present in *Plymin* apply to REIT: REIT has overdue land tax and it has displayed an inability to provide timely and accurate financial information. The last financial statements for REIT filed with ASIC were for the financial year ended 30 June 2012 and no further financial documentation has been provided to ASIC. As a registered managed investment scheme, the responsible entity of REIT is required to prepare and file annual audited reports with ASIC pursuant to the Act.³¹
71. REIT, and the entities and persons associated with it, has a long history of compliance breaches, as outlined further in paragraph 123 below. The reasons for the cancellation of Lotus's AFSL by ASIC were:
- a. failure to lodge financial statements for Lotus, REIT and the Sovereign Leisure and Hospitality Fund (SLHF)³² within the prescribed time;
 - b. failure to comply with a Notice issued by ASIC under s 30 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act);
 - c. failure to have EDRS membership;
 - d. failure to lodge compliance plan audit reports for REIT and SLHF;

³⁰ Johnston Affidavit, [70]-[74].

³¹ Johnson Affidavit, [75].

³² Sovereign Leisure and Hospitality Fund (ARSN 125 307 333) was a scheme Lotus was authorised to operate in addition to REIT on 18 June 2014. SHLF was deregistered on 10 March 2017: Johnston Affidavit, [40]-[41].

- e. failure to lodge licensee accounts for Lotus within the prescribed time;
 - f. failure to comply with the requirement to lodge an audit opinion for Lotus;
 - g. failure to lodge breach reports in relation to significant breaches; and
 - h. failure to have adequate financial and human resources.
72. In recovery proceedings under section 588E, a company can be presumed to be insolvent where it has failed to keep financial records as required by subsection 286(1) of the Act. The obligation under section 286(1) to keep records also applies to registered schemes. While that presumption does not strictly apply here, by way of analogy arguably the failure to keep financial records means that the above factors, particularly those referred to in subparagraphs a., e. and f. above, are indicia of insolvency of REIT as well as Lotus, given that REIT is purporting to operate even though Lotus has been deregistered.

Lack of viability

73. The purpose for which the scheme was established is no longer capable of being realised. The Lara Property, which was the only property acquired by the scheme, has not been developed and it appears that it is unlikely to be successfully rezoned as residential land and subdivided into 700 lots, as contemplated by the REIT PDS.³³ On this basis the scheme as originally envisaged appears to have failed.
74. The administration of the scheme has also failed. Funds were authorised to be paid to the responsible entity and, for reasons which have not been explained, funds are no longer being paid to a responsible entity, but rather are being paid to Timeline.³⁴ This is examined in more detail below.
75. In circumstances which are similar to those in *FEAP*:
- a. the responsible entity no longer exists;³⁵
 - b. REIT does not have any assets other than the Lara Property³⁶ (which has purportedly been mortgaged in favour of EFSOL for an amount of between \$400,000 and \$507,000);³⁷
 - c. the responsible entity of REIT, Lotus, did not satisfy material conditions of its AFSL, which AFSL has been revoked;³⁸ and

³³ Johnston Affidavit, [25]-[26].

³⁴ Johnston Affidavit, [48].

³⁵ Johnston Affidavit, [66].

³⁶ Johnston Affidavit, [25].

³⁷ Johnston Affidavit, [52].

- d. REIT has been unable to secure a responsible entity to discharge the functions of a responsible entity of the scheme.³⁹

Justifiable lack of confidence in management

Lack of a responsible entity

76. The history of the responsible entities for REIT is concerning. As set out below, there have been gaps during which there has been no responsible entity; there is currently no responsible entity and there has not been since 21 September 2016 when Lotus' AFSL was cancelled by ASIC for the reasons set out at paragraph 71 above. Accordingly, at various times and currently, REIT has been operating in breach of Part 5C.2 of the Act.
77. REIT was registered as a managed investment scheme on 13 October 2000, at which time it was known as the Mercator Monthly Income Fund.⁴⁰ The responsible entity at the time of registration of REIT was Lion Advantage Ltd, then known as Mercator Funds Management Limited (**Lion Advantage**).⁴¹
78. Lion Advantage ceased to be the responsible entity of REIT on 31 March 2013⁴² and there was no responsible entity for 15 months, when Lotus was appointed on 18 June 2014.⁴³ The delay in the appointment of the replacement responsible entity was due to delays in Lotus meeting ASIC's requirements of responsible entities, including having adequate professional indemnity insurance in place, meeting financial requirements and appointing a suitable custodian.⁴⁴
79. Mr John Isaacs, who was investigated by ASIC,⁴⁵ has been involved with the management of REIT and Lotus and is connected with other entities involved in the scheme.
80. Mr Isaacs has attempted to secure Vasco Investment Managers Limited (**Vasco**) as a replacement responsible entity for REIT and has been in discussions with Vasco for some time, possibly since late 2015,⁴⁶ however Vasco has not been appointed.

³⁸ Johnston Affidavit, [66].

³⁹ Johnston Affidavit, [66].

⁴⁰ Newby Affidavit, [9]; Johnston Affidavit, [12].

⁴¹ Newby Affidavit, [10], [12(a)]; Johnston Affidavit, [13].

⁴² Newby Affidavit, [12] (b)].

⁴³ Newby Affidavit, [12(c)].

⁴⁴ Johnston Affidavit, [43].

⁴⁵ Johnston Affidavit, [10].

⁴⁶ Johnston Affidavit, [65]; [99].

81. ASIC submits that Vasco is unlikely to be appointed as responsible entity, on the basis of the following evidence:
- a. Mr Isaacs stated in his section 19 examination that he had proposed that Vasco replace Lotus as the responsible entity of REIT and that he proposed that it would be organised and completed by January 2017;⁴⁷
 - b. Ms Johnston deposes to a discussion with the Managing Director of Vasco to the effect that he had not been provided with the information he had requested to determine whether Vasco should take on the role of responsible entity of REIT and that Vasco had not committed to taking on that role;⁴⁸ and
 - c. some of the correspondence between Mr Isaacs and Vasco has been deliberately concealed in Mr Isaacs' response on 23 December 2016 to directions by ASIC to provide relevant documents.⁴⁹
82. ASIC submits that in the circumstances, and given that REIT has been attempting to secure a new responsible entity without success for up to 12 months, there does not appear to be any realistic prospect of a replacement responsible entity being appointed.

Potential misleading and deceptive conduct

83. From around 2011, the REIT investors purchased units in the Lara Syndicate for at least \$7,000 each as an initial deposit and paid a minimum of \$300 per month under a "savings plan" as described on page 7 of the REIT PDS.⁵⁰
84. The REIT PDS contemplated that investors may pay money by cheque to 'Perpetual Trustee Co Ltd as custodian for Real-estate Equity Investment Trust, Lara Property Development Syndicate Subtrust', or that it may be paid by direct debit to Lion Advantage (the former responsible entity for the scheme). While the PDS mentions Timeline in the context of receiving a service fee, it does not contemplate that investors will pay funds directly to it or any bank account held by it. Investors were led to believe that their funds would be paid to the responsible entity as part of a savings plan, and not, as has transpired, to an unrelated entity. Accordingly, there is a prima facie misleading representation in the REIT PDS as to the operation of the scheme, upon which investors may have relied when deciding to join the scheme.

⁴⁷ Johnston Affidavit, [97].

⁴⁸ Johnston Affidavit, [99].

⁴⁹ Johnston Affidavit, [98].

⁵⁰ Johnston Affidavit, [27].

85. In addition, it appears that there were no reasonable grounds for the representations in the REIT PDS that:
- a. the savings plan would allow investors to save sufficient funds to acquire property at a fixed price upon completion of the property development; or
 - b. that capital redemption of units would occur after 5 years or sooner subject to completion of the projects held by the sub-trusts.
86. ASIC submits that without having taken the necessary steps (or indeed any steps) to ensure that the Lara Property (or an alternative property) could be developed in the way promised in the REIT PDS, including obtaining the necessary permits to develop it, there were no reasonable grounds for it to make these representations.
87. The investors in REIT have invested on the basis of representations which may be misleading and deceptive, and it is not clear at this stage by whom or on whose behalf the representations were made. These matters require investigation by a liquidator.

Lack of transparency with Perpetual

88. Since 2016, Perpetual has attempted to resign as the custodian of the assets of REIT due primarily to the failures of REIT to pay land tax.⁵¹ It has been unable to do so because it required the consent of Studley Financial Services Pty Ltd (**Studley**), being the mortgagee registered on the title of the Lara Property.⁵² Perpetual has been unable to obtain the consent of Studley to resign as custodian.⁵³
89. In fact, the mortgage granted to Studley was discharged in September 2014 but Perpetual had not been notified of this⁵⁴ and, as at 8 July 2016, the Studley mortgage was still registered to the title of the Lara Property.⁵⁵
90. Indeed, none of REIT, Lotus nor their management informed Perpetual, the registered proprietor of the Lara Property,⁵⁶ about the following matters:
- a. the lodgment of a caveat by Equity-One Mortgage Fund on 25 January 2013;⁵⁷
 - b. the discharge of the Studley mortgage on 16 September 2014;⁵⁸
 - c. the purported grant of a mortgage to EFSOL in May 2016;⁵⁹ and

⁵¹ Newby Affidavit, [25].

⁵² Newby Affidavit, [20]-[23]; [31].

⁵³ Newby Affidavit, [26]-[32].

⁵⁴ Newby Affidavit, [33]-[36].

⁵⁵ Newby Affidavit, [37].

⁵⁶ Newby Affidavit, [39].

⁵⁷ Newby Affidavit, [37].

⁵⁸ Newby Affidavit, [31]-[35].

d. the cancellation of the AFSL of Lotus.⁶⁰

91. The lack of transparency with the custodian of REIT suggests that the management of REIT knew that these transactions or aspects of them were not legitimate or at least not in the interests of the scheme or investors.

Funding of the Lara Property

92. The funding of the Lara Property is murky and there are suggestions that there have been monies paid out of the scheme that are not justifiable.
93. It appears that the funding of the Lara Property occurred as follows:
- a. half the purchase price of \$975,000 was funded by private investors;
 - b. the other half was undertaken by vendor finance, which was later refinanced by Studley;
 - c. Studley's loan was refinanced by another financier (possibly Equity-One Mortgage Fund); and
 - d. there was a final refinance from the to EFSOL in May 2016.⁶¹
94. Lotus has purported to grant a mortgage over the Lara Property in favour of EFSOL in circumstances where it is not the registered proprietor of the Lara Property. Lotus entered into an agreement with EFSOL entitled "Musharakah Agreement" dated 16 May 2016⁶² under which EFSOL provided finance to Lotus and Mr Isaacs executed the agreement on behalf of Lotus as the responsible entity.
95. The agreement, made under Shariah law, contemplates the transfer of the Lara Property to EFSOL and Lotus jointly, with EFSOL owning a 52 per cent share and Lotus owning at 48 per cent share. The value of EFSOL's share is expressed to be "consideration of \$507,000" with \$400,000 being paid into a solicitor's trust account and \$107,000 stated to be for services provided by EFSOL to Lara, including "back office support, front office support and underwriting of any financial costs to Lara if REIT is unable to fund it."⁶³
96. The impact of the Musharakah Agreement on the legal ownership of the Lara Property is unclear, and there is evidence of the execution of a mortgage purportedly given by Lotus in favour of EFSOL even though no such mortgage appears on the land title search and it is not clear how

⁵⁹ Newby Affidavit, [38]-[39].

⁶⁰ Newby Affidavit, [12(e)].

⁶¹ Johnston Affidavit, [49].

⁶² Johnston Affidavit, [51], Exhibit NMJ-23.

⁶³ Johnston Affidavit, [52]-[58].

Lotus was able to grant a mortgage without Perpetual's consent.⁶⁴ The legal effect of the Musharakah Agreement and the mortgage need to be investigated.

97. Finance totalling \$507,000 has purportedly been advanced by EFSOL to Lotus in May 2016.⁶⁵ ASIC has not been provided with any documentary evidence of this funds transfer taking place. A substantial fee of \$107,000 has been paid to EFSOL, and no satisfactory explanation has been given of the services which justify a fee of this magnitude. Accordingly, ASIC is concerned that the fee is not an arm's length transaction and may have not been a proper use of investors' funds.⁶⁶
98. There is evidence that the management of Lotus and EFSOL are connected and are not dealing on an arms' length basis:
- a. Mr Isaacs was a director of Lotus from 26 September 2013 until 21 September 2016 and was the person with whom Perpetual communicated as the management of REIT.⁶⁷
 - b. Mr Isaacs has been acting as the responsible manager for EFSOL, although he has denied this.⁶⁸
99. These matters point to misconduct on the part of management and, at the least, require investigation by a liquidator.

Other misuse of investor funds

100. It appears that investor monies have not been used to develop the Lara Property in a way which would enable them to purchase a property with their saved money for a fixed purchase price at completion of the development, as envisaged by the REIT PDS.⁶⁹
101. Instead, investor monies have been paid into a bank account maintained by Timeline, which is not the responsible entity of REIT. The reason for this is unclear.⁷⁰
102. Ms Zarkovic, a lawyer employed in ASIC's Enforcement – Financial Services team, carried out an analysis of an account held by Timeline (**Timeline Account**) which received funds from REIT

⁶⁴ Johnston Affidavit, [59]-[60].

⁶⁵ Johnston Affidavit, [52], [78].

⁶⁶ Johnston Affidavit, [54]-[58].

⁶⁷ Newby Affidavit, [12(d)].

⁶⁸ Johnston Affidavit, [79]-[82]; [89].

⁶⁹ Johnston Affidavit, [25].

⁷⁰ Johnston Affidavit, [48].

- investors on a monthly basis by direct debit through a payment processing system called Paygate, a South African-based company operating through an Australian subsidiary.⁷¹
103. The signatories on the Timeline Account are Mr Isaacs, Mr Ahmed and Natalie Louise McKeown, who are respectively the secretary and two directors of Timeline.⁷²
 104. Ms Zarkovic also carried out an analysis of three bank accounts which received funds transfers from the Timeline Account:
 - a. an account held at the Australia and New Zealand Banking Group (**ANZ**) in the name of Lotus (**Lotus ANZ Account**),⁷³ the signatories of which are Su-Chen Wen and Maura McCabe, in their capacity as directors of Lotus;⁷⁴
 - b. a Macquarie Bank account in the name of Lotus (**Lotus Macquarie Account**),⁷⁵ the signatories of which are Mr Isaacs and Mark O'Donnell in their (now former) capacities as directors of Lotus;⁷⁶ and
 - c. a Macquarie Bank account in the name of Timeline Consulting (**TC Account**)⁷⁷, the signatory of which is Mr Isaacs as sole director of Timeline Consulting Pty Ltd;⁷⁸
 105. In his section 19 examination, Mr Isaacs stated that about \$4,000 to \$5,000 per month was being collected from investors in REIT, and that Lotus was being paid \$4,000 per month.⁷⁹ However, Ms Zarkovic formed the view from her analysis that the majority of funds deposited into the Timeline Account are the funds of investors.⁸⁰ Accordingly, the money from investors was not in fact paid to Lotus in accordance with the REIT PDS but was in fact paid to Timeline through the Paygate system.
 106. Investor monies were being paid into Timeline's account from at least 17 June 2013 up until at least 5 June 2017,⁸¹ notwithstanding that Timeline was deregistered on 25 January 2015 and Lotus had its AFSL cancelled on 21 September 2016.⁸² An amount of \$308,212.90 was received through the Paygate system from 17 June 2013 to 5 June 2017, from investors in REIT, by way of recurring deposits.⁸³ During this period, other deposits were received by cash and cheques

⁷¹ Zarkovic Affidavit, [8]; [10(a)]; Johnston Affidavit, [116]-[122]; [27]-[28].

⁷² Zarkovic Affidavit, [13].

⁷³ Zarkovic Affidavit, [9(a)]; [10(b)].

⁷⁴ Zarkovic Affidavit, [14].

⁷⁵ Zarkovic Affidavit, [9(b)], [[10(c)]].

⁷⁶ Zarkovic Affidavit, [15].

⁷⁷ Zarkovic Affidavit, [9(c)]; [10(d)].

⁷⁸ Zarkovic Affidavit, [16].

⁷⁹ Zarkovic Affidavit, [17].

⁸⁰ Zarkovic Affidavit, [18]-[22].

⁸¹ Zarkovic Affidavit, [19].

⁸² Johnston Affidavit, [114].

⁸³ Zarkovic Affidavit, [19] and Table 1.

totalling \$22,283.⁸⁴ Ms Zarkovic concluded that of a total of \$330,495.90 deposited into the Timeline Account during the period 17 June 2013 to 5 June 2017, \$308,212.90 constituted REIT investor funds.⁸⁵

107. When Lotus' AFSL was cancelled, disbursements largely stopped⁸⁶ but deposits did not stop. Since then deposits of \$31,195.60 have been received from investors into the Timeline Account through Paygate.⁸⁷ On 10 March 2017, ASIC wrote to CBA and requested that it put a stop on debits from the accounts held in the name of Timeline including the Timeline Account.⁸⁸
108. Ms Zarkovic has concluded that during the period 17 June 2013 to 5 June 2017, amounts totalling \$171,298 were withdrawn from the Timeline Account in cash and to Lotus and Timeline Consulting.⁸⁹
109. Other amounts withdrawn from the Timeline Account during this period totalled \$101,352.65.⁹⁰ Of this, an amount totalling \$46,870.03 has been identified as pertaining to council rates, land tax, ASIC fees, Paygate fees, fees to Studley and to Perpetual. However, \$54,482.62 has been withdrawn in untraced electronic funds transfers⁹¹ and it is possible that some of these funds were paid to Lotus, Timeline Consulting or their management.
110. In addition, money which flowed from Timeline and then to the Lotus ANZ Account, Lotus Macquarie Account and TC Account was further transferred between the accounts or to the management of REIT, Lotus and Timeline. An inference can be drawn that all or some of this is REIT investors' money.⁹²
111. In addition, it appears that the majority of the funds paid by investors have been depleted:
 - a. as at 5 June 2017, the balance of the Timeline Account was \$47,796.65, meaning that the majority of funds paid into it by Paygate (totalling \$308,212.90) have been withdrawn;⁹³
 - b. as at 12 June 2017, the balance of the Lotus ANZ Account was \$0.52 overdrawn, meaning that all funds deposited from the Timeline Account (totalling \$72,200) and other sources have been withdrawn;⁹⁴

⁸⁴ Zarkovic Affidavit, [19] and Table 2.

⁸⁵ Zarkovic Affidavit, [39].

⁸⁶ Zarkovic Affidavit, Table 6.

⁸⁷ Zarkovic Affidavit, [36] and Table 6.

⁸⁸ Johnston Affidavit, [113]-[115].

⁸⁹ Zarkovic Affidavit, [24] and Table 3.

⁹⁰ Zarkovic Affidavit, [25]-[27] and Table 4.

⁹¹ Zarkovic Affidavit, [27] and Table 3.

⁹² Zarkovic Affidavit, [29]-[31].

⁹³ Zarkovic Affidavit, [32].

⁹⁴ Zarkovic Affidavit, [33].

- c. as at 8 June 2017, the account balance of the Lotus Macquarie Account was \$10.32, meaning that almost all funds deposited from the Timeline Account (totalling \$22,000) and other sources have been withdrawn;⁹⁵ and
 - d. as at 8 June 2017, the balance of the TC Account was \$2,951.92, and the majority of funds deposited from the Timeline Account (\$13,2000) have been withdrawn.⁹⁶
112. Of the \$308,212.90 of investor funds received during the period June 2013 to June 2017 through Paygate a total of \$35,562.25 remains, with the funds having been disbursed as follows:
- a. to REIT, Lotus or Timeline or its management in the amount of \$171,298:
 - i. cash withdrawals in the amount of \$50,698;
 - ii. cheques to Lotus in the amount of \$13,200;
 - iii. electronic funds transfer to accounts held by Lotus and/or Isaacs in the amount of \$107,400;
 - b. unidentified electronic funds transfers in the amount of \$54,482.62;
 - c. other fees and charges in the amount of \$46,870.03.⁹⁷
113. Together with other unidentified deposits received in the amount of \$22,283, which may or may not be investor funds, and an amount of \$10,048.50 of withdrawals which were not analysed, this accounts for the balance as at 5 June 2017 of \$47,796.65.⁹⁸
114. Only the amount of \$46,870.03 appears to be attributed to validly charged fees, taxes and charges by government and other service providers.⁹⁹
115. It is not clear what the balance of the investor funds have been used for – they certainly have not been used for development of the Lara Property as expected by the investors when they entered into the scheme.¹⁰⁰
116. It is possible that fees were paid in respect of the services provided by the responsible entity – an amount totalling \$107,400 was paid by cheque or funds transfer to Lotus during the period 17 June 2013-5 June 2017 – however, in circumstances where:
- a. the Lara Property is the only asset of REIT;¹⁰¹
 - b. the land has not been developed and no steps have been taken by Lotus or REIT to develop it;¹⁰²

⁹⁵ Zarkovic Affidavit, [34].

⁹⁶ Zarkovic Affidavit, [35].

⁹⁷ Zarkovic Affidavit, Table 7.

⁹⁸ Zarkovic Affidavit, Table 4.

⁹⁹ Zarkovic Affidavit, Table 4.

¹⁰⁰ Johnston Affidavit, [96].

¹⁰¹ Johnson Affidavit, [25].

- c. REIT has not filed any financial reports with ASIC since April 2012;¹⁰³
- d. there is no current responsible entity;¹⁰⁴ and
- e. the maximum annual management fee payable by REIT pursuant to the REIT PDS is \$13,650,¹⁰⁵

Lotus appears not to have undertaken work to warrant the payment to it of responsible entity fees, particularly in the order of magnitude of \$107,400.

- 117. Further, it is clear that a fee of approximately \$107,000 was to be paid to EFSOL pursuant to the Musharakah Agreement for reasons that appear not to have been a proper use of REIT investors' funds.¹⁰⁶ In the absence of any documentary evidence that fees were paid to EFSOL, an inference can be drawn that the \$107,400 of funds paid to Lotus and subsequently disbursed were in fact the funds that were recorded as being paid EFSOL.
- 118. In any case, there is no explanation as to why the funds were not transferred directly to Lotus as the responsible entity in accordance with the REIT PDS and disbursed by the responsible entity, rather than to the Timeline Account. It is possible that a liquidator of REIT may claw back these payments on behalf of investors.

Persistent failure to comply with legal requirements

- 119. The management of REIT, Lotus and Timeline includes:
 - a. Mr Isaacs, who has been involved with the management of REIT and Lotus and is connected with other entities involved in the scheme.
 - b. Mr Sharmarke Mohamed Ahmed, a friend of Mr Isaacs.¹⁰⁷ Mr Ahmed was the purchaser under the original contract of sale of the Lara Property.¹⁰⁸
 - c. Natalie McKeown, Mr Isaacs' partner.
- 120. The deposit was paid in equal shares by Mr Ahmed and Ms McKeown.
- 121. At the time it was appointed as responsible entity, Lotus had three directors: Marie Monet, Su-Chen Wan; and Mr Isaacs. Mr Isaacs was also the responsible manager.

¹⁰² Johnson Affidavit, [25].

¹⁰³ Johnson Affidavit, [75].

¹⁰⁴ Johnson Affidavit, [66].

¹⁰⁵ Johnston Affidavit, [92].

¹⁰⁶ Johnston Affidavit, [54]-58].

¹⁰⁷ Johnston Affidavit, [21].

¹⁰⁸ Johnston Affidavit, [20].

122. Timeline, which is described in the REIT PDS as a “service provider” to REIT, was also connected with Mr Isaacs, who was its secretary from 17 August 2010 until its deregistration on 25 January 2015. Ms McKeown and Mr Ahmed were the directors of Timeline from 17 August 2010 to 25 January 2015 and were its shareholders at the date of registration.¹⁰⁹
123. REIT and its management, including Mr Isaacs, Mr Ahmed and Ms McKeown, have exhibited persistent failures to comply with legal requirements, evidenced by the following:
- a. on 10 August 2012, ASIC cancelled Lion Advantage’s AFSL on the grounds that it had repeatedly failed to have adequate professional indemnity insurance in place; it had failed to lodge audited financial reports on time; and had failed to hold membership of an ASIC approved external dispute resolution scheme;¹¹⁰
 - b. on 14 August 2012 one of the directors of Lion Advantage, David Hickie, was banned by ASIC from providing financial services for two years;¹¹¹
 - c. REIT was without a responsible entity for around 15 months between 2013 to 2014 in breach of section 601FB of the Act;¹¹²
 - d. ASIC issued a notice on 18 August 2016 to Lotus pursuant to section 915C(4) of the Act regarding Lotus’s compliance with section 912A of the Act;¹¹³
 - e. Lotus’s AFSL was cancelled on 21 September 2016 due to a number of compliance concerns (as set out in paragraph [71] above);¹¹⁴
 - f. REIT is again in breach of section 601FB of the Act for failing to have a responsible entity;
 - g. Lotus has not lodged financial statements with ASIC since 30 June 2014, in breach of sections 285(3), 292(1), 301(1) and 319(1) of the Act;¹¹⁵
 - h. REIT has not lodged financial statements with ASIC since 30 June 2012, in breach of sections 85(3), 292(1), 301(1) and 319(a) of the Act;¹¹⁶
 - i. Lotus and Mr Isaacs failed to comply with a notice issued by ASIC on 23 March 2016 under section 30 of the ASIC Act requiring production of documents regarding REIT;¹¹⁷ and
 - j. Mr Isaacs has not fully produced documents he was requested to produce pursuant to Directions issued to him following his section 19 examination.¹¹⁸

¹⁰⁹ Johnston Affidavit, [44].

¹¹⁰ Johnston Affidavit, [36], [37]; [38].

¹¹¹ Johnston Affidavit, [38].

¹¹² Johnston Affidavit, [39].

¹¹³ Johnston Affidavit, [64].

¹¹⁴ Johnston Affidavit, [66].

¹¹⁵ Johnston Affidavit, [61].

¹¹⁶ Johnston Affidavit, [75].

¹¹⁷ Johnston Affidavit, [100]-[102].

¹¹⁸ Johnston Affidavit, [103]-[110].

Interests of investors and the public interest

124. ASIC submits that the foregoing matters demonstrate that it is just and equitable, and in the interests of the investors, to wind up REIT. In short, their funds have been misused; without the liquidation, they will not receive any money back and will not receive anything in return for their 'savings plan' as promised; and without the liquidation, it is unlikely that the misuse of their funds can be properly investigated and amounts clawed back.
125. Additionally, the affairs and management of the Defendants are otherwise being conducted in a manner that appears prejudicial to the interests of its investors, and investor funds are or may be at risk. A liquidator should be appointed to investigate this.
126. Further, in circumstances where the REIT is most likely insolvent, appears unable to achieve its purpose, and continues to receive funds from investors, it is in the public interest that it be wound up.

WINDING UP TIMELINE

Applicable provisions

127. Sections 462(2)(e) and 464 authorise ASIC to make an application for winding up under section 461(1) where ASIC is investigating or has investigated matters being or connected with the affairs of the company under Division 1 of Part 3 of the ASIC Act.
128. Section 461(1)(k) of the Act provides that a Court may order the winding up of a company if the Court is of the opinion that it is just and equitable to do so. This section allows the Court to wind up a company, including in view of the public interest, particularly in situations involving public fundraising such as managed investment schemes: see for example *Bilkurra*.
129. As noted above, the case law applicable to the winding up of schemes on the just and equitable ground is derived from the case law on winding ups under section 461(1)(k). Therefore the case law referred to above applies to the winding up of Timeline.

Just and equitable grounds for winding up Timeline

Insolvency and lack of viability

130. As noted above, Timeline was deregistered on 25 January 2015 due to its failure to pay fees, and was reinstated administratively by ASIC on 24 July 2017 for the purposes of this proceeding.¹¹⁹
131. The fact that Timeline was deregistered establishes, prima facie, that it is not viable in that it has demonstrated its inability to comply with the requirements of the Act. ASIC considers that Timeline should not be allowed to continue in operation now that it has been reregistered by ASIC for the purposes only of this proceeding.
132. It is further arguable that because it was deregistered, Timeline is prima facie insolvent due to its inability to pay its fees as and when they fell due. If Timeline was solvent, presumably it would have paid its fees. In accordance with *Bilkurra*, Timeline should not be permitted to continue to operate if it is insolvent. In addition, it is likely that there will be payments made by and to Timeline that a liquidator may claw back.

Justifiable lack of confidence in management

Evidence of misconduct and lack of confidence in management

133. The winding up order can be justified on the grounds that ASIC has lost confidence in the ability of management to comply with the law. The management of Timeline and the management of REIT are connected. Therefore, the same evidence of misconduct as raised above regarding the management of REIT apply in respect of Timeline.
134. As noted in *Drury*, it can be necessary to wind up companies associated with the principal proponents of a managed scheme, where the scheme shares management with that company. In this case, ASIC has justifiable concerns about the management of Timeline, given the its concerns about REIT which shares management with Timeline.
135. In accordance with the line of reasoning in *Bilkurra*, Timeline should be wound up in order to enable the full investigation of all of the activities of Timeline and the clawing back of transactions from the Timeline Account where possible in accordance with Part 5.7B, Division 2 of the Act.

¹¹⁹ Johnston Affidavit, [45].

Misleading and deceptive conduct

136. As outlined above, despite its deregistration, Timeline's bank account continued to receive the money of investors. The receipt of money by Timeline was not contemplated in the REIT PDS.
137. In accordance with *Bilkurra*, where investors in land banking schemes appear to have invested on the basis of misleading representations, this is a factor which tends towards winding up the companies and the appointment of a liquidator.

Public interest

138. The winding up of Timeline is justified because it protects investors who continue to pay funds into Timeline in relation to a scheme that is no longer viable, and whom never authorised the payment of funds to Timeline, and to ensure that whatever investor funds remain in the Timeline Account are not depleted further.

The relationship between REIT and Timeline

139. Timeline may seek to argue that it should not be the subject of the liquidation because it does not owe any direct obligations to the investors. In particular, it may seek to argue that it was in receipt of investors' funds through no fault of its own.
140. In *Bilkurra*, Beach J noted that the defendants contested the proposition that funds raised from investors were transferred between associated entities with apparent disregard to the obligations owed to investors. The defendants argued that the companies that dissipated the funds owed no obligations to investors directly. His Honour found at [99] that this submission "lacks commercial reality", given the close connections between the management of the entities and the manner in which investor funds were raised and dissipated.
141. In *Drury*, the respondents were found to have breached the Act by failing to register a managed investment scheme. ASIC acknowledged that the relevant respondent was not as involved in the scheme as that of the other respondents, but referred to cases where the companies associated with the principal proponents of a managed investment scheme were also wound up (at [44]). In that case, ASIC did not contend that the respondent had any contact with the contributors but argued that it was an integral part of the scheme by being directly involved in the receipt of scheme funds

and subsequently in their dispersal. The Court ordered the winding up of that respondent, due to its involvement in the scheme by receipt of those funds.

142. In this case, Timeline is not directly involved in the scheme in that it is not the responsible entity. However, it is associated with the principal proponents of the scheme. The management of Timeline has been conducting a managed investment scheme without a responsible entity in breach of section 601FB and has been unlawfully receiving and dissipating money that was intended by investors to fund and achieve the purpose of the scheme. Accordingly, it is justified that Timeline be wound up, in accordance with the approach of the Court in both *Drury* and *Bilkurra*.

ORDERS REQUESTED

Extent of power under section 601NF(1)

143. Under section 601NF(1), the Court may appoint a person, other than the responsible entity of the scheme, to take responsibility for ensuring that the scheme is wound up in accordance with its constitution and any orders made under section 601NF(2) (*FEAP* at [32]). Gordon J noted in *FEAP* that such appointments are not unusual, citing *Re PWL* at [86]-[92], *Re Environinvest* at [131]-[132]; and *Rubicon* at [30].
144. The nature and extent of the powers which section 601NF confers upon an appointed person by virtue of his or her appointment is not clear from the terms of the statute nor is the matter clarified in the Explanatory Memorandum of the *Managed Investments Bill 1997* (Cth) which simply states in respect of the proposed section 601NF (which is in identical terms to section 601NF as enacted) that: “the Court may make other such orders as it sees fit”. Beyond directing that a registered scheme be wound up in accordance with its constitution, the provision leaves the detail of the winding up of a registered scheme in the hands of the Court which may make such orders as it thinks necessary: see *Equititrust* at [48].
145. Nevertheless, an appointment pursuant to section 601NF may be said itself to authorise the appointed person to cause assets to be collected, realised, and other steps taken so as to wind up the scheme in accordance with the constitution and any orders made under section 601NF(2): *Equititrust* at [38].
146. In *Equititrust*, it was considered necessary not only to make an order that the receiver have oversight of the process pursuant to an order under section 601NF(1), but given the company’s

history of non-compliance with the Act and breaches of its licence conditions, the Court concluded that the receiver be appointed as a receiver of the property of the fund under section 601NF(2).

Independent liquidators should be appointed

147. ASIC contends that an independent liquidator must be appointed and that the scheme management should not be appointed (pursuant to section 601NF(1)) to wind up the schemes themselves.
148. There are several cases in which the scheme's management has been allowed to conduct the winding up, in some cases under supervision, noting that these cases considered a winding up of unregistered schemes under section 601EE.¹²⁰ In *ASIC v Tasman Investment Management Ltd* (2004) 183 ALR 743, Barrett J found the following factors relevant to deciding whether to allow the scheme management to undertake the winding up under section 601EE:
- a. The existence of, or potential for uncertainty and dispute as to, the members' legal position and rights and the true purport of transactions.
 - b. Potential for different views as to the appropriate method of bringing the scheme to an end, including as to the allocation of costs.
 - c. The existence of, or potential for, conflicts indicating a possible need for an accounting between different interests or to distance the winding up from the operator and persons associated with it.
 - d. The need to assess the rights that the investors may have against the operator or outside parties.
 - e. The conduct of the operator in and about the operation of the scheme and solicitation of investment including the provision of information to investors.
 - f. Any depressing effect the appointment of an external controller may have on the scheme's operation or the value of assets.
 - g. The expenses likely to be involved in different and competing winding up proposals.
 - h. The amount at stake, in terms of funds invested and funds to be administered.
 - i. The views of investors.
149. In *ASIC v Takaran Pty Ltd (No 2)* (2002) 41 ACSR 561 Barrett J said at [15] that the scheme's management should be allowed to conduct the winding up only in 'exceptional circumstances' because of the public interest consideration. ASIC submits that such exceptional circumstances do not apply here because the scheme's management has not demonstrated that any such

¹²⁰ *Re LawLoan Mortgages Pty Ltd* [2003] 2 Qd R 200; (2002) 172 FLR 241; *ASIC v Atlantic 3 Financial (Aust) Pty Ltd* (2003) 47 ACSR 52; [2003] QSC 265; *ASIC v Young* (2003) 173 FLR 441; 21 ACLC 655; These cases relate to winding up ordered under section 601EE.

confidence should be reposed in it. On the contrary, ASIC submits that it is necessary for an external administrator to be appointed not only to protect the interests of investors but also to investigate potential claims against the scheme management or other parties.¹²¹

150. In the present case, the evidence points to a strong likelihood that the scheme management has mismanaged the scheme and ASIC submits that those persons should not be placed in charge of the liquidation.

Orders required under section 601NF(2)

Powers of the independent insolvency practitioner

151. Section 601NF(2) gives the Court power to make directions about how a registered scheme is to be wound up, if the Court thinks it necessary to do so (including for the reason that the provisions in the scheme's constitution are inadequate or impractical).
152. In this case, the Constitution of REIT¹²² is not sufficiently practical or adequate and does not include the necessary mechanics to enable an independent insolvency practitioner to wind up REIT and investigate all of the claims of investors that the scheme may have against various persons and entities.
153. Accordingly, ASIC requests an order to grant the appointed responsible person additional powers analogous to those of a liquidator. An example of this approach can be seen in *ASIC v McNamara* [2002] FCA 1005 (*McNamara*) where Mansfield J made an order to wind up an unregistered scheme, appointed a liquidator and ordered that:

the liquidator may exercise such functions and powers as set out in Chapter 5 of the Act as he would be entitled to exercise if the managed investment scheme were a company, with such modifications as are reasonably necessary in the circumstances.

154. The power conferred on the Court by section 601NF(2) has not been read in such a way as to permit the Court, by order, to impose a new legislative regime on the winding up of a particular scheme and thereby affecting the rights of, and imposing duties, on third parties (*Stacks* at [55]). While the Court has indicated that certain principles regarding liquidators can be applied by analogy (*Knightsbridge* at [79]), and that in practice “liquidators” of unregistered schemes assume they have the power of company liquidators (*Stacks* at [36]), it has been construed narrowly in both *Capelli* and *Stacks* (at [55]).

¹²¹ See also *Environinvest* (at [132]), in which the Court considered it was necessary that a person be appointed under section 601NF(1) to take responsibility to wind up the schemes having regard to the position of the responsible entity being insolvent and unable to discharge any of its functions.

¹²² Johnston Affidavit, [12] and exhibit NMJ-5.

155. ASIC submits that the independent insolvency practitioner in this case should be given the power of a liquidator of a company under the Act, to enable him to consider all claims against the owners and management of the scheme and to gather up all monies owing to the investors and any other creditors, in a manner similar to the order made in *McNamara* set out above.

Costs

156. ASIC seeks an order for the reasonable costs of the independent insolvency practitioner to be paid out of the scheme property. This approach has been adopted in previous matters.
157. In *FEAP*, Gordon J ordered that pursuant to section 601NF(2) of the Act, the administrators' costs of the application in question, and their reasonable remuneration and costs and expenses of ensuring that the scheme was wound up in accordance with its constitution and the orders of the court, be paid from the relevant scheme, and if the scheme's property was inadequate, be costs and expenses in the deed administration of the responsible entity.
158. In *PWL*, the Supreme Court of Western Australia ordered that the costs of the winding up by a person appointed under section 601NF(1), and the reasonable remuneration costs and expenses in winding up those schemes, be paid from the assets of the schemes, or to the extent the assets were insufficient, the assets of the responsible entity.

FORM OF ORDERS

ASIC requests the following orders:

159. In respect of REIT, pursuant to section 601NF(1) and (2) of the Act (and if necessary pursuant to section 601ND(1)(a) of the Act):
- a. The Court directs that REIT (and any of its sub-trusts including the Lara Sub-Trust) are to be wound up.
 - b. The independent insolvency practitioner, having given consent, is appointed to wind up the registered scheme in accordance with its constitution and with any further orders made by the Court.
 - c. In the absence of a responsible entity, the independent insolvency practitioner has the power and responsibility to exercise all functions that a responsible entity would have in winding up the schemes, and shall have all of the powers that a liquidator would ordinarily have in relation to a company that are necessary to enable the independent insolvency practitioner to

- investigate claims on behalf of the members and investors, gather the assets of the scheme, and distribute them to the members and investors in accordance with the constitution.
- d. The independent insolvency practitioner shall have access to the books and records of the Defendants and Lotus relating to the scheme.
160. Pursuant to section 461(1)(k) of the Act, an order that Timeline be wound up in accordance with the Act, and that the independent insolvency practitioner, having given consent, be appointed as a liquidator of Timeline in accordance with its constitution, the Act and any further orders of the Court.
161. ASIC's costs of this application and the independent insolvency practitioner's reasonable remuneration and costs and expenses of winding up the scheme and the company are to be paid from the property of REIT and Timeline.

4 September 2017

LAURA KEILY
Counsel for the Plaintiff



ASIC

Australian Securities & Investments Commission

1 سبتمبر 2017

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بخصوص الاستثمار الخاص بك في "صندوق استثمار الأسهم العقارية"

ASIC هي مؤسسة حكومية مستقلة تنظم الأسواق والخدمات المالية في أستراليا. ويشمل دورنا حماية مصالح المستثمرين عندما تسير الأمور في المسار الخطأ.

نفهم أنك مستثمر في صندوق استثمار الأسهم العقارية (المعروف أيضاً باسم REIT)، التي تملك الأرض في 130 شارع فليندرس، لارا.

وقد بدأت ASIC الإجراءات القضائية ضد REIT وشركة تدعى Timeline Project Management Pty Ltd (Timeline). ونحن نخبرك بالمزيد من المعلومات عن هذا، والفرصة المتاحة لديك لإبداء رأيك في تلك الإجراءات، أدناه.

لماذا نرسل إليك هذه الرسالة وكيف يمكننا مساعدتك؟

لدينا مخاوف حول REIT والطريقة التي ربما تم استخدام جزء من أموال المستثمرين بها. وكمستثمر، فنحن نرغب أن تكون على دراية بهذه المسائل وما الذي يمكن أن يحدث بعد ذلك.

إذا كانت لديك أية أسئلة فيمكنك التحدث معي أو مع زميلتي جيسكا زاركوفيتش:

بمؤسسة لاصالات لىصافته ASIC

ن:جونستوي ومعاؤو 03 (3588 9280) naomi.johnston@asic.gov.au

اكجيسيك:شأو 03 (4608 9280) وفي jessica.zarkovic@asic.gov.au

إذا كنت بحاجة إلى مترجم فوري، تفضل بالاتصال بخدمة الترجمة الهاتفية على الرقم 131 450 أولاً وسوف يقومون بالاتصال بنا.

لا تستطيع ASIC أن تخبرك بما يجب القيام به بعد ذلك، لكننا نستطيع مساعدتك من خلال مناقشة وضعك الخاص.

مرفق بهذه الرسالة نسخة من قرارات المحكمة، ونسخة من طلبات ASIC وبعض الأسئلة الأكثر شيوعاً. ونشير إلى هذه الوثائق أدناه.

ما الذي حدث بالفعل؟

بدأت ASIC إجراءات لتطلب من المحكمة أن تقرر ما الذي يجب أن يحدث مع REIT والاستثمار الخاص بعد ذلك. وأصدرت المحكمة بعض القرارات الأولية في جلسة استماع يوم الجمعة 18 أغسطس 2017، وقد أدرجنا نسخة من هذه القرارات مع هذا الخطاب.

ما الذي سيحدث بعد ذلك؟

تطلب القرارات من ASIC والأطراف الأخرى تقديم مذكرات إلى المحكمة بشأن القضايا التي تم رفعها. مذكرات ASIC مرفقة بهذه الرسالة.

ومن المقرر أن يتم تقديم طلبات REIT و Timeline في 1 سبتمبر 2017.

وسيتبع ذلك ترتيب جلسة استماع أخرى للمحكمة في تاريخ بعد 6 أكتوبر 2017.

ماذا يمكنك أن تفعل؟

كمستثمر يمكنك المشاركة في إجراءات المحكمة إذا كنت ترغب في ذلك. وينص القرار رقم 6 على أنه إذا كنت ترغب أن تستمع إليك المحكمة، فإنه يتعين عليك إرسال خطاب إلى المحكمة وإلى جميع الأطراف لإعلامهم قبل 22 سبتمبر 2017.

ربما ترغب في مناقشة ذلك مع مستثمرين آخرين والتحدث مع محام يمكنه تقديم المشورة القانونية المستقلة إليك حول ما يمكن أن تعنيه هذه الإجراءات لاستثمارك. وقد يتمكن مركز الشؤون القانونية المحلي الذي تتبعه من تزويدك بمساعدة مجانية. يمكنك البحث عن المركز المحلي الذي تتبعه في هذا الموقع: http://www.fcl.org.au/find_a_clc.php.

ولا يتعين عليك المشاركة في إجراءات المحكمة ما لم تطلب المحكمة ذلك في وقت لاحق.

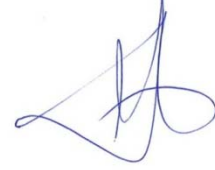
هل ترغب في الحصول على المزيد من المعلومات؟

إذا كنت ترغب في الحصول على المزيد من المعلومات، تفضل بالاتصال بي أو بجيسكا باستخدام معلومات الاتصال أعلاه.

وضعنا أيضًا المزيد من المعلومات حول أسباب اتخاذ ASIC هذا الإجراء في وثيقة "الأسئلة الأكثر شيوعاً" المرفقة مع هذا الخطاب.

سوف تقدم ASIC تحديثات حول هذه المسألة، بما في ذلك مواعيد الاستماع المقبلة، على موقعها على الانترنت في <http://asic.gov.au/about-mr252-releases/17-release/2017-media-a-centre/find-c/mediaasi-http://asic.gov.au/about-scheme-banking-land-a-up-wind-to-acts-asic>

وتفضلوا بقبول فائق الاحترام



نعومي جونستون
محامية أولى، إنفاذ الخدمات المالية
هيئة الأوراق المالية والاستثمار الأسترالية
المرفق.

أسئلة وأجوبة - معلومات للمستثمرين في REIT

1. ما هي مخاوف ASIC من خطة صندوق الاستثمار لحقوق الملكية العقارية (REIT)؟

تقوم ASIC بمثل دور الشرطة بالنسبة للشركات وخطط الاستثمار. دور ASIC هو تنظيم سلوك هذه الكيانات. نعتقد أنه ينبغي للمحكمة أن تمنع المدعى عليهم من العمل لأنهم لم يعملوا بصورة عادلة ولأن إدارتهم لا تفعل الشيء الصحيح.

وقد قامت شركة ASIC بالتحقيق في خطة الاستثمار العقاري من خلال إجراء مقابلات مع الأشخاص المشاركين في الخطة (بما في ذلك إدارتها)، ومراجعة العديد من الوثائق.

وبعد تحقيقنا، نشعر بالقلق إزاء ما يلي:

- يبدو أن خطة الاستثمار في حقوق الملكية العقارية (REIT) لا تتطوي على إمكانية لعودة المستثمرين إما في الأجل القصير أو على المدى الطويل.
- يواصل بعض المستثمرين دفع الأموال إلى خطة (REIT) على الرغم من احتمالية عدم استمرار تطورها.
- دُفعت أموال المستثمرين إلى شركة تسمى (Timeline) Project Management Pty Ltd التي ليس لها علاقة رسمية بخطة REIT.
- وقد سُحب مبلغ كبير من الأموال المدفوعة إلى Timeline وأصبح رصيد هذا الحساب الآن حوالي 45,000 دولار. ليس من الواضح بالنسبة إلى ASIC أين أو لماذا ذهبت معظم تلك الأموال.
- وخلافاً لالتزاماتها القانونية، لم يتم إعداد أي بيانات مالية لخطة REIT لمدة 5 سنوات.
- وخلافاً لالتزاماتها القانونية، لم يكن لدى خطة REIT "كيان مسؤول" لإدارة البرنامج لمدة عام. وذلك لأن الشركة المسؤولة السابقة، Lotus Securities Pty Ltd (شركة مرتبطة بجون إسكس)، وكان قد سحب منها ASIC ترخيص الخدمات المالية لأنها لم تمتثل للالتزامات القانونية المختلفة. ويتمثل دور الكيان المسؤول في حماية مصالح المستثمرين.

وتقول ASIC إنه من العدل والإنصاف وقف البرنامج عن العمل للأسباب المبينة أعلاه. وهذا أمر يتعين على المحكمة أن تقرره.

2. ما الذي تسعى إليه ASIC في هذه الإجراءات القضائية؟

تسعى ASIC إلى حماية مصالح المستثمرين.

ASIC تريد من المحكمة تعيين شخص مستقل (مصفي) لإدارة خطة REIT وممتلكاتها في العنوان الكائن في 490 Flinders Avenue, Lara.

كما ترغب ASIC في أن تعين المحكمة مصفياً إلى Timeline.

3. أين ذهبت أموال المستثمرين؟

تدرك ASIC أن بعض أموال المستثمرين قد تم دفعها إلى حساب مصرفي يحمل اسم Timeline والذي لا يبدو أنه مرتبط بأي شكل من الأشكال بخطة REIT. ليس من الواضح بالنسبة إلى ASIC سبب دفع Timeline لأموال المستثمرين عندما يبدو أنه

ليس لها أي صلة بخطة REIT. مدراء Timeline هم شارمارك أحمد و ناتالي ماكايون.

كما تلقت eTimelin "رسوم إدارية" ولكن ليس من الواضح لـ ASIC ما هي خدمات الإدارة التي قدمتها إلى خطة REIT.

لم تقدم خطة REIT بيانات مالية إلى ASIC منذ عام 2012، على الرغم من أن ذلك مطلوب بموجب القانون. وهذا يعني أنه لا يمكن لك ولا لـ ASIC معرفة ما يحدث لموارد REIT المالية.

4. ما الذي حدث لتطوير عقار لارا؟

يساور ASIC القلق لعدم اتخاذ أي خطوات لتطوير عقار لارا، وبناءً على المعلومات الحالية، يبدو أن تطوير العقار لا يمكن أن يمضي قدماً.

أبلغت ASIC Greater Geelong Council بما يلي:

- يقع عقار لارا في منطقة زراعية؛
- إن المجلس لا يؤيد إعادة توزيع الممتلكات لأغراض التنمية؛
- لم يجز المجلس أي مناقشات (كذلك الحال مع REIT) فيما يتعلق بإعادة توزيع الممتلكات.

5. ماذا تريد أن تفعل ASIC بعقار لارا؟

تريد ASIC من المحكمة تعيين شخص مستقل (مصنف) لخطة REIT و Timeline حتى يتمكنوا من السيطرة على ممتلكات لارا، والتحقق في مسائل خطة REIT وبيع الممتلكات من أجل إعادة الأموال المتاحة للمستثمرين. لا تحاول ASIC أن تأخذ الممتلكات بعيداً عن المستثمرين. تريد ASIC للمستثمرين استرداد أكبر قدر ممكن من أموالهم، نظراً لعدم إمكانية تنفيذ الخطة كما هو مقرر لها.

6. ماذا تعني أوامر المحكمة الاتحادية الصادرة في 21 أغسطس 2017 للمستثمرين؟

تتاح لك الفرصة لتمثيلك في إجراءات المحكمة.

إذا كنت تريد أن تمثل أمام المحكمة، فيجب عليك تقديم إخطار كتابي إلى المحكمة و ASIC والمدعى عليهم في موعد أقصاه 4 بعد الظهر يوم 22 سبتمبر 2017. ويرد ذلك في الفقرة 6 من الأوامر الصادرة عن المحكمة.

إذا كانت هذه الخطوة تحتاج إلى التنفيذ ثم يجب أن عليك أن تسعى إلى الحصول على المشورة القانونية الخاصة بك، وإذا كنت تريد ذلك، يمكنك القيام بذلك مع المستثمرين الآخرين. إذا قمت باستشارة محام فيجب أن تزوده بهذه الوثيقة وأوامر المحكمة المرفقة الصادرة في 21 أغسطس 2017.

7. ماذا سيحدث في القضية؟

ستطلب المحكمة من ASIC تقديم حججها، وستطلب من المدعى عليهم تقديم حججهم.

قد تطلب منك ASIC أو المدعى عليهم تقديم أدلة حول ما حدث لك في هذه المسألة. وستستمع المحكمة إلى ما تقوله بشأن ما يجب القيام به.

8. ماذا عليّ أن أفعل؟

لا يتعين عليك تقديم أية أدلة أو كتابة أي مستندات تتعلق بهذه القضية إذا كنت لا ترغب في القيام بذلك، ما لم تخبرك المحكمة أنك يجب عليك ذلك. لا يتعين عليك مساعدة ASIC أو المدعى عليهم إذا كنت تفضل عدم القيام بذلك.

إذا طلب منك المدعى عليهم (أو محاميهم) التوقيع على أي وثائق، فليست مضطراً لذلك، ونوصي بالحصول على المشورة القانونية قبل القيام بذلك.

9. ماذا أفعل إذا كانت لدي أسئلة؟

دليل ASIC حول كيفية القيام بأعمال التصفية قد يساعدك أيضاً. يمكنك العثور على هذا الدليل على: http://download.asic.gov.au/media/1340240/Liquidation_guide_for_creditors.pdf.

إذا كانت لديك صعوبة في التحدث أو فهم اللغة الإنجليزية، اتصل بخدمة الترجمة، TIS National، على 131 450. وسوف يتصلون بنا حتى تتمكن من مساعدتك في طلب البحث.

إذا كنت (أو كنت ستون على نومي جوعندلك الاتصنكميتالومعملد من ابي مزلجة إبدال لا ترا 03) 3588 9280 اكيسياو ج شتيوفكي على 9280 4608 (03 زارنتروكلد الايبرلأو عبر ا naomi.johnston@asic.gov.au .jessica.zarkovic@asic.gov.au) على

إذا كنت بحاجة إلى المشورة القانونية يمكنك استشارة محام. إذا كنت تعتقد أنك مؤهل للحصول على المساعدة القانونية، يرجى الاتصال بفيكتوريا ليجال إيد على الرقم 1300 792 387 أو الوصول على المعلومات من موقعهم على الإنترنت <http://www.legalaid.vic.gov.au>.

قد يكون المركز القانوني المحلي قادراً على تقديم المساعدة لك، ويمكنك البحث عن مركزك المحلي على هذا العنوان: http://www.fclc.org.au/find_a_clc.php.



المحكمة الاتحادية في أستراليا

منطقة التسجيل: فيكتوريا القسم:

العام

رقم: VID820/2017

اللجنة الأسترالية للأوراق المالية والاستثمار
المدعي

515 623REALESTATE EQUITY INVESTMENT TRUST (ARSN 094) وآخر مذكور

اسمه في الجدول الزمني مدعى عليهم

أمر قضائي

حضرة القاضي موشينسكي

القاضي:

21 أغسطس 2017

تاريخ الأمر القضائي:

ملبورن

مكان الإصدار:

وتصدر المحكمة أحكاماً بالموافقة على ما يلي:

1. العرائض NMJ-1 إلى NMJ-9 بشأن شهادة خطية من ناعومي مارغريت جونستون المحلف في 17 أغسطس 2017 على أن تبقى هذه المعلومة سرية وعدم الكشف عنها لأي شخص دون موافقة خطية وصريحة من جميع الأطراف. أو بأمر من المحكمة.
2. تقوم الفقرة 1 من هذه الأحكام القضائية على أساس أنه من الضروري إسقاط حقه أمام المحكمة المختصة في رفع دعوى مماثلة، وذلك من أجل الحفاظ على السرية على المعلومات الشخصية لكل من الأفراد والمستثمرين في خطة صناديق الاستثمار في الأسهم العقارية (REIT).
3. قام المدعي (ASIC) برفع وتقديم المذكرات المكتوبة لدعم طلبه بحلول الساعة 4:00 بعد الظهر في 1 سبتمبر 2017.
4. ترسل ASIC عن طريق البريد و/أو البريد الإلكتروني، نسخة من مذكراتها المكتوبة وهذه الأحكام القضائية إلى كل مستثمر من المستثمرين في خطة REIT بحلول الساعة 4:00 بعد الظهر في 1 سبتمبر 2017. يكون الامتثال لهذا الحكم القضائي كافياً إذا أرسلت ASIC المراسلات بالبريد العادي أو بالبريد الإلكتروني إلى المستثمرين في آخر عنوان معروف ومتاح لـ ASIC.
5. يتخذ المدعى عليهم الإجراءات ويطلعون على أي إفادات خطية عند المعارضة لطلب ASIC قبل الساعة 4.00 بعد الظهر في 15 سبتمبر 2017.
6. يخطر أي مستثمر في خطة REIT ويسعى إلى أن يمثل أمام المحكمة بشأن طلب ASIC بإشعار خطي، ويخطر كذلك الأطراف بحلول الساعة 4.00 بعد الظهر يوم 22 سبتمبر 2017.
7. تقدم ASIC وترفع أية إفادات خطية في مذكرة الرد بحلول الساعة 4.00 بعد الظهر يوم 2 أكتوبر 2017.



2 -

8. ترفع ASIC وترسل أي ملاحظات مكتوبة مكتملة بحلول الساعة 4:00 بعد الظهر يوم 2 أكتوبر 2017.
9. يقدم المدعى عليهم ويطلعون على المذكرات المكتوبة بحلول الساعة 4:00 بعد الظهر يوم 6 أكتوبر 2017.
10. تدرج الإجراء على القائمة للمحاكمة، في موعد لاحق بعد 6 أكتوبر 2017، على تقدير ليوم واحد.
11. هناك حرية للتنفيذ.
12. تأجيل الحكم بمصاريف الدعوى.

تاريخ ختم هذا الإدخال: 21 أغسطس 2017

المسجل
{توقيع}



- 3

الجدول الزمني

رقم: VID820/2017

المحكمة الاتحادية في أستراليا
منطقة التسجيل: فيكتوريا القسم:
العام

TIMELINE PROJECT MANAGEMENT PTY LTD
(ACN 145 830 851)

المدعى عليه الثاني

1 Siteembar 2017

Level 7, 120 Collins Street,
Melbourne VIC 3000
GPO Box 9827, Melbourne VIC 3001
DX 423 Melbourne

Telefoonka: +61 3 9280 3200

Fakis: +61 3 9280 3444

www.asic.gov.au

Gacaliye Mudane/Marwo,

Ku saabsan maalgelintaada ku aadan Hantida Dhulka ee Sanduuqa Maalgelinta

ASIC waa urur dowli ah oo madaxbanaan ee qawaaniinta u dejiya suuqyada maaliyadda iyo adeegyada Austaraaliya dhexdeeda ah. Doorkeenu waxaa ka mid ah in aan difaacno danaha maalgashata marka waxyaabo qalad ah ay dhacaan.

Waan fahamsannahay in adigu aad tahay meel-geliye dhanka Hantida Dhulka ee Sanduuqa Maalgelinta (oo sidoo kale loo yaqaano **REIT**), kaa soo isla leh dhulka **490 Flinders Avenue, Lara**.

ASIC bilaabanayaan tallaabaddii Maxkamadda ee lidka ku ahaa REIT iyo shirkad lagu magacaabo Timeline Project Management Pty (**Timeline**). Waxbadan oo arrinkan ku saabsan ayaan kuu sheegi doonaa, iyo fursad adiga aad wax uga dhihi karto inta tallaabadan ay socoto, hoos ka fiiri.

Maxay tahay sababta aan warqaddan kuugu soo direyno iyo sidee ayaan kuu caawin karnaa?

Waxaa jira welwel REIT ku saabsan iyo qaabka ay dhici karto in lacagta maalgashata loo isticmaalay. Sida maalgashato ahaan, waxaan rabnaa in arrinkan aad la socoto iyo waxa xiga ee dhici kara.

Haddii aad qabto wax su'aallo ah aniga ama qofka aan wada shaqayno oo ah Jessica Zarkovic ayaad la soo hadli kartaa:

Sida aad ASIC ula soo xiriiri karto:

Naomi Johnston: (03) 9280 3588 am naomi.johnston@asic.gov.au

Jessica Zarkovic: (03) 9280 4608 ama jessica.zarkovic@asic.gov.au

Haddii aad rabto qof turjumaan ah, soo wac Adeegga Telfoonka Turjumaanka marka koowaad soo wac 131 450 oo iyaga ayaa anaga na soo wici doona.

ASIC kuuma sheegi karo waxa la samayn la'haa tallaabada xigta laakin annaga ayaa kaa caawin karna in xaaladdaada aan kaala hadalno.

Warqaddan waxaan ku soo lifaaqnay nuqdo ah amarrada Maxkamadda, nuqdi Qoraalka ASIC iyo qaar ka mid ah Su'aalaha Markasta La Isweydiyo. Dukumentiyadan hoos ayaan ku soo qaadanay.

Maxaa hadda horey u dhacay?

ASIC waxay bilowday tallaabo Maxkamadda lagu waydiinayo in maxkamaddu ay go'aamiso waxa xigga ee ku dhici la'haa R iyo maalgelintaada. Waxaa jiray amarro ay Maxkamaddu horey ugu soo saartay dhegeysigii dhacay maalinta Jimcaha, 18ka bisha Agoosto, 2017 oo nuqdi amarkii ka soo baxay warqaddan ayaan kula soo lifaaqay.

Waxa dhici doona marka xigta?

Amarrada waxay uga baahan yihiin in ASIC iyo qolada kale in Maxkamaddu u soo gudbiyaan qoraallo ku saabsan arrinka la soo jeediyay. Qoraala ay ASIC soo gudbiyay waa lagu soo lifaaqay.

Waqtiga loo qabtay in REIT and Timeline ay qoraalka u soo gudbiyaan waa 1da Seteember, 2017.

Ballan kale oo dhegeysi Maxkamad ah ayaa markaa kaddib la ballami doonaa wixii **ka dambeeya** 6da Oktoobar, 2017.

Waxaad qaban karto?

Adigu maalgeliya ahaan adiga waad ka **qeybqaadan kartaa dacwadda Maxkamadda ka socoto haddii aad rabto**. Amarka lambarka 6 wuxuu leeyahay haddii aad rabto in Maxkamaddu ay ku dhegeysato, markaas waxaad u baahan tahay in Maxkamaddu iyo qolyaha lugta ku leh oo dhan aad u so qorto oo aad u sheegto ka hor inta aan la gaarin **22ka Seteember, 2017**.

Waxaad u baahnaan doontaa in maalgashata kale aad kala hadasho oo aad ula hadasho qareen ku siin kara talo dhanka sharciga oo madaxbanaan ee ku saabsan howlahan iyo micnaha ayu maalgelintaada leedahay dacwaddan. Xaruntaada Sharciga ee Xaafaddaada ayaa dhici karta inay ku siiyaan **caawinaad bilaash** ah. Boggan internetka ayaad ka baari kartaa xarunta xaafaddaada u dhow: http://www.fclc.org.au/find_a_clc.php.

Adiga uma baahnid in aad ka soo qaybgasho dacwadda Maxkamadda ka socoto, aysan ka ahayn haddii Maxkamaddu ay wakhti kale kaaga baahato maahane.

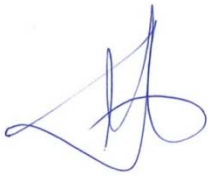
Ma u baahan tahay xog kale oo dheeraad ah?

Aniga ama Jessica la soo xiriir adiga oo isticmaalaya fahfaahinta kor ku qoran haddii aad rabto xog dheeraad ah.

Sidoo kale waxaan xog dheeraad ah oo ku saabsan sababta ADIC ay tallaabadan u soo qaaday soo celinay ama ku soo qornay dukumentiga warqaddan la soo raaciyay ee ah *“Su'aalaha Markasta La Isweydiyo”*

ASIC waxay ku soo qori doontaa wixii xog ah ee soo cusboonaada oo arrinkan ku saabsan, oo ay ku jiraan taariikhaha dhegeysiga dacwadadha mustaqbalka boggan <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2017-releases/17-252mr-asic-acts-to-wind-up-a-land-banking-scheme/>.

Daacadnimo,

A handwritten signature in blue ink, appearing to be 'Naomi Johnston', with a stylized, cursive script.

Naomi Johnston
Qareenada Sare, Fulinta Adeegyada Maaliyadda
Guddiga Maalgelinta iyo Amniga Austaraaliyan

Lagu soo lifaaqqay.

Su'aalaha Badi La Is Weydiiyo – Macluumaadka loogu talagalay maalgashadeyaasha REIT

1. Waa maxay walaacyada ay guddiga ASIC ka qabaan nidaamka Ammaano haynta Maalgelinta Qiimaha saafi ah ee Guryaha (Realestate Equity Investment Trust) (REIT)?

ASIC waxay la mid yihiin booliiska marka laga hadlayo shirkadaha iyo nidaamyada maalgelinta. Doorka ASIC waa in ay nidaamiyaan habdhaqanka ururradaas. Waxaan aaminsan nahay in Eedaysanayaasha Maxkamaddu u diiddo in ay hawlgallo sameeyaan maxaa yeelay hawlgalladoodii hore caddaali ma ahayn maamulkooduna waxa hagaagsan ma sameeyaan.

ASIC ayaa baaray nidaamka REIT iyagoo waraystay dad nidaamka ku jira (xataa maamulkiisa), waxayna eegeen dukumeentiyo farabadan.

Baaritaankayagii ka dib, waxaan ka walaacsan nahay in:

- Nidaamka REIT u muuqdo mid aanan lagu rajo qabin in uu macaash u keeno maalgashadeyaasha waqtiga gaaban ama waqtiga dheer.
- Maalgashadeyaasha qaar ay weli lacag ku shubaan nidaamka REIT inkastoo ay suurogal tahay in guryaha aanan la dhisin.
- Lacagta maalgashadeyaasha la siiyey shirkad la yiraahdo Timeline Project Management Pty Ltd (**Timeline**) oo aanan xiriir rasmi ah la lahayn nidaamka REIT.
- Lacagta la siiyey shirkadda Timeline caddad ballaaran lagala baxay oo baaqiga akownkaasi iminka yahay qiyaas ahaan \$45,000. ASIC si cad uguma muuqato halka la geeyey lacagtaas inteeda ugu badan ama sababta loo qaaday.
- Iyadoo dhan ka ah waajibaadka sharci ahaan saaran, muddo 5 sano ah bayaanno maaliyadeed aanan laga diyaarinin nidaamka REIT.
- Iyadoo dhan ka ah waajibaadka sharci ahaan saaran, nidaamka REIT muddo hal sano ah uusan lahayn 'urur masuul ah' oo nidaamka maamula. Taas waxaa sabab u ah in ururkii hore ee masuul ahaa, Lotus Securities Pty Ltd (shirkad xiriir la lahayd John Isaacs), ay guddiga ASIC ka qaadeen shatigiisii adeegyada maaliyadeed maxaa yeelay waxuu addeeci waayey waajibaad sharciyeed oo kaladuwan. Doorka ururka masuul ah waxa weeyaan in uu dhawro danaha maalgashadeyaasha.

ASIC ayaa sheegay in ay xaq iyo caddaali tahay in sababaha kor ku xusan lagu joojiyo hawlgalka nidaamka. Tani waa wax Maxkamaddu u baahan doonto in ay ka go'aan gaarto.

2. Waa maxay waxa ay guddiga ASIC ka rabaan dacwadahan maxkamadeed?

ASIC ayaa doonaya in ay dhawraan danaha maalgashadeyaasha.

ASIC waxay doonayaan in Maxkamaddu magacaabto qof madax bannaan (xaraashe) oo maamula nidaamka REIT iyo hantidiisa ku taalla cinwaanka ah 490 Flinders Avenue, Lara.

ASIC waxay weliba doonayaan in Maxkamaddu xaraashe u magacaabto shirkadda Timeline.

3. Halkee ayaa la geeyey lacagtii maalgashadeyaasha?

ASIC sida ay u fahansan yihiin waxaa lacagta maalgashadeyaasha qaybteed lagu shubay akown bangi oo ku furan magaca shirkadda Timeline oo aanan u muuqanin in ay dhinac kaga xiran tahay nidaamka REIT. Guddiga ASIC si cad uguma muuqato sababta lacagta maalgashadeyaasha loo siiyo shirkadda Timeline marka ay u muuqato in aanay xiriir ku lahayn REIT. Agaasimeyaasha Timeline waa Sharmarke Ahmed iyo Natalie McKeown.

Waxaa weliba shirkadda Timeline la siiyey "ajuurada maamulka" laakiin guddiga ASIC si cad uguma muuqato adeegyada maamulka ee ay ka bixisay nidaamka REIT.

Nidaamka REIT bayaanno maaliyadeed uma soo dirin guddiga ASIC tan iyo sanadkii 2012, inkastoo sharci ahaan taas laga sugayo. Taas macnaheedu waxa weeyaan in adiga iyo guddiga ASIC aydaan ogaan karin waxa ka dhacaya maaliyadda REIT.

4. Maxaa laga qabtay dhisidda hantida Lara?

ASIC waxay ka walaac qabaan in aanan tallaabooyin laga qaadin dhisidda hantida Lara oo marka la raaco macluumaadka hadda la hayo waxay u muuqataa in dhisidda hantida aanan lagu dhaqaaqi karin.

Kawnsalku Greater Geelong ayaa ASIC u sheegay in:

- hantida Lara ku taallo aag beero ah;
- Kawnsalku uusan taageersanayn in aag kale loo yeelo hantida la dhisayo; oo
- Kawnsalku uusan wax wadahal ah ka yeelanin sidii aag kale loogu yeeli lahaa hantida (haddii uu xataa la yeelan lahaa REIT).

5. Maxay ASIC rabaan in ay ku sameeyaan hantida Lara?

ASIC waxay doonayaan in Maxkamaddu ay qof madax bannaan (xaraashe) u magacaabto nidaamka REIT iyo shirkadda Timeline si uu ula wareego maamulka hantida Lara, u baaro arrimaha nidaamka REIT uuna hantida u iibiyo si lacagta la heli karo loogu celiyo maalgashadeyaasha. ASIC iskuma dayayaan in ay hantida ka qaadaan maalgashadeyaasha. ASIC waxay doonayaan in ay maalgashadeyaashu soo ceshadaan inta lacag ah ee suurogal ah, maadaama aanay suurogal ahayn in nidaamka loo hirgeliyo sidii qorshaysnayd.

6. Amarrada Maxkamadda Federaali ah ee la soo saaray maalintii 21 August 2017 maxay uga dhigan yihiin maalgashadeyaasha?

Waxaad fursad u haysataa in lagaa matalo ama aad wakiil u soo dirato dacwadaha Maxkamadda.

Haddii aad rabto in Maxkamadda lagaa dhegeysto, waa in aad ogaysiin qoraal ah siiso Maxkamadda, ASIC iyo Eedaysaneyaasha kama dambays **4ta galabnimo maalinta 22 Setembar 2017**. Tan waxaa lagu xusay baaragaraafka 6 ee Amarrada ay Maxkamaddu soo saartay.

Haddii tani ay tahay tallaabo laga yaabo in aad rabto in aad qaaddo markaa waa in aad doonato talo sharciyeed oo gaar kuu ah, haddiina aad rabto, waxaad sidaas la samayn kartaa maalgashadeyaal kale. Haddii aad looyar la hadasho markaa waa in aad isaga siiso

dukumeentigan iyo Amarrada Maxkamadda ee maalintii 21 August 2017 kuwaasoo warqaddan la socda.

7. Maxaa dacwadda ka dhici doona?

Maxkamadda ayaa guddiga ASIC weydiin doonta in ay doodahooda soo jeediyaan waxayna Eedaysaneyaasha weydiin doontaa in ay doodahooda soo jeediyaan.

ASIC ama Eedaysaneyaasha ayaa laga yaabaa in ay ku weydiyaan in aad ka markhaati furto wixii arrinkan kaa soo gaaray. Maxkamaddu waxay dhegaysan doontaa waxa aad tiraahdo si ay uga go'aan gaarto waxa ay samaynayso.

8. Maxaa waajib igu ah in aan sameeyo?

Waajib kuguma aha in aad dacwaddan ka markhaati furto ama dukumeentiyo ka qorto haddii aadan rabin in aad sidaas samayso, marka ay Maxkamaddu kugu amarto mooyee. Waajib kuguma aha in aad guddiga ASIC ama Eedaysaneyaasha midkood caawiso haddii aadan rabin.

Haddii Eedaysaneyaasha (ama looyarradoodu) ay ku weydiyaan in aad dukumeentiyo saxiixdo, waajib kuguma aha in aad sidaas samayso waxaan kugula talinaynaa in aad talo sharciyeed doonato ka hor inta aadan sidaas samaynin.

9. Maxaan sameeyaa haddii aan su'aalo qabo?

Hagaha ASIC ee ku saabsan sida xaraashidda loo sameeyo ayaa weliba ku caawin kara.

Waxaad hagahan ka heli kartaa halkan:

http://download.asic.gov.au/media/1340240/Liquidation_guide_for_creditors.pdf.

Haddii aad dhibaato ku qabto ku hadalka ama fahanka Ingiriisiga, wac adeegga turjumaanka, TIS National, oo lambarkiisu yahay **131 450**. Annaga ayay na soo wici doonaan si aan weydiintaada kaaga caawin karno.

Haddii aad weli u baahan tahay macluumaad dheeraad ah waxaad la xiriiri kartaa Naomi Johnston oo aad ka helayso lambarka (03) 9280 3588 ama Jessica Zarkovic oo aad ka helayso lambarka (03) 9280 4608 ama iimayl aad ugu dirto halkan naomi.johnston@asic.gov.au ama jessica.zarkovic@asic.gov.au.

Haddii aad u baahan tahay talo sharciyeed waxaad la hadli kartaa looyar. Haddii aad u malaynayso in aad u qalmi karto Gargaarka Sharciga (Legal Aid) markaas fadlan la xiriir Victoria Legal Aid oo aad ka helayso lambarka 1300 792 387 ama macluumaad ka eeg bartooda internetka oo ah <http://www.legalaid.vic.gov.au/>.

Waxaa weliba gargaar ku siin karta Xarunta Sharciyeed ee Bulshada (Community Legal Centre) ee xaafaddaada waxaanad xarunta xaafaddaada ka baari kartaa cinwaankan: http://www.fclc.org.au/find_a_clc.php.



Maxkamadda Federaali ah ee Ustaraaliya

Diiwaanka Degmada: Victoria

Qaybta: Guud

Lam: VID820/2017

GUDDIGA GAAR AH EE AMMAANOYINKA IYO MAALGELINNADA USTARAALIYA
Dacwoodaha

AMMAANO HAYNTA MAALGELINTA QIIMAHA SAAFI AH EE GURYAHA (REALESTATE EQUITY INVESTMENT TRUST) (ARSN 094 623 515) iyo qof kaloo ku magacaaban lifaaqa Eedaysaneyaasha

AMARKA

XAAKINKA: JUSTICE MOSHINSKY

TAARIKHDA AMARKA: 21 August 2017

HALKA LAGA SOO SAARAY: Melbourne

WAXAY MAXKAMADDU KU AMAR BIXINAYSAA IYADOO LA OGGOL YAHAY IN:

1. Caddaynada NMJ-1 ilaa NMJ-9 ee dhaarta qoran ee Naomi Margaret Johnston ee laga dhaariyey maalintii 17 August 2017 sir lagu hayo oo aanan loo shaacinin qof kaste haddii aanan oggolaansho cad oo qoran laga helin dhinacyada dhammaantood, ama aanay Maxkamaddu ku amar bixinin.
2. Baaragaraafka 1 ee amarradan lagu soo saaro sababta ah in ay lagama maarmaan tahay in la horjoogsado waxyeellada gaari karta fulinta caddaaladda hagaagsan, si sirta loogu ilaaliyo macluumaadka shakhsi ahaaneed ee maalgashadeyaasha kaladuwan ee nidaamka Ammaano haynta Maalgelinta Qiimaha saafi ah ee Guryaha (**REIT**).
3. Dacwoodaha (**ASIC**) uu soo diro uuna keeno dukumeentiyada qoran ee uu ku taageerayo codsashadiisa kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 1 Setembar 2017.
4. Guddiga ASIC ugu diraan, dhanka boostada iyo/ama iimayl, nuqulka dukumeentiyadooda qoran iyo amarradan mid kaste oo ka mid ah maalgashadeyaasha nidaamka REIT kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 1 Setembar 2017. Waxaa addeecid ku filan u ah amarkan haddii guddiga ASIC wax ugu diraan ama iimayl ugu diraan maalgashadeyaasha cinwaankii ugu dambeeyey ee lagu ogaa ee ASIC ay helaan.
5. Eedaysaneyaashu soo diraan ayna keenaan dhaaraha qoran ee ay kaga soo horjeedaan guddiga ASIC codsashadooda kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 15 Setembar 2017 .
6. Maalgashade kaste ee nidaamka REIT oo raba in Maxkamaddu ka dhegeysato codsashada guddiga ASIC ogaysiin qoran u diro Maxkamadda iyo dhinacyada kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 22 Setembar 2017.
7. Guddiga ASIC soo diraan ayna keenaan dhaaraha qoran ee ay kaga jawaabayaan kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 2 Oktoobar 2017.



8. Guddiga ASIC soo diraan ayna keenaan wixii dukumeentiyo qoran ah ee dheeraad ah kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 2 Oktoobar 2017.
9. Eedaysaneyaashu soo diraan ayna keenaan wixii dukumeentiyo qoran ah ee dheeraad ah kama dambays marka ay saacaddu tahay 4.00 galabnimo maalinta 6 Oktoobar 2017.
10. Dacwadda loo qorsheeyo in maxkamadda la mariyo, taariikh ka dambaysa maalinta 6 Oktoobar 2017, iyadoo lagu qiimaynayo hal maalin.
11. Xorriyad loo helo codsasho.
12. Kharashyada la reebto.

Taariikhda diiwaangelinta la shaanbadeeyey: 21 August 2017

A handwritten signature in blue ink, which appears to read "David Soden".

Diiwaan hayaha

- 3 -



Lifaaqa

Lam: VID820/2017

Maxkamadda Federaali ah

ee Ustaraaliya

Diiwaanka Degmada:

Victoria

Qaybta: Guud

Eedayanaha Labaad

TIMELINE PROJECT MANAGEMENT PTY LTD
(ACN 145 830 851)