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Thursday 2 April 2020

20-077MR Court winds up Merlin Diamonds Limited

Upon an application made by ASIC, the Federal Court of Australia has made orders to wind up Merlin Diamonds Limited (Merlin) on insolvency grounds and appointed Mr Salvatore Algeri and Mr Timothy Norman, of Deloitte Financial Advisory Pty Ltd, as joint and several liquidators.

In making the orders, Justice O'Bryan found that '[e]very relevant financial indicator shows that Merlin is presently insolvent: it has incurred losses over the past few years; it has no income and significant expenses; it has amounts currently owing to creditors including liabilities to employees and the ATO; its working capital and quick asset ratios are less than one and it has negative net assets excluding the value of its mining tenements.'

Justice O'Bryan was satisfied on the evidence that 'Merlin does not have available to it any realistic prospect of raising a sufficient amount of cash or readily realisable assets to meet its current outstanding liabilities.'

Justice O'Bryan found that the affairs of Merlin have been brought to such an unsatisfactory state that the appointment of liquidators to Merlin is necessary to protect its shareholders and creditors. His honour also found it was in the public interest that an independent expert and officer of the Court continues to investigate Merlin's affairs and to take whatever action is appropriate to redress any breaches of the Corporations Act by the current and former directors.

The Court's judgment can be downloaded [here](#).

ASIC's investigation into Merlin is ongoing.

Background

Merlin Diamonds, a Melbourne-based company that had been listed on the ASX, engaged in the exploration and development of diamond mining projects. Its flagship project was the Merlin diamond mine in the Northern Territory.

Merlin Diamond's shares were suspended from trading on 1 October 2018. Merlin Diamonds had 3.3 billion ordinary shares issued and last traded at \$0.006 per share – resulting in a market capitalization of approximately \$20 million. On 16 March 2020, the ASX announced that Merlin Diamonds had been removed from the ASX Official List by the ASX with effect from the commencement of trading on 16 March 2020.

On 20 September 2019, the Federal Court, upon an application by ASIC, ordered that Mr Algeri and Mr Norman be appointed as provisional liquidators of Merlin ([19-262MR](#)).

It is the role of liquidators to:

- investigate and report to creditors about a company's affairs;
- realise a company's assets;

- enquire into the failure of the company and possible offences by people involved with the company and report them to ASIC; and
- distribute proceeds of any realisation of the company's assets in accordance with the priorities under the *Corporations Act* 2001.

ASIC will monitor the liquidation process but will generally not become involved in matters of commercial judgment by a liquidator.

ASIC's guides on insolvency may assist [creditors](#) and [shareholders](#).

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