

update

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Friday Facts: ASIC successful in having former director banned for 25 years

A decision of the New South Wales Supreme Court delivered last week highlights the potential consequences for directors who pay blatant disregard to their duties and, in particular, engage in insolvent trading.

Mr Edwin Goulding (**Mr Goulding**), a former director of the Sydney Investment House Group, has been disqualified from managing corporations for 25 years following a successful ASIC prosecution.

In November of last year Mr Goulding was found guilty of serious and numerous breaches of his duties as a director including:

- allowing intercompany loans to insolvent entities;
- making false or misleading statements to investors; and
- operating an unregistered managed investment scheme.

Mr Goulding was found to have misappropriated at least \$4.2 million in company funds. Justice Hamilton described his attitude as being "that the companies and their funds were his to dispose of as he thought fit without attention to the matters he should have considered as a director of the relevant company or the formalities that should be attended to."

ASIC sought the disqualification order pursuant to s206C of the *Corporations Act*

2001. The disqualification order is designed to protect the public by seeking to safeguard the public interest in the transparency and accountability of companies and in the suitability of directors who hold office. It is protective against present and future misuse of the corporate structure.

Elements of dishonesty, the incurrence of large losses, disregard for the law and compliance with corporate regulation, as well as a lack of contrition or remorse, have led the Courts to impose longer disqualification periods. The Courts will have regard to four general categories in determining whether or not disqualification is warranted, and if so for how long:

1. The nature and seriousness of contraventions
2. Protection of the public
3. Retribution and deterrence
4. Mitigating factors

The breaches committed by Mr Goulding were considered by the Court to be serious enough to warrant the banning order. The Court found that on some occasions Mr Goulding deliberately did what he knew was

wrong. Although Mr Goulding claimed to have acted on legal advice, the Court found at times he in fact acted deliberately in doing precisely the things his legal advice indicated must not be done.

The penalty handed down serves as a timely reminder to all of the seriousness of the consequences of breaching directors' duties and follows a series of cases where increasingly long disqualifications have been granted at ASIC's request.

For more information

For more information, please contact:

- Mary Nemeth, Partner on 03 9321 7810
mnemeth@rigbycooke.com.au
- Lucy Fitzgerald on 03 9321 7914
lfitzgerald@rigbycooke.com.au

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