



Federal Court of Australia  
District Registry: Queensland  
Division: General

No: QUD439/2018

**AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**  
Plaintiff

**LINCHPIN CAPITAL GROUP LTD ACN 163 992 961** and another named in the  
schedule  
Defendant

### **ORDER**

**JUDGE:** JUSTICE DERRINGTON

**DATE OF ORDER:** 15 March 2019

**WHERE MADE:** Brisbane

#### **THE COURT ORDERS THAT:**

1. Paragraphs 6, 7, 8, 9 and 10 of the Orders made on 7 August 2018 in this proceeding are vacated.

#### **Declarations**

2. It is declared that the First Defendant has acted in contravention of:
  - (a) section 601ED(5) of the Corporations Act 2001 (Cth) (**the Act**) because on and from 6 August 2014, the First Defendant failed to register the unregistered managed investment scheme known as the Investport Income Opportunity Fund of which the First Defendant is the trustee (**Unregistered Fund**) and thereby operated a managed investment scheme contrary to section 601ED(5) of the Act;
  - (b) section 911A of the Act because it issued interests in the Unregistered Fund from 6 August 2014, when it did not hold an Australian Financial Services Licence (**AFSL**);
  - (c) section 911B of the Act because it purported to issue interests in the Unregistered Fund pursuant to an AFSL held by The Financiallink Group Pty Ltd, when it was not authorised by that AFSL to do so;
  - (d) section 1041H(1) of the Act and section 12DA of the Australian Securities and Investments Commission Act 2001 in respect of representations made to potential investors in the Information Memorandum issued 23 January 2014.



3. It is declared that the Second Defendant has acted in contravention of:
- (a) section 208 (as modified by section 601LC) of the Act by engaging in related party transactions without member approval;
  - (b) section 601FC(1)(b) of the Act because it failed to exercise reasonable care and skill as responsible entity of the registered managed investment scheme known as Investport Income Opportunity Fund of which the Second Defendant is the responsible entity (**Registered Fund**);
  - (c) section 601FC(1)(c) of the Act because it did not act in the best interests of the members of the Registered Fund;
  - (d) section 601FC(1)(h) of the Act because it failed to comply with its compliance plan;
  - (e) section 601FC(1)(j) of the Act because it failed to ensure that the property of the registered fund was valued at regular intervals;
  - (f) section 601FC(1)(k) of the Act because it contravened the requirement to ensure that payments were made out of scheme property in accordance with the Act;
  - (g) section 912A(1)(a) of the Act because it failed to ensure that the financial services it provided in respect of the Registered Fund were provided efficiently and fairly;
  - (h) section 912A(1)(aa) of the Act because it did not have in place adequate arrangements for the management of conflicts of interest;
  - (i) sections 1013D(1)(f) and 1013E of the Act because it did not identify in the second and the third Product Disclosure Statements (**PDS**) dated 1 October 2015 and 24 June 2016 respectively that it issued to potential investors, the nature of the related party transactions which had been entered into prior to issuing those PDS;
  - (j) section 1017B(1) of the Act because it failed to identify to the Registered Fund members the nature and extent of the related party transactions that were entered into following the issue of the first, second and third PDS (the first PDS being dated 27 April 2015).

#### **The First Defendant — Linchpin Capital Group Ltd**

4. Pursuant to section 461(1)(k) of the Act, the First Defendant be wound up.
5. Jason Tracy and David Orr of Deloitte (**Liquidators**) be appointed as joint and several liquidators of the First Defendant.



**Linchpin Capital Group Ltd as trustee of the Investport Income Opportunity Fund**

6. The Unregistered Fund be wound up pursuant to section 601EE(2) of the Act.
7. Pursuant to section 601EE(2) of the Act:
  - (a) the Liquidators be appointed to be take responsibility for ensuring that the Unregistered Fund is wound up in accordance with its Constitution and subject to these orders;
  - (b) the Unregistered Fund be wound up as if:
    - (i) the Unregistered Fund were a corporation; and
    - (ii) the provisions of parts 5.4B, 5.6 and 5.7B of the Act applied to the winding up.

**The Second Defendant — Endeavour Securities (Australia) Ltd**

8. Pursuant to section 461(1)(k) of the Act, the Second Defendant be wound up.
9. Jason Tracy and David Orr of Deloitte (**Liquidators**) be appointed as joint and several liquidators of the Second Defendant.

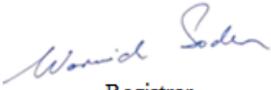
**Endeavour Securities (Australia) Ltd as responsible entity of the Investport Income Opportunity Fund**

10. The Registered Fund be wound up pursuant to section 601ND(1)(a) of the Act.
11. Pursuant to section 601NF(1) of the Act, the Liquidators be appointed to be take responsibility for ensuring that the Registered Fund is wound up in accordance with its Constitution and subject to these orders.
12. Pursuant to section 601NF(2) of the Act, the Registered Fund be wound up as if:
  - (a) the Registered Fund were a corporation; and
  - (b) the provisions of parts 5.4B, 5.6 and 5.7B of the Act applied to the winding up.

**Costs**

13. The Defendants pay the Plaintiff's costs of the proceeding.

Date that entry is stamped: 15 March 2019.

  
Registrar



**Schedule**

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Second Defendant      ENDEAVOUR SECURITIES (AUSTRALIA) LTD ACN 079 988  
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