



## Federal Court appoints provisional liquidators to Uglii Corporation Limited

**Date :** September 21, 2016

By Georgina King a Senior Associate of Matthews Folbigg, in our Insolvency, Restructuring and Debt Recovery Group

In a decision handed down on 8 September 2016 the Federal Court has appointed provisional liquidators to online search company Uglii Corporation Limited and five of its related companies.

Prior to the decision, investigations by ASIC identified suspected contraventions of the *Corporations Act 2001 (Cth)* (Act) in connection with the companies including a failure to lodge financial reports, false and misleading statements in relation to sale of shares, offering securities for sale and advertising the offer without a disclosure document, having only two directors registered in respect of two public companies and trading while insolvent. At the time of the decision ASIC had applied to wind the companies up on the basis of insolvency pursuant to sections 464 and 459B of the Act or alternatively pursuant to section 461(1)(k) on just and equitable grounds.

In respect of the facts of the matter, Justice Davies noted:

*"The possible breaches of the Act which ASIC has uncovered involve not just "procedural" lapses. Of serious and immediate concern is that ASIC's investigations have disclosed a strongly arguable case that Uglii Corporation has improperly misused the funds raised from the share sale for the purpose of creating a fighting fund by using those funds as working capital. It is also of considerable concern that the delay in finalising and lodging the companies' financial reports has meant that the accounts have not been audited and the true financial position of the companies is unknown. An acceptable explanation for failure to lodge returns has not been given and whilst senior counsel for the companies informed the Court that the companies are committed to remedying the failure to lodge returns and acknowledge that they have to do it, they have not done so and have not put on any evidence to explain what steps need to be taken by them to address the breaches, or what steps they have taken towards rectifying the breaches. There is no reason to have confidence that the directors will do what is required to enable the auditors to complete their task. Another matter also of considerable concern is that it appears from the KPMG material that there is a lack of evidence to support the substantial cash flow projections from the Uglii system, which is a matter warranting independent investigation by an external controller."*

As set out in the decision, a provisional liquidator will generally not be appointed to a company unless the Court is satisfied there is a reasonable prospect that a winding up order will be made in respect of a current winding up application and good reason is shown for a provisional liquidator to be appointed prior to hearing of the winding up application. Justice Davies found that in the circumstances there was a reasonable prospect that a winding up order would be made on the basis of insolvency and on just and equitable grounds based on a justifiable lack of



confidence in the conduct and management of the affairs of the companies and a risk to the public interest requiring protection. The Judge also concluded that there was no less intrusive measure that would satisfactorily address the circumstances of the case and accordingly provisional liquidators should be appointed to each of the companies.

Pursuant to the orders made by the Court the provisional liquidators are to provide a report on the provisional liquidation to ASIC and the Court within 42 days of their appointment.

Read the full judgment here:

[http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1099\(link is external\)](http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2016/2016fca1099(link%20is%20external))

If you would like more information or advice in relation to insolvency, restructuring or debt recovery law, contact Georgina King on (02) 9806 7485 or [georginak@matthewsfolbigg.com.au](mailto:georginak@matthewsfolbigg.com.au), or a Principal of the Matthews Folbigg Insolvency, Restructuring & Debt Recovery Group:

Jeffrey Brown on (02) 9806 7446 or [jeffreyb@matthewsfolbigg.com.au](mailto:jeffreyb@matthewsfolbigg.com.au)

Stephen Mullette on (02) 9806 7459 or [stephenm@matthewsfolbigg.com.au](mailto:stephenm@matthewsfolbigg.com.au)