

## CLIFFORD CHANCE ADVISES FTI CONSULTING (AS RECEIVERS OF THE QUINTIS GROUP OF COMPANIES) ON DIRECTIONS APPLICATION IN THE SUPREME COURT OF WESTERN AUSTRALIA

Global law firm Clifford Chance has advised Daniel Woodhouse, Hayden White and John Park (in their capacities as the joint and several receivers of the Quintis Group of Companies) (Receivers) on a successful application to the Supreme Court of Western Australia for directions under Corporations Act 2001 (Cth) (Corporations Act) s 424 and declaratory relief under Supreme Court Act 1935 (WA) s 25(6).

### BACKGROUND

By way of brief, factual background:

- The Quintis Group operated multiple retail managed investment schemes and high net worth investment schemes focusing on Indian sandalwood.
- In about March 2024, on the application of the responsible entity of certain of the above managed investment schemes (**SPL**), and having regard to downward trending market value for sandalwood, the Honourable Justice Cobby made orders to the effect that it would be just and equitable for SPL to wind up the 2007, 2008, 2009, 2012 and 2014 managed investment schemes (among others) on the basis that each of the managed investment schemes were unprofitable and that the continuation of each of those managed investment schemes could well expose the relevant scheme investors to additional costs (which would not be able to be met from the proceeds of any sandalwood sold from the schemes) (**MIS Winding Up Proceeding**).
- The rest of the companies in the Quintis Group were placed into voluntary administration / receivership in about April 2024.
- The Receivers were appointed by the Quintis Group's secured noteholders. After undertaking a sale and marketing campaign for the sale of the Quintis Group as a whole (which did not lead to any interested buyers), the Receivers undertook a sale and marketing campaign for the assets of the Quintis Group. Such assets included land which was formerly used as part of the managed investment schemes referred to above (and which had ex-scheme trees growing upon it).

Certain ex-scheme investors contended that they had a legal right or interest to the trees referred to above (and that the Receivers should not deal with the trees without ex-scheme investors' consent).

Having regard to the above, the Receivers commenced an application for directions and declarations to the effect that they would be justified in proceeding on the basis that the ex-scheme investors had no right, title or interest in the ex-scheme trees.

## KEY ISSUES

The Receivers' application is notable for the following reasons:

- **The application highlights the flexibility of judicial directions for insolvency practitioners:** Certain of the ex-scheme trees were situated on land that was leased by the Quintis Group from a third-party landlord (with the relevant lease due to expire within months of the Receivers' appointment). The Receivers were concerned that the expiry of those leases would mean that any trees situated on the third-party owned land would vest in the third-party landlord (which would not be to the benefit of the noteholders, the Quintis Group's other creditors or to the ex-scheme investors claiming an interest in such trees). In *Re Quintis (Australia) Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) [No 2] [2024] WASC 278*, the Receivers successfully obtained directions to the effect that they were justified in harvesting such trees and holding the proceeds of sale of those trees in escrow pending the final determination of the Supreme Court of Western Australia as to the proper distribution of those proceeds.
- **Over 2,700 ex-scheme investors were joined as defendants to the application:** Given the arguments raised by certain of the ex-scheme investors in correspondence, it became apparent that declaratory relief would be required to allow the Receivers to sell the relevant land assets of the Quintis Group and distribute their proceeds to mitigate the risk of collateral attack / future claims by one or more ex-scheme investors. The decision emphasises that judicial directions, while helpful in giving insolvency practitioners comfort to undertake a particular course of action, are not watertight and cannot be used to extinguish (actual or claimed) third party rights.
- **The application highlights that while all managed investment schemes operate within the parameters of the Corporations Act, the legal rights and interests of scheme investors will turn on the constitutional documents of their relevant scheme:** The ex-scheme investors argued, in effect, that ex-scheme trees constituted scheme property and were held on trust for the benefit of the ex-scheme investors. After a close analysis of the terms of the relevant schemes' constitutional documents, the court found that the ex-scheme trees were not in the nature of scheme property or held on trust for the ex-scheme investors.
- **The application highlights the flexibility of equitable liens as a remedy for third parties in insolvency scenarios:** In the alternative to their argument that the ex-scheme trees constituted scheme / trust property, the ex-scheme investors argued, in effect, that it would be unconscionable for the Receivers to deal with the ex-scheme trees without accounting to the ex-scheme investors (given ex-scheme investors had contributed funds to their planting and maturation). The court did not accept that argument having regard to: (1) the terms of the constitutional documents of the relevant schemes (which each ex-scheme investor accepted and which no ex-scheme investor argued had been inadequately disclosed to ex-scheme investors); and (2) the fact that no ex-scheme investor, despite receiving notice, chose to intervene or participate in the MIS Winding Up Proceeding (which dealt with substantively similar issues to the instant proceeding). Although the ex-scheme investors were unsuccessful on this point, the decision highlights the potential flexibility of equitable liens as a remedy for third parties in insolvency scenarios.

## DECISION

A copy of the reasons handed down by the Honourable Justice Strk can be found here: [Re Quintis \(Australia\) Pty Ltd \(Receivers and Managers Appointed\) & Ors \[No 3\] \[2025\] WASC 248](#).

## CONTACTS



**Mark Gillgren**  
Partner  
T +61 8 9262 5543  
E mark.gillgren  
@cliffordchance.com



**Naomi Griffin**  
Partner  
T +61 2 8922 8093  
E naomi.griffin  
@cliffordchance.com



**Pat Saraceni**  
Director  
T +61 8 9262 5524  
E pat.saraceni  
@cliffordchance.com



**James Hewer**  
Counsel  
T +61 8 9262 5540  
E james.hewer  
@cliffordchance.com



**Rebecca Elgar**  
Counsel  
T +61 2 8922 8082  
E rebecca.elgar  
@cliffordchance.com



**Adriano Poncini**  
Senior Associate  
T +61 8 9262 5532  
E adriano.poncini  
@cliffordchance.com



**Penelope McCann**  
Senior Associate  
T +61 2 8922 8097  
E penelope.mccann  
@cliffordchance.com



**Hague Skinner**  
Senior Associate  
T +61 8 9262 5595  
E Hague.Skinner  
@cliffordchance.com



**Campbell Norton**  
Associate  
T +61 8 9262 5600  
E campbell.norton  
@cliffordchance.com



**Wanipa Ndhlovu**  
Lawyer  
T +44 207006 3759  
E wanipa.ndhlovu  
@cliffordchance.com



**Gabriel Merga**  
Trainee Solicitor  
T +852 2826 3546  
E gabriel.merga  
@cliffordchance.com

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Clifford Chance, Level 24, 10 Carrington Street,

Sydney, NSW 2000, Australia

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