

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405)
(IN LIQUIDATION)

EX PARTE

GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION) IN
ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED
IN SCHEDULE 1

First Plaintiff

GREAT SOUTHERN OLIVES COMPANY LIMITED (ACN 121 381 208) (IN LIQUIDATION)

Second Plaintiff

GREAT SOUTHERN OLIVE HOLDINGS PTY LIMITED (ACN 111 092 374) (IN LIQUIDATION)

Third Plaintiff

ANDREW JOHN SAKER

Fourth Plaintiff

MARTIN BRUCE JONES

Fifth Plaintiff

DARREN GORDON WEAVER

Sixth Plaintiff

JAMES HENRY STEWART

Seventh Plaintiff

GREAT SOUTHERN OLIVE PROCESSING PTY LTD (ACN 128 547 437) (IN LIQUIDATION)

Eighth Plaintiff

JAMES THACKRAY

First Defendant

TONY MCGRATH

Second Defendant

COLIN NICOL

Third Defendant

THE GROWERS LISTED IN SCHEDULE 8 OF THE AMENDED ORIGINATING PROCESS

Fourth Defendants

THIRD AFFIDAVIT OF MICHAEL JOSEPH FERNON

Date of document:

28 July 2010

Filed on behalf of:

Fourth Defendants

Prepared by:

Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

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Solicitors Code: 101294

Ref: MJF:100171

Email: michael.fernon@clarendonlawyers.com.au

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I, **MICHAEL JOSEPH FERNON** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

1. I am a director of Clarendon Lawyers Pty Ltd (**Clarendon Lawyers**) who are solicitors for a number of the growers listed as fourth defendants to this proceeding.
2. Except where I state otherwise I make this affidavit from my own knowledge. Where I depose to matters arising from information and belief, I believe those matters to be true.

Timbercorp Proceedings

3. Clarendon Lawyers represents growers in Victorian Supreme Court Proceedings for the apportionment of proceeds of sale of the almond and olive assets sold by the Timbercorp group of companies (now in liquidation) and which relate to various managed investment schemes in respect of which Timbercorp Securities Limited (in liquidation) is responsible entity.
4. Supreme Court of Victoria Proceeding No S CI 2009 10699 relates to the apportionment of proceeds of sale of some of the Timbercorp almond assets (**Timbercorp Almond Apportionment Proceedings**).
5. On 22 December 2009 in the Timbercorp Almonds Apportionment Proceedings her Honour Justice Davies made orders (**22 December Order**), *inter alia*, that:
 - (a) in relation to each relevant scheme, the persons represented by Clarendon Lawyers be representatives of all of the growers in that scheme; and
 - (b) the legal costs and disbursements of Clarendon Lawyers be paid by the liquidators of the relevant Timbercorp company from the fund created from the proceeds of sale of the relevant almond assets up to a maximum of \$100,000 within 14 days of the presentation to the liquidators by Clarendon Lawyers of tax invoice for those legal costs and disbursements (**Costs Order**).

Now produced and shown to me marked "**MJF-11**" is a true copy of the 22 December Order.

6. On 22 March 2010 Her Honour Justice Davies made further orders (**22 March Order**) vacating the Costs Order and replacing it with an order that requires the liquidators to pay an unlimited amount of Clarendon Lawyers costs and disbursements provided that Clarendon Lawyers' invoice for costs and disbursements is accompanied by a bill of costs prepared and certified by an appropriately qualified costs consultant. Now produced and shown to me marked "**MJF-12**" is a true copy of the 22 March Order.



7. The Costs Orders and the 22 March Order relate to the costs incurred after the 22 December Order.
8. On 17 December 2009 Clarendon Lawyers' clients issued an interlocutory process seeking an order for payment of their costs up to and including obtaining the 22 December Order.
9. On or about 16 April 2010 the liquidators of Timbercorp Securities Limited (in liquidation) paid the costs so there was no need to continue the proceeding.


Costs

10. On 20 April 2009 I sent a letter by email to Mr James Healy of Middletons solicitors for the liquidators of the first, second, third and eighth plaintiffs which set out suggested orders and attached copies of orders made in the Timbercorp proceedings. Now produced and shown to me marked "MJF-14" is a copy of the letter and attachments.
11. Clarendon Lawyers seek an order on behalf of the fourth defendants named in schedule 1 of the interlocutory procedure that the reserved costs of the fourth defendants in this proceeding be paid by the liquidators of the first, second, third and eighth plaintiffs, on a full indemnity basis in accordance with Clarendon Lawyers' terms of engagement, or alternatively be paid by them by from the fund created by paragraph 6 of the order made by the Honourable Justice Le Miere on 27 May 2010 in these proceedings.
12. Now produced and shown to me marked "MJF-15" is a standard Clarendon Lawyers terms of engagement.

SWORN by the said **MICHAEL JOSEPH FERNON**)
 at Melbourne in the State of Victoria)
 this 28th day of July 2010)



Before me:.....

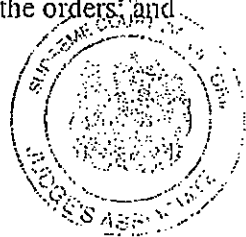


CELIA JANE ARMSTRONG
 of Clarendon Lawyers Pty Ltd
 Level 17, Rialto North Tower
 525 Collins St, Melbourne Victoria 3000
 an Australian Legal Practitioner within the
 meaning of the *Legal Profession Act 2004*

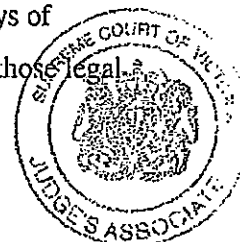
OTHER MATTERS: None

THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Graham Goldenberg is appointed as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935);
 - (b) Christopher Mark Littley is appointed as the representative of the Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092);
 - (c) Constantine Moshopoulos is appointed as the representative of the Growers in the 2006 Timbercorp Almond Project (ARSN 118 387 974);
 - (d) David Butterfield is appointed as the representative of the Growers in the 2007 Timbercorp Almond Project (ARSN 122 511 040); and
 - (e) David Butterfield is appointed as the representative of the Growers in the unregistered managed investment scheme known as the 2002 Timbercorp Almond Project (Private Offer No 1).
4. The persons appointed pursuant to paragraph 3 above, are joined as the Fifth, Sixth, Seventh and Eighth Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on or before 4:00pm 23 December 2009:
 - (a) incorporating a declaration as to what, if any, right the Growers represented by the Fifth, Sixth, Seventh and Eighth Defendants have to the sale proceeds held on trust by the Second Defendant pursuant to paragraph 7 of the orders; and



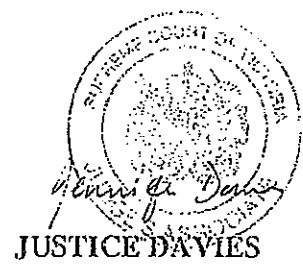
- (b) amending paragraph 5 of the originating motion to read "A declaration as to how the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders ought to be distributed between the plaintiff and the first, fifth, sixth, seventh and eighth defendants."
6. The parties file and serve a list of documents on which they intend to rely in relation to the issue of what right, if any, they have to the net sale proceeds (the Funds) to be held on trust by the second defendant pursuant to paragraph 7 of the orders (the Rights Issue) on or before 4:00pm on 12 February 2010.
7. The parties file and serve on or before 4:00pm on 19 February 2010:
- (a) written contentions of fact and law addressing the Rights Issue (the Rights Contentions);
- (b) any affidavit material upon which they wish to rely in relation to the Rights Issue.
8. The parties file and serve on or before 4:00pm on 5 March 2010:
- (a) written contentions of fact and law in reply to the Rights Contentions;
- (b) any affidavit material upon which they wish to rely by way of reply in relation to the Rights Issue.
9. Each party serve a copy of the documents referred to in paragraphs 6, 7 and 8 upon TGG Almond Committee Inc and any other document filed in the proceeding from the date of this order at the same time as the document is served upon a party to the proceeding.
10. The Liquidators of the Second Defendant pay from the Funds to Clarendon Lawyers, the solicitors for the Fifth, Sixth, Seventh and Eighth defendants, the legal costs and disbursements incurred in this proceeding by the Fifth, Sixth, Seventh and Eighth Defendants in complying with paragraphs 6, 7, 8 and 9 of this order on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) up to a maximum of \$100,000 within 14 days of presentation to the Liquidator by Clarendon Lawyers of a tax invoice for those legal



costs and disbursements, such tax invoices rendered by Clarendon Lawyers with such frequency as it sees fit.

- 11. The proceeding is listed for further directions at 10:00am on 12 March 2010.
- 12. Costs of today are reserved.
- 13. Liberty to apply.

DATE AUTHENTICATED: 4 December 2010



SCHEDULE OF PARTIES

S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and WESTPAC BANKING CORPORATION (ACN 007 457 141) Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) First Defendant

ALMOND LAND PTY LTD (IN LIQ) Second Defendant
(ACN 091 460 392)

MARK ANTHONY KORDA (in his capacity as liquidator of Almond Land Pty Ltd (in liq)) Third Defendant

LEANNE KYLIE CHESSER (in her capacity as liquidator of Almond Land Pty Ltd (in liq)) Fourth Defendant



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and WESTPAC BANKING CORPORATION LIMITED (ACN 007 457 141) Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and others according to the schedule attached Defendants

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Davies

DATE MADE: 22 March 2010

ORIGINATING PROCESS: Originating Motion filed 15 December 2009

HOW OBTAINED: Upon return of the orders of the Honourable Justice Davies made 22 March 2010:

ATTENDANCE: Mr. P Anastassiou of Senior Counsel with
Mr. R G Craig of Counsel for the Plaintiff
Mr. M Moshinsky of Senior Counsel with
Ms. W Harris of Counsel for the First Defendant
Mr. P Crutchfield of Senior Counsel with
Mr. O Bigos of Counsel for the Second to
Fourth Defendants
Mr. G Bigmore of Her Majesty's Counsel with
Mr. S Hopper of Counsel for the Fifth to Eighth
Defendants

OTHER MATTERS: None



THE COURT ORDERS THAT:

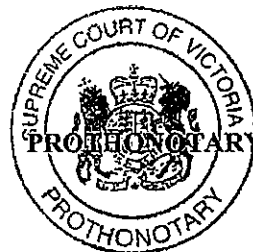
1. On or before 4:00pm on 19 April 2010 the parties file and serve:
 - (a) written contentions of fact and law in rebuttal to the reply rights contentions; and
 - (b) any affidavit material upon which they wish to rely by way of rebuttal in relation to the rights issue.
2. Paragraph 10 of the orders of the Honourable Justice Davies made on 22 December 2009 be vacated and in lieu thereof the following order is made:

The Liquidators of the Second Defendant pay from the funds to Clarendon Lawyers, the solicitors for the Fifth, Sixth, Seventh and Eighth Defendants, the legal costs and disbursements incurred in this proceeding by the Fifth, Sixth, Seventh and Eighth Defendants in complying with paragraphs 6, 7, 8 and 9 of this order on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* within 14 days of presentation to the Liquidator by Clarendon Lawyers of:

- i. a tax invoice for Clarendon Lawyers' legal costs and disbursements in relation to this proceeding; and
 - ii. a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant, to be agreed by the parties (the Consultant).
3. The Liquidators of the Second Defendant pay from the funds to Clarendon Lawyers, the solicitors for the Fifth, Sixth, Seventh and Eighth Defendants the legal costs and disbursements of the Fifth, Sixth, Seventh and Eighth Defendants of and incidental to this proceeding from and including this day on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* within 14 days of presentation to the Liquidator by Clarendon Lawyers of:
 - i. a tax invoice for Clarendon Lawyers' legal costs and disbursements in relation to this proceeding; and
 - ii. a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant, to be agreed by the parties (the Consultant).
 4. The proceeding is listed for further directions at 10:00am on 23 April 2010.
 5. All other questions of costs are reserved.
 6. Liberty to apply.

DATE AUTHENTICATED

9 April 2010



SCHEDULE OF PARTIES

S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED
 (ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA
 AND NEW ZEALAND BANKING GROUP LIMITED
 (ACN 005 357 522) AND BOS INTERNATIONAL
 (AUSTRALIA) LIMITED (ACN 066 601 250) AND
 WESTPAC BANKING CORPORATION LIMITED
 (ACN 007 457 141)

Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP
 LIMITED (ACN 005 357 522)

First Defendant

ALMOND LAND PTY LTD (IN LIQUIDATION)
 (ACN 091 460 392)

Second Defendant

MARK ANTHONY KORDA (IN HIS CAPACITY AS
 LIQUIDATOR OF ALMOND LAND PTY LTD
 (IN LIQUIDATION))

Third Defendant

LEANNE KYLIE CHESSER (IN HER CAPACITY AS
 LIQUIDATOR OF ALMOND LAND PTY LTD
 (IN LIQUIDATION))

Fourth Defendant



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2010 1354

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) AS
TRUSTEE FOR AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED (ACN 005 357 522) AND BOS INTERNATIONAL
(AUSTRALIA) LIMITED (ACN 066 601 250) AND WESTPAC
BANKING CORPORATION LIMITED (ACN 007 457 141) .

Plaintiff

- and -

B.B OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367)
and others according to the schedule attached

Defendants

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Davies

DATE MADE: 22 March 2010

ORIGINATING PROCESS: Originating Motion filed 16 March 2010

HOW OBTAINED: Upon return of the orders of the Honourable Justice
Davies made 22 March 2010

ATTENDANCE: Mr. P Anastassiou of Senior Counsel with
Mr. R G Craig of Counsel for the Plaintiffs
Mr. P Crutchfield of Senior Counsel with
Mr. O Bigos of Counsel for the First to Sixth Defendants
Mr. G Bigmore of Her Majesty's Counsel with
Mr. S Hopper of Counsel for Michael Charles Vicary,
Pamela Jan Dry and David Butterfield

OTHER MATTERS: Not applicable

THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.

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3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Michael Charles Vicary is appointed as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179);
 - (b) Pamela Jan Dry is appointed as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715); and
 - (c) David Butterfield is appointed as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722).
4. The persons appointed pursuant to paragraph 3 above, are joined as the Seventh, Eighth, and Ninth Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the defendants on or before 4:00pm on 26 March 2010:
 - (a) incorporating a declaration as to what, if any, right the Growers represented by the Seventh, Eighth, and Ninth Defendants have to the sale proceeds held on trust by the First Defendant pursuant to paragraph 8 of the Orders; and
 - (b) amending paragraph 5 of the originating motion to read "A declaration as to how the sale proceeds held on trust by the First Defendant pursuant to paragraph 8 of the orders ought to be distributed between the Plaintiff and the Second, Seventh, Eighth, and Ninth Defendants."
6. The Plaintiff is granted leave to proceed against Almond Land Pty Ltd ACN 091 460 992 (in liquidation), B.B. Olives Pty Ltd ACN 083 992 367 (in liquidation) and Timbercorp Limited ACN 055 185 067 (in liquidation) pursuant to s 471B of the *Corporations Act 2001* (Cth).
7. Paragraph 11 of the orders made by the Honourable Justice Croft in proceeding S CI 2009 9998 is discharged, insofar as it relates to exhibit MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009 in proceeding S CI 2009 9998.
8. The Plaintiff serve on the Defendants a draft list of the documents on which the Plaintiff intends to rely in relation to the Rights Issue (the Draft List) on or before 4:00pm on 23 April 2010.
9. The Defendants serve on the Plaintiff a list of any documents which are not already identified in the Draft List and on which the Defendants intend to rely in relation to the Rights Issue (Further Documents) on or before 4:00pm on 7 May 2010.
10. The Plaintiff file and serve a List of Documents incorporating those documents identified in the Draft List and the Further Documents on or before 4:00pm on 14 May 2010.
11. On or before 4:00pm on 21 May 2010 the parties file and serve:



- (a) written contentions of fact and law addressing the issue of what right, if any, right they have to the net sale proceeds (the Funds) to be held on trust by the first defendant pursuant to paragraph 8 of the Orders (the Rights Issue) (the Rights Contentions);
 - (b) any affidavit material upon which they wish to rely in relation to the Rights Issue.
12. On or before 4:00pm on 4 June 2010 the parties file and serve:
 - (a) written contentions of fact and law in reply to the rights contentions;
 - (b) any affidavit material upon which they wish to rely by way of reply in relation to the rights issue.
13. Each party serve a copy of the documents referred to in paragraphs 8, 9, 10, 11 and 12 upon Herbert Geer, solicitors of Level 20/385 Bourke Street, Melbourne, 3001 (marked to the attention of Mr Tom May) for TGG Almond Committee Inc and Ms Kerree Bezencon and any other document filed in the proceeding from the date of this order at the same time as the document is served upon a party to the proceeding.
14. The Liquidators of the First Defendant pay from the Funds to Clarendon Lawyers, the solicitors for the Seventh, Eighth and Ninth Defendants, the legal costs and disbursements of the Seventh, Eighth and Ninth Defendants of and incidental to this proceeding on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005 (Vic)* within 14 days of presentation to the Liquidator by Clarendon Lawyers of:
 - (a) a tax invoice for Clarendon Lawyers' legal costs and disbursements in relation to this proceeding; and
 - (b) a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant, to be agreed by the parties (the Consultant).
15. The proceeding is listed for further directions at 10:00am on 18 June 2010.
16. All other questions of costs are reserved.
17. Liberty to apply.

DATE AUTHENTICATED

19 April 2010



SCHEDULE OF PARTIES

S CI 2010 1354

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) AND BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) AND WESTPAC BANKING CORPORATION LIMITED (ACN 007 457 141)	Plaintiff
---	-----------

- and -

B.B OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367)	First Defendant
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ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)	Second Defendant
---	------------------

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)	Third Defendant
--	-----------------

MARK ANTHONY KORDA (IN HIS CAPACITY AS LIQUIDATOR OF ALMOND LAND PTY LTD (IN LIQUIDATION))	Fourth Defendant
--	------------------

LEANNE KYLIE CHESSER (IN HER CAPACITY AS LIQUIDATOR OF ALMOND LAND PTY LTD (IN LIQUIDATION))	Fifth Defendant
--	-----------------

MARK FRANCIS XAVIER MENTHA (IN HIS CAPACITY AS LIQUIDATOR OF B.B OLIVES PTY LTD (IN LIQUIDATION))	Sixth Defendant
---	-----------------





19 April 2010

Level 17 Rialto North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

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www.clarendonlawyers.com.au
ABN 43 704 593 249

Our Ref: MAB:MJF:1000171

James Healy
Middletons
Level 25, Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000

Dear Mr Healy

**GS Olive proceedings
Supreme Court Proceeding No. COR 35 of 2010**

As at the time of writing, we act for 119 growers in relation to this proceeding. This number is increasing on a daily basis. These clients are supported by the Save My Trees group which comprises over 7000 members, of whom over 500 are olive growers

On 12 April 2010 we filed and served a notice of appearance in respect of GP Levvey Pty Ltd and Mr Phillip Capicchiano. We will be filing and serving notices of appearance in respect of additional growers in due course.

Access to confidential information

All of the growers for whom we act have appointed Mr Rob Burns as their agent in this proceeding. Accordingly it is essential that Mr Burns be given access to the confidential information so that he can properly instruct us. Enclosed is a letter from Mr Cappicchiano confirming his appointment of Mr Burns. We trust this is sufficient and look forward to your clients agreeing to release the information to Mr Burns. If they continue to refuse access, our clients will have no alternative but to seek an adjournment of the 29 April hearing date until the information is provided and Mr Burns has had a reasonable opportunity to consider it and give us his instructions.

Our clients' concerns

Our clients are concerned about three matters concerning your clients' application – whether the sale process has been conducted with appropriate rigour, the procedure they propose to adopt to pass to the purchasers clear title to the olive assets by destroying growers' rights, and your clients' conflicts of interest.

Sale process

We have reviewed the material filed on behalf of your clients and they do not provide sufficient evidence to form a view whether the sale process was rigorous. Our clients are reviewing their position on this and, as we indicated above and in our letter of 16 April 2010, our clients require the confidential information to be made available to Mr Burns in order to give us instructions.

Growers Rights

Our clients have subleases over their lots, including the olive trees and the infrastructure, for the unexpired portion of 20 years. These subleases are proprietary rights which cannot be ignored by your clients or by the landlords. Similar rights held by the Timbercorp growers were described by Mr Justice Robson in the Victorian Supreme Court as having substantial value.

The landowners take their rights subject to the growers' rights under the schemes because:

- (a) the growers are tenants in possession of the land;
- (b) the subleases, in addition to the land include *"the Olive Trees and the Olive Grove infrastructure"*, and confer rights to water;



- (c) if the sublease are terminated; our clients have rights to seek an order for relief against forfeiture under s.81(4) of the *Property Law Act 1969 (WA)*;
- (d) the subleases will survive the surrender or merger of the head leases into the freehold under s.75 of the *Property Law Act 1969 (WA)*;
- (e) if the Liquidator were to disclaim the head leases, then the head leases will merge into the freehold and our clients subleases survive the disclaimer under s.75 of the *Property Law Act 1969 (WA)* (see *NAB v NSW* [2009] FCA 1066 per Rares J, esp at 26)

Winding up

The winding up of the scheme may lead to the automatic termination of our clients' subleases. Pursuant to the terms of the sublease agreements, the growers' subleases terminate earlier than the 20 year term if a project is terminated pursuant to the provisions of the scheme constitutions. As the constitutions contemplate that the schemes may terminate in accordance with the Corporations Act, your clients' current application could result in the subleases being terminated with consequent loss by the growers of their proprietary rights. GSMAL should not be applying to wind up the schemes in a manner that denies the scheme members any ability to be compensated for the loss of their valuable proprietary rights.

Conflicts

Your clients, as officers of GSML as the responsible entity, are obliged to act in the best interests of scheme members and should be taking all steps to protect the growers' valuable rights.

There is a fundamental and irreconcilable conflict in your clients acting as liquidators for both the landlords and the responsible entity as tenant in negotiating for the termination of the head leases.

The proposal put forward by your client is advantageous to the creditors and shareholders of the landlord companies but disadvantageous for the members of the schemes. There is no basis for your client to ignore the valuable rights of the scheme members in favour of the creditors and shareholders of the other entities. Your clients must act to protect the interests of all parties and as a responsible entity, where there is a conflict, give preference to the rights of members (secs 601FC(1)(c) and 601FD(1)(c) of the Corporations Act)

Proper process

In our opinion, the proper process is to adopt the procedures considered appropriate by the Victorian Supreme Court namely:

1. adjourn the winding up application,
2. the responsible entity seeks approval from the court that it is justified in amending the scheme constitutions under s.601FC to give itself the power to surrender growers' leases for valuable consideration,
3. all rights of the parties are preserved,
4. the sale proceeds, once received, are deposited into an account held by the liquidators, and
5. the growers and the liquidators of the landowners either agree upon an appropriate apportionment or the apportionment is determined by a legal proceeding.

It may also be necessary to conduct a more rigorous sale process depending upon the outcome of our clients' further investigation when the confidential information is available.

Enclosed with this letter are copies of orders made by Mr Justice Robson on 21 August 2009 and 9 October 2010 in the Victorian Supreme Court in relation to the sale of some of the Timbercorp almond assets. These orders have been replicated three times and by two other Victorian Supreme Court judges in relation to other Timbercorp schemes - on 12 November 2009 by Mr Justice Croft in relation to the Timbercorp olive assets, on 11 December 2009 by Ms Justice Davies in relation to other Timbercorp almond assets and on 26 February 2010 by Ms Justice Davies in relation to Timbercorp citrus assets.

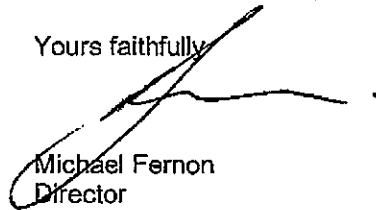
Our clients request that your clients amend their application to adopt the same procedure as adopted by the liquidators of the Timbercorp horticultural entities. In all the circumstances, this is, in our clients' view, the best



way to ensure that the growers' rights are recognised and protected and essential for your client to fulfil its obligations to the growers as members of the schemes while still making progress with the liquidation of the companies and the schemes. By adopting this procedure, the growers' rights will only be extinguished for value and, in the absence of agreement between the parties, the Court will settle upon a proper apportionment of the sale proceeds.

Please let us have a response at your earliest convenience.

Yours faithfully



Michael Fernon
Director

Enc

Direct Tel: 03 8681 4419
Email: michael.fernon@clarendonlawyers.com.au

Level 13
350 Collins Street
MELBOURNE VIC 3000

19 April 2010

James Healy
Middletons
Level 25, Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000

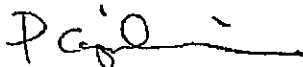
Dear Mr Healy

In the matter of Great Southern Managers Limited (In liquidation)
Supreme Court of Western Australia: Proceeding COR 35 of 2010

I refer to your letter to my solicitor, Mark Bland of Clarendon Lawyers, dated 19 April 2010.

I confirm that I have appointed Mr Rob Burns as my agent and adviser for the purpose of representing my interests in the abovementioned proceedings. I also confirm and reiterate my solicitor's request that your client grants Mr Burns access to the confidential affidavits in order for him to adequately advise me in relation to this proceeding.

Yours faithfully,



Phillip Capicchiano

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

COMMERCIAL COURT
CORPORATIONS LIST

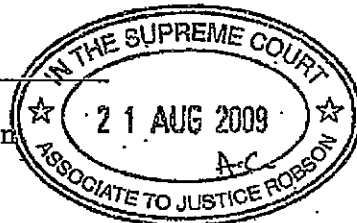
LIST E
No. 7114 of 2009

IN THE MATTER of TIMBERCORP SECURITIES LIMITED (UNDER
ADMINISTRATION) (ACN 092 311 469)

BETWEEN:

TIMBERCORP SECURITIES LIMITED (UNDER Administration) (ACN 092 311 469) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1 and others (according to the schedule attached) Plaintiffs

GENERAL FORM OF ORDER



JUDGE: The Honourable Justice Robson

DATE MADE: 20 August 2009

ORIGINATING PROCESS: Originating Process of the Plaintiffs filed 4 June 2009

HOW OBTAINED: On the hearing of the Originating Process dated 4 June 2009

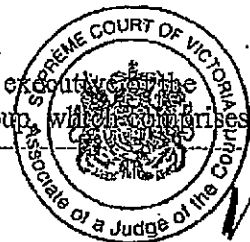
ATTENDANCE: Mr P D Crutchfield of Counsel with Mr O Bigos of Counsel for the Plaintiffs

Mr G T Bigmore, one of Her Majesty's Counsel with Mr M Galvin of Counsel for the Plaintiffs to the Originating Processes of 6 July 2009 described as the Timbercorp Growers Group.

Mr I G Waller of Senior Counsel with Mr S J Hibble of Counsel for ASIC as *amicus curiae*

OTHER MATTERS: The Second and Third Plaintiffs, by their counsel, undertake to:

- a) convene a meeting of the executive of the Timbercorp Growers Group, which comprises



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Christopher Garnaut, David Haintz, Kerree Bezencon, Neil White and Darren Steinhardt every fortnight until the sale process referred to in paragraph (b) is finalised;

- b) give an update at that meeting in relation to the process for the sale of assets (being the assets in relation to the Project of each of the Almond Schemes, including all or any of the Project Property or the Project's scheme property (as defined in the *Corporations Act 2001* (Cth)) and any other property vested in members of the Almond Schemes which relates to the Almond Schemes), but without disclosing any information that is confidential; and
- c) consult with the executive of the Timbercorp Growers Group after the receipt of all bids under the sale process and before entering into any contract for the sale of these assets, on the provision of confidentiality undertakings from members of the committee of inspection in a form approved by the Second and Third Plaintiffs, including providing information on the amounts offered by the bidders (without identifying bidders), the payment terms of such offers and the amount to be apportioned between the assets and the schemes.

(The expressions **Project** and **Project Property** have the meanings given to them in the respective Almond Schemes' constitutions.)

THE COURT DIRECTS THAT:

1. Pursuant to s 511 of the *Corporations Act 2001* (Cth) (Act), the Second and Third Plaintiffs (Korda and Chesser) are justified in causing the First Plaintiff (TSL) in its capacity as the responsible entity of each of:
 - a) 2001 Timbercorp Almond Project (ARSN 095 649 746);
 - b) 2002 Timbercorp Almond Project (ARSN 099 611 935);
 - c) 2003 Timbercorp Almond Project (ARSN 103 197 299);
 - d) 2004 Timbercorp Almond Project (ARSN 108 336 670);
 - e) 2005 Timbercorp Almond Project (ARSN 112 935 092);
 - f) 2006 Timbercorp Almond Project (ARSN 118 387 974);



g) 2007 Timbercorp Almond Project (ARSN 122 511 040),

(together, **Almond Schemes**),

to amend the constitution of each of the Almond Schemes pursuant to s 601GC(1)(b) of the Act by executing a deed in the form contained in **Schedule 1** for each of the constitutions.

2. Pursuant to s 511 of the Act, Korda and Chesser are justified in giving the undertakings.
3. If Korda and Chesser are of the view that the disclosure of the information referred to in the undertakings may prejudice the sale process, they may apply to the Court to be excused from this obligation.

THE COURT ORDERS THAT:

4. The application for the winding up of the Almond Schemes, and the interlocutory processes filed on behalf of Timbercorp Growers Group, be adjourned to a date to be fixed.
5. There be general liberty to apply granted to any person affected by these orders.
6. Costs be reserved.

DATE 20 August 2009



[Handwritten signature]
THE HONOURABLE JUSTICE ROBSON

SCHEDULE OF PARTIES

No. 7114 of 2009

BETWEEN:

TIMBERCORP SECURITIES LIMITED (UNDER ADMINISTRATION) (ACN 092 311 469)

Corporation

- and -

TIMBERCORP SECURITIES LIMITED (UNDER ADMINISTRATION) (ACN 092 311 469) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1

Firstnamed Plaintiff

MARK ANTHONY KORDA

Secondnamed Plaintiff

LEANNE KYLIE CHESSER

Thirddnamed Plaintiff





Timbercorp Securities Limited (in liquidation)
ACN 092 311 469

Amendment Deed

[insert name of Project]
ARSN [insert]



Arnold Bloch Leibler
Ref:JCS:011499489
dmatpcdocs\abl\731703\1

1A

THIS DEED POLL is made on

2009

PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
of Level 8, 461 Bourke Street, Melbourne 3000
("TSL")

BACKGROUND

- A TSL was appointed the responsible entity of the [insert name of Project] (ARSN insert) pursuant to the Constitution.
- B TSL is desirous of disposing of its assets including various leases granted by third parties.
- C In order to give clear and free title to the assignee of any lease, any sub-leases/licence and joint venture agreement of the leased land may be surrendered.
- D TSL considers it appropriate that it be granted the power to surrender each sub-lease/licence and joint venture agreement on behalf of the Growers.
- E On 18 August 2009, Justice Robson of the Supreme Court of Victoria directed TSL and the liquidators of TSL that the liquidators of TSL would be justified in executing or procuring TSL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this Deed.
- F In accordance with section 601GC of the *Corporations Act* and the directions of the Court, TSL has executed this deed to modify the Constitution in the manner set out in this deed.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

"Constitution" means the constitution dated [insert date] (as amended).

"Effective Date" means the date this deed is lodged with the Australian Securities and Investments Commission.

1.2 Interpretation

Clause 1.2 of the Constitution applies to the interpretation of this deed



2 Amendment

The Constitution is amended with effect on and from the Effective Date by inserting after clause 11(f) the following clause:

"(fa) to assign, terminate, surrender or otherwise deal with any Sub-lease/Licence and Joint Venture Agreement;"

2.1 Remains in effect

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

2.2 Read as a single document

With effect on and from the Effective Date:

- (a) the parties are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

3 General

3.1 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

3.2 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

3.3 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as a DEED

EXECUTED by TIMBERCORP)
SECURITIES LIMITED (in liquidation))
 by being signed in its name, and on its)
 behalf by **MARK ANTHONY KORDA** in)
 his capacity as liquidator in the presence)
 of:

Signature of witness

Signature of liquidator

Name of witness (print)



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IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION

No. 9998 of 2009

B E T W E E N:

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (in liquidation) (ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (in liquidation) (ACN 092 311 469) in its capacity as responsible entity of the managed investment schemes listed in Schedule 1 and ors according to the Schedule.

Plaintiffs

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Croft

DATE MADE: 12 November 2009

ORIGINATING PROCESS: Originating process of the Plaintiffs filed 10 November 2009

HOW OBTAINED: On the hearing of the originating process on 11 November 2009

ATTENDANCE: Mr L Zwier and Ms B Toy-Cronin, Solicitors for the Plaintiffs
Mr GT Bigmore of Her Majesty's Counsel and Mr SG Hopper of Counsel for the Timbercorp Growers Group
Mr TD Cordner for Kerree Anne Bezencon
Ms S Hibble of Counsel for the Australian Securities and Investments Commission
Mr PE Anastassiou of Senior Counsel and Mr RG Craig of Counsel for Westpac Banking Corporation, BOS International Australia Limited and Australia and New Zealand Banking Group Limited

OTHER MATTERS: Each of the Plaintiffs and Boundary Bend Limited have entered into sale and purchase deeds on 12 October 2009 (SPDs) which form Confidential Exhibits MAK-18 and MAK-19 to the Affidavit of Mark Anthony Korda sworn 10 November 2009 (Affidavit).

THE COURT ORDERS THAT:

The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First Plaintiff (TSL)) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (Registered Schemes) to enter into and perform the SPDs and extinguishing all of the rights of Growers' (investors in the schemes set on in schedules 1 and 2 of this order)



in respect of the assets the subject of the SPDs (**Grower Rights**).

2. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as liquidators of the Second Plaintiff (OML) are justified in procuring the Second Plaintiff as manager of the Unregistered Olive Scheme to enter into and perform the SPDs and extinguishing all of the Grower Rights.
3. The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
4. The Third and Fifth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
5. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (OML) are justified in disclaiming in respect of the unregistered managed investment scheme listed in Schedule 2 of this order (**Unregistered Olive Scheme**) the Project and Management Agreement as defined in the Affidavit (PMA) and the Licence and Joint Venture Agreements (as defined in the Affidavit) and to the extent necessary have leave to do so pursuant to section 568 of the *Corporations Act 2001 (Cth)*.

THE COURT ORDERS, DECLARES AND DIRECTS THAT:

6. The:
 - (a) Third (Korda) and Fourth (Chesser) Plaintiffs in their capacity as liquidators of the First (TSL), Sixth (Timbercorp) and Eighth (Almond Land) Plaintiffs; and
 - (b) Third (Korda) and Fifth (Mentha) Plaintiffs in their capacity as liquidators of the Second (OML), Seventh (OLPL), Ninth (BBO), Tenth (Olivecorp Processing) and Eleventh (Boort Estate) Plaintiffs –

may enter into and perform:

 - (i) the SPDs; and
 - (ii) any document referred to, in connection with, or necessary to give effect to the SPDs.
7. Upon completion of any sale under the Boort SPDs the net proceeds of sale after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Seventh Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (**Net Boort Proceeds**) are to be held by the Seventh Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Boort Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.



- 8. Upon completion of any sale under the Boundary Bend SPDs the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Ninth Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (Net Boundary Bend Proceeds) are to be held by the Ninth Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination of a proceeding to determine which person or persons have any rights to all or any part of the Net Boundary Bend Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
- 9. Insofar as each of the Secured Creditors have any rights to the assets the subject of the SPDs, whether under their securities over those assets or otherwise, nothing in the release of those securities upon completion of the SPDs will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
- 10. Insofar as the Growers have any rights to the assets the subject of the SPDs nothing in order 1-5 above, or any action taken thereunder by the Third, Fourth and Fifth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
- 11. Exhibits MAK-14, MAK-15, MAK-17, MAK-18, MAK-19, MAK-30, MAK-31 and MAK-32 to the Affidavit be kept confidential.
- 12. The interlocutory process of John Arigus Horden dated 10 November 2009 be dismissed.
- 13. Costs be reserved.

DATE AUTHENTICATED:

- 3 DEC. 2009

John Croft

The Honourable Justice Croft



SCHEDULE 1

1. 2001 Timbercorp Olive Project (ARSN 094 382 082)
2. 2002 Timbercorp Olive Project (ARSN 098 233 455)
3. 2003 Timbercorp Olive Project (ARSN 104 648 473)
4. 2004 Timbercorp Olive Project (ARSN 108 744 378)
5. 2006 Timbercorp Olive Project (ARSN 119 182 179)
6. 2007 Timbercorp Olive Project (ARSN 123 155 715)
7. 2008 Timbercorp Olive Project (ARSN 129 307 722)

SCHEDULE 2

1. 2000 Timbercorp Olive Project (Private Offer) (Unregistered)



SCHEDULE OF PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

OLIVECORP MANAGEMENT LTD (IN LIQUIDATION) (ACN 089 542 343)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2
Second Plaintiff

MARK ANTHONY KORDA
Third Plaintiff

LEANNE KYLIE CHESSE
Fourth Plaintiff

MARK FRANCIS XAVIER MENTHA
Fifth Plaintiff

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
Sixth Plaintiff

OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)
Seventh Plaintiff

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)
Eighth Plaintiff

B.B. OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367)
Ninth Plaintiff

OLIVECORP PROCESSING FACILITY PTY LTD (IN LIQUIDATION) (ACN 098 581 081)
Tenth Plaintiff

BOORT ESTATE PTY LTD (IN LIQUIDATION) (ACN 101 679 716)
Eleventh Plaintiff

Dated: 12 November 2009

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2010 398

IN THE MATTER OF TIMBERCORP SECURITIES LTD (IN LIQUIDATION)

BETWEEN:

TIMBERCORP SECURITIES LTD (IN LIQUIDATION) Plaintiffs
CAN 092 311 469 IN ITS CAPACITY AS RESPONSIBLE
ENTITY OF THE 2005 TIMBERCORP CITRUS
PROJECT (ARSN 114 091 299)
and others according to the schedule attached

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Davies

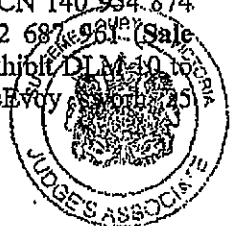
DATE MADE: 26 February 2010

ORIGINATING PROCESS: Originating Process filed 29 January 2010

HOW OBTAINED: At trial

ATTENDANCE: Mr. L Zweir, Solicitor with
Mr. O Bigos of Counsel for the Plaintiffs
Mr. D Shayin of Her Majesty's Counsel with
Mr. D Gration of Counsel for Ms Bezencon and TGG
Citrus Committee Inc.
Mr. S Hopper of Counsel with
Mr. M Galvin of Counsel for Mr Bugden
Ms. Harris of Counsel for David Laurence McEvoy and
Paul William Kirk, as receivers and managers of OIM#2
Pty Ltd ATF Timbercorp Orchard Trust #2

OTHER MATTERS: OIM#2 Pty Ltd ACN 112 691 997 (Receivers and
Managers Appointed) in its capacity as trustee for the
Timbercorp Orchard Trust #2 (OIM#2) has entered into
a sale and purchase contract in respect of land known as
"Solora" with Agriproperty Pty Ltd ACN 140 954 874
and CostaExchange Limited ACN 002 687 961 (Sale
Contract) which forms confidential exhibit DLM-40 to
the affidavit of David Laurence McEvoy
January 2010 (McEvoy Affidavit).



The receivers of OIM#2 are David Laurence McEvoy and Paul William Kirk (Receivers).

THE COURT ORDERS THAT:

1. Siger Super Services Pty Ltd as trustee for the Kereg Trust and TGG Citrus Committee Inc are to be joined as Defendants to these proceedings.
2. The Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) are justified in procuring the First Plaintiff as responsible entity of the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (Citrus Scheme) to terminate or surrender each relevant Grower licence and extinguishing all of the rights of Growers (investors in the Citrus Scheme) in respect of the assets the subject of the Sale Contract (Grower Rights).
3. The Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to enable OIM#2 and the Receivers to perform the Sale Contract.

THE COURT ORDERS, DECLARES AND DIRECTS THAT:

4. Upon completion of any sale under the Sale Contract the net proceeds of sale (after payment of the Receivers' selling costs and expenses, retentions (if any), the costs and expenses of the Receivers referable to the preservation and realisation of the assets the subject of the Sale Contract, and the costs and expenses of the liquidators of the First Plaintiff which are to be reimbursed by the Receivers in accordance with the Solara Grower Rights Deed (as defined in the McEvoy Affidavit) (Net Sale Proceeds) are to be held by the Receivers of OIM#2 in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Sale Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
5. Insofar as the Australia and New Zealand Banking Group Limited has any rights to the assets the subject of the Sale Contract, whether under its securities over those assets or otherwise, nothing in the release of those securities upon completion of the Sale Contract will prejudice those rights for the purposes of its claim to all or any part of the Net Sale Proceeds.
6. Insofar as the Growers have any rights to the assets the subject of the Sale Contract nothing in orders 2 and 3 above, or any action taken thereunder by the Second and Third Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Sale Proceeds.
7. Exhibits DLM-6, DLM-8, DLM-9 and DLM-10 to the McEvoy Affidavit are to be kept confidential.



- 8. Exhibit MAK-2 to the Affidavit of Mark Korda sworn 8 February 2010 is kept confidential.
- 9. Costs reserved.

DATE AUTHENTICATED: 26 February 2010



SCHEDULE OF PARTIES

S CI 2010 398

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2005 TIMBERCORP
CITRUS PROJECT (ARSN 114 091 299)**

First Plaintiff

MARK ANTHONY KORDA

Second Plaintiff

LEANNE KYLIE CHESSER

Third Plaintiff



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
SCI 2009 10382

IN THE MATTER of TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
AND ORS ACCORDING TO THE SCHEDULE

Plaintiffs

GENERAL FORM OF ORDER

JUDGE: Justice Davies

DATE MADE: 11 December 2009

ORIGINATING PROCESS: Originating Process filed 27 November 2009

HOW OBTAINED: Originating Process filed 27 November 2009

ATTENDANCE: Mr L Zwier, Solicitor, with Ms Bridgette Toy-Cronin,
Solicitor, for the Plaintiffs

Mr M Moshinsky of Senior Counsel with Ms W Harris of
Counsel for Messrs McEvoy and Kirk, Receivers and
Managers of OIM#2 Pty Ltd and OIM#5 Pty Ltd

Mr G Bigmore of Queen's Counsel with Mr S Hopper of
Counsel for D Butterfield

Mr D Gratton of Counsel for Mr D Cross

Mr CM Archibald of Counsel for Ms Bezencon and the
Timbercorp Growers Group Committee Inc.

OTHER MATTERS: OIM#2 Pty Ltd ACN 112 691 997 (Receivers and
Managers Appointed) in its capacity as trustee for the
Timbercorp Orchard Trust #3 (OIM#2) has entered into a
sale and purchase contract in respect of land known as
"Liparoo" with Olam Orchards Australia Pty Ltd (Olam
Australia) and Olam International Limited (Olam)
(Liparoo Sale Contract) which forms confidential exhibit



DLM-16 to the affidavit of David Laurence McEvoy sworn 27 November 2009 (McEvoy Affidavit).

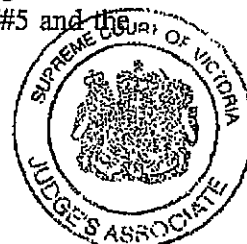
Trust Company Limited ACN 004 027 749 in its capacity as custodian of the assets of the Timbercorp Orchard Trust #5 and agent of OIM#5 Pty Ltd (Receivers and Managers Appointed) in its capacity as trustee for the Timbercorp Orchard Trust #5 (OIM#5) has entered into a sale and purchase contract in respect of land known as "Yungera" with Olam Australia and Olam (Yungera Sale Contract) which forms confidential exhibit DLM-17 to the McEvoy Affidavit.

The receivers of OIM#2 and OIM#5 are David Laurence McEvoy and Paul William Kirk (Receivers).

These orders as authenticated on 15 December 2009 have been amended to record accurately the appearances as being Mr D Gratton of Counsel representing Mr D Cross, rather than Mr D Cross representing Mr D Gratton.

THE COURT DIRECTS THAT:

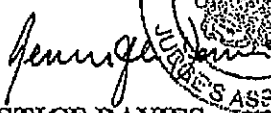
- 1 The Third and Fourth Plaintiffs (in their capacity as Liquidators of the First Plaintiff) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (Registered Almond Schemes) to terminate or surrender each relevant Grower sub-lease or licence and joint venture agreement and extinguishing all of the rights of Growers' (investors in the schemes set on in schedules 1 and 2 of this order) in respect of the assets the subject of the Liparoo Sale Contract and Yungera Sale Contracts (Grower Rights).
- 2 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in procuring the Second Plaintiff as manager of the managed investment scheme listed in Schedule 2 of this order (Unregistered Almond Scheme) to extinguish all of the Grower Rights.
- 3 The Third and Fourth Plaintiffs (in their capacity as Liquidators of the Second Plaintiff) are justified in disclaiming in respect of the Unregistered Almond Scheme the Project and Management Agreement as defined in the affidavit of Mark Anthony Korda sworn 30 November 2009 (PMA) and the licence and joint venture agreement and to the extent necessary have leave to do so pursuant to section 568 of the *Corporations Act 2001(Cth)*.
- 4 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First and Second Plaintiffs) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to enable OIM#2 and the Receivers to perform the Liparoo Sale Contract.
- 5 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to enable OIM#5 and the Receivers to perform the Yungera Sale Contract.




THE COURT ORDERS, DECLARES AND DIRECTS THAT:

- 6 Upon completion of any sale under the Liparoo Sale Contract the net proceeds of sale (after payment of the Receivers' selling costs and expenses, retentions (if any), the costs and expenses of the Receivers referable to the preservation and realisation of the assets the subject of the Liparoo Sale Contract, and the costs and expenses of the liquidators of the First and Second Plaintiff which are to be reimbursed by the Receivers in accordance with the TPIF Grower Rights Deed (as defined in the McEvoy Affidavit)) (**Net Liparoo Proceeds**) are to be held by the Receivers of OIM#2 in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Liparoo Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
- 7 Upon completion of any sale under the Yungera Sale Contract the net proceeds of sale (after payment of the Receivers' selling costs and expenses, retentions (if any), the costs and expenses of the Receivers referable to the preservation and realisation of the assets the subject of the Yungera Sale Contract, and the costs and expenses of the liquidators of the First and Second Plaintiff which are to be reimbursed by the Receivers in accordance with the TPIF Grower Rights Deed (as defined in the McEvoy Affidavit)) (**Net Yungera Proceeds**) are to be held by the Receivers of OIM#5 in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination of a proceeding to determine which person or persons have any rights to all or any part of the Net Yungera Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
- 8 Insofar as the ANZ has any rights to the assets the subject of the Sale Contracts, whether under its securities over those assets or otherwise, nothing in the release of those securities upon completion of the Liparoo Sale Contract and Yungera Sale Contract will prejudice those rights for the purposes of its claim to all or any part of the Net Liparoo Proceeds and/or Net Yungera Proceeds.
- 9 Insofar as the Growers have any rights to the assets the subject of the Liparoo Sale Contract and Yungera Sale Contract nothing in orders 1-5 above, or any action taken thereunder by the Third and Fourth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Liparoo Proceeds and/or Net Yungera Proceeds.
- 10 Exhibits DLM-10, DLM-13, DLM-14, DLM-15, DLM-16 and DLM-17 to the McEvoy Affidavit be kept confidential.
- 11 Costs are reserved.

DATE AUTHENTICATED: 6 January 2010


JUSTICE DAVIES



SCHEDULE OF PARTIES

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1**

First Plaintiff

**ALMOND MANAGEMENT PTY LTD (IN LIQUIDATION) (ACN 094 468 845)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2**

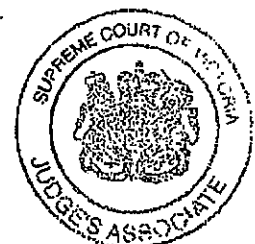
Second Plaintiff

MARK ANTHONY KORDA

Third Plaintiff

LEANNE KYLIE CHESSER

Fourth Plaintiff



SCHEDULE 1

1. 2001 Timbercorp Almond Project (ARSN 095 649 746)
2. 2002 Timbercorp Almond Project (ARSN 099 611 935)
3. 2003 Timbercorp Almond Project (ARSN 103 197 299)
4. 2004 Timbercorp Almond Project (ARSN 108 336 670)
5. 2005 Timbercorp Almond Project (ARSN 112 935 092)



SCHEDULE 2

1. 2002 Timbercorp Almond Project (Private Offer No 1)



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT**

LIST E

No 9408 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION)**

ACN 092 311 469

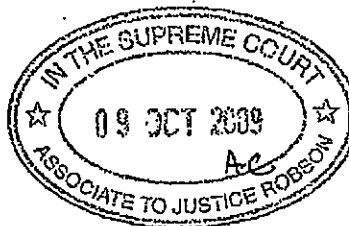
**TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND ORS ACCORDING TO THE SCHEDULE**

Plaintiffs

ORDERS

Date of document: 9 October 2009
Filed on behalf of: the Plaintiffs

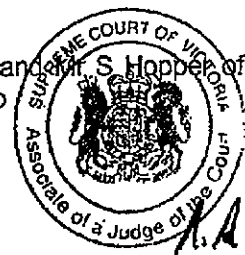
Prepared by:
ARNOLD BLOCH LEIBLER
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Ref: 01-1499489

(Leon Zwier lwier@abl.com.au/
Bridgette Toy-Cronin btoycronin@abl.com.au)

JUDGE:	Justice Robson
DATE MADE:	9 October 2009
ORIGINATING PROCESS:	Originating Process of the Plaintiffs filed 5 October 2009 as amended by the Amended Originating Process filed on 6 October 2009
HOW OBTAINED:	On hearing of the originating process on 6 October 2009.
ATTENDANCE:	L Zwier and B Toy-Cronin for the Plaintiffs Mr G Bigmore of Her Majesty's Counsel and Mr S Hopper of Counsel for the Timbercorp Growers Group



Mr M Shand of Her Majesty's Counsel for Kerree Anne Bezencon

Mr I Waller of Senior Counsel and Mr S Hibble of Counsel for the Australian Securities and Investments Commission

Mr P Cawthorn of Senior Counsel and Mr R Craig of Counsel for Westpac Banking Corporation, BOS International Australia Limited and Australia and New Zealand Banking Group Limited

OTHER MATTERS:

Each of the Plaintiffs and Olam Orchards Australia Pty Limited and Olam International Limited have entered into a sale and purchase deed on 18 September 2009 (SPD) which forms Confidential Exhibit MAK-14 to the affidavit of Mark Anthony Korda sworn 5 October 2009 (Affidavit).

THE COURT DIRECTS THAT:

- 1 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (**Registered Schemes**) to enter into and perform the SPD and extinguishing all of the rights of Growers (investors in the schemes set out in schedules 1 and 2 of this order) in respect of the assets the subject of the SPD (**Grower Rights**).
- 2 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in procuring the Second Plaintiff as manager of the unregistered managed investment scheme listed in Schedule 2 of this order to enter into and perform the SPD and extinguishing all of the Grower Rights.
- 3 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPD.
- 4 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPD.



- 5 The Third and Fourth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in disclaiming the Project Management Agreements and the Licence and Joint Venture Agreements (as those respective terms are defined in the Affidavit) and to the extent necessary have leave to do so pursuant to section 568(1A) of the Corporations Act 2001 (Cth).

THE COURT ORDERS, DECLARES AND DIRECTS THAT:

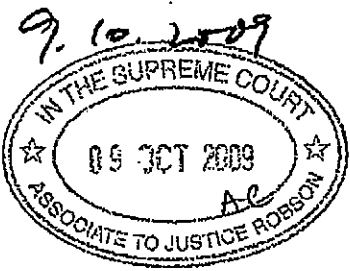
- 6 The Third and Fourth Plaintiffs in their capacity as liquidators of the First, Second, Fifth and Sixth Plaintiffs may enter into and perform:
- (a) the SPD; and
 - (b) any document referred to, in connection with, or necessary to give effect to the SPD.
- 7 Upon completion of any sale under the SPD the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second, Fifth and Sixth Plaintiffs referable to the preservation and realisation of the assets the subject of the SPD, as approved by the committee of inspection of the Sixth Plaintiff and the Secured Creditors (as that term is defined in paragraph 13 of the Affidavit), or order of the Court) (**Net Proceeds**) be held by the Sixth Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act) pending the hearing and determination by the Court of a proceeding (**Rights Proceeding**) to determine which person or persons have any rights to all or any part of the Net Proceeds (**Claimants**), and to be held on trust for the Claimants until further order of the Court.
- 8 Insofar as each of the Secured Creditors have any rights to the assets the subject of the SPD, whether under their securities over those assets or otherwise, nothing in the release of those securities upon completion of the SPD will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds.
- 9 Insofar as the Growers have any rights to the assets the subject of the SPD nothing in orders 1 to 5 above, or any action taken thereunder by the Third and Fourth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Proceeds.



10 Exhibits MAK-9, MAK-10, MAK-13, MAK-14, MAK-23 and MAK-25 to the Affidavit be kept confidential.

11 Costs be reserved.

DATE AUTHENTICATED:



SCHEDULE OF PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

ALMOND MANAGEMENT PTY LTD (IN LIQUIDATION) (ACN 094 468 845)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2
Second Plaintiff

MARK ANTHONY KORDA
Third Plaintiff

LEANNE KYLIE CHESSER
Fourth Plaintiff

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
Fifth Plaintiff

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 992)
Sixth Plaintiff



SCHEDULE 1

1. 2002 Timbercorp Almond Project (ARSN 099 611 935)
2. 2005 Timbercorp Almond Project (ARSN 112 935 092)
3. 2006 Timbercorp Almond Project (ARSN 118 387 974)
4. 2007 Timbercorp Almond Project (ARSN 122 511 040)



SCHEDULE 2

1. 2002 Timbercorp Almond Project (Private Offer) (Unregistered)



Terms of Engagement

These Terms of Engagement set out the disclosures required under section 3.4.9 of the *Legal Profession Act 2004* for non-litigious matters. Not all the disclosures may be relevant to you.

1 How we will charge you

1.1 Hourly rate

Our legal costs are determined on an hourly rate as set out in the engagement letter. The hourly rates for other professional staff who may become involved in your matter are set out in section 1.4 below.

You have the right to negotiate an engagement letter and terms of engagement with us and receive written progress reports and a written report of legal costs incurred to date, on reasonable request.

We may also wish to discuss with you a fixed fee or retainer arrangement, or charging a premium for time spent where the circumstances justify it. For example, where your matter requires particularly urgent attention, or involves sustained periods of work outside normal business hours or poses particularly challenging or specialised problems.

We will tell you of any substantial changes affecting any of your matters and will obtain your approval before incurring any significant or extraordinary expenses, except in cases of urgency.

The fees and expenses contained in the engagement letter and these Terms of Engagement may change from time to time. Any revised fees and expenses will apply from the date notified to you.

1.2 Disbursements

You must pay us all necessary and proper disbursements. These will be incurred by us on your behalf, but you must repay these at the conclusion of the matter or on demand by us.

We will charge you at cost for any expense we incur on your behalf. These expenses may include:

- fees of law firms in other jurisdictions;
- barrister's and expert's fees;
- agents' fees;
- government fees and charges;
- bank charges; and
- travel and accommodation expenses.

We do not charge for routine photocopying, faxes, postage and domestic phone calls.

We may ask you to pay in advance such amounts as required for expenses we expect to incur plus any GST (Goods and Services Tax) that may be payable.

1.3 Travel arrangements

Travel and accommodation, unless you instruct us otherwise, will be booked through our usual travel agents who will bill us. You must reimburse us for the amount billed.

1.4 Other professional staff

The hourly rates for professional staff engaged on your matters are:

Professional Staff	Hourly rate (excl GST)	Hourly rate (incl GST)
Director	\$495.00	\$544.50
Senior Associate	\$400.00	\$440.00
Associate	\$360.00	\$396.00
Solicitor	\$225.00-\$285.00	\$247.50-\$313.50
Graduates	\$200.00	\$220.00
Paralegal Staff/ Law Clerks	\$100.00 - \$160.00	\$110.00 - \$176.00
Secretarial and administrative staff overtime	We pass on any overtime paid to those staff engaged on your matter.	

Please note that some directors and staff with particular expertise may charge rates outside the above ranges.

2 Our accounts

We normally issue accounts monthly, although we may vary this depending on the circumstances. We will also issue an account on completion of each of your matters.

Unless otherwise agreed, we will send our accounts to the person to whom the engagement letter is addressed. Our accounts are to be paid within 14 days of receipt.

The account will be a tax invoice and briefly describe the work we have done. If you require an itemised account, you must request this within 30 days after you receive the account.

We may ask you to pay an amount in advance to cover expenses or on account of our fees. In that case we will assume, on receipt of your payment, your authority to draw on the money paid for our fees and expenses, as they become due.

3 Unpaid accounts

If an account remains unpaid 30 days after you receive it, we may charge you interest at a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2% from the period beginning 30 days after payment is demanded until the legal costs are paid.

If you fail to pay an account, we may:

- (a) choose not to perform any further work for you until all accounts are paid in full;
- (b) retain custody of your papers, documents or files until all accounts are paid in full; and
- (c) charge interest a rate not exceeding the Cash Rate Target, as fixed by the Reserve Bank of Australia, plus 2% on any amount outstanding for 30 days or more after the date on which the account is given to you.

4 If you have a concern about our legal costs

If you have any concern about our legal costs, or our legal services, please do not hesitate to speak to the director responsible for your matter. If we cannot satisfactorily resolve your concern with you, you may:

- (a) seek a costs review by the Costs Court under Division 7 of Part 3.4 of the Act within 12 months after the bill is given to you or the law practice requests payment of costs or you pay the costs (whichever is earlier);

- (b) in limited circumstances you may seek a costs review outside the 12 month time limit. In these circumstances the Supreme Court will determine whether or not it is just and fair for the Costs Court to deal with your application outside the 12 month time limit after considering your sophistication as a client, the delay and the reasons for the delay;
- (c) apply to VCAT to set aside this agreement under section 3.4.32 of the Act; or
- (d) make a complaint to the Legal Services Commissioner under chapter 4 of the Act within 60 days after the legal costs were payable or, if an itemised bill was requested in respect of those costs, within 30 days after the request was complied with. You may be able to make a complaint to the Legal Services Commissioner up to 4 months after the end of the period referred to. This is provided that you can satisfy the Commissioner that there was a reasonable cause for the delay in making the complaint and legal proceedings have not been commenced for the recovery or review of the legal costs that are the subject of the complaint.

If you require further information or a copy of the relevant legislation, please contact us.

5 Trust money

If we receive money on your behalf we will deposit the money into our trust account.

Should we receive money into our trust account on your behalf, you may authorise us to withdraw from that money any sums owing for our legal costs and disbursements. We will give you written notice prior to withdrawing money from our trust account.

You have the right to revoke your authority by giving seven (7) days notice in writing, but we may still withdraw money held on your behalf for legal costs accrued (whenever billed) up to the expiry of the notice period.

If we receive money to be paid to a third party we will forward that money to the third party unless you instruct us to do otherwise.

6 Conflicts

We will consult you if we become aware of any new instruction we receive which may conflict with your current instructions.

7 Confidential information

We will not disclose any confidential information which we obtain as a result of acting for you to anyone else unless compelled by law or to the extent permitted by these terms. Possession of confidential information or knowledge will not prevent us from acting for another person if the directors and solicitors personally involved in acting for that other person do not have actual knowledge of the confidential information.

We will not disclose to you any confidential information or knowledge which we obtain as a result of acting for any other client.

8 Privacy of personal information

We are committed to respecting the privacy of your personal information.

Where we refer to "personal information", this means information which identifies an individual or from which an individual's identity can be reasonably ascertained. In some circumstances, including where it is necessary for the conduct of your matter, we may need to collect sensitive

information. Sensitive information is defined in the *Privacy Act 1988* (Cth) and includes health information.

9 Information collected

For the purpose of providing our services to you, we may collect some personal information. The personal information we collect is limited in most cases to names, professional and contact details and information relating to the services we provide you.

If we are not provided with personal information that we request, we may not be able to fully provide our services to you.

We may, from time to time, collect personal information or sensitive information from you about third parties, such as your customers or employees. Before giving us this information, you must provide any notifications and obtain any consents which are required by the *Privacy Act 1988* (Cth) or any other applicable laws or codes to enable us to collect and otherwise handle that third party personal information lawfully and without taking any further steps. This may require you to inform those third parties of the matters set out in this section 9.

10 Use and disclosure of your information

We may share your information with third parties including your professional advisers and organisations with whom we have co-promotional arrangements (and any third parties used in administering those arrangements). We may also share your information with other service providers including barristers, experts and law firms in other jurisdictions, and organisations that assist us by providing archival, auditing, consulting, mailhouse, delivery, technology and security services. In the conduct of your matter, we may also need to share your information with courts, tribunals and other regulatory authorities.

In addition to providing our services (including legal, training and consulting services) to you, we may use and disclose your information to maintain our relationship with you, to keep you informed of our services, events, developments in the law and other matters which we consider may be of interest to you, and for purposes related to our research, planning, service development, security and risk management. We may also use and disclose your information to the extent that we are required or authorised by law to do so.

11 If you are an individual

If you are an individual, you authorise us to collect, use and disclose your personal and sensitive information as set out in sections 9 and 10, including where this may involve a transfer of personal information outside Australia or of health information outside the State or Territory in which it is held.

12 Third parties

You must pay our accounts whether or not:

- (a) you have a right of indemnity or recovery from a third party;
- (b) any third party seeks an assessment of any of our accounts; or
- (c) you receive any amount from a third party.

13 Internet communications

We may communicate with you electronically. Electronically transmitted information cannot be guaranteed to be secure or error free and it can be adversely affected or unsafe to use.

We are not liable to you in respect of any loss, damage, error or omission arising from or in connection with the electronic communication of information to you.

Please let us know if you do not want us to communicate electronically with you.

14 Apportionment of liability

To the extent permitted by law, you agree that to the extent that any loss or damage suffered by you is attributable to fault, negligence, or lack of care on your part or on the part of any person for whom you are responsible, we (and our directors and employees) are not liable (in tort, contract or otherwise) for the loss or damage.

15 Benefit of advice

Unless we specifically say otherwise, advice given by us in the course of our engagement:

- (a) is given solely for your benefit;
- (b) may not, without our prior written consent, be:
 - (i) relied on by another person;
 - (ii) disclosed except to persons who, in the ordinary course of your business, have access to your papers and records, on the basis that they will not disclose the advice to anyone else; or
 - (iii) filed with a governmental agency or other agency or quoted or referred to in a public document;
- (c) is strictly limited to the matters stated in it and does not apply by implication to other matters;
- (d) is limited to the law of the place in which our office is situated, as applied by the courts of that place, and is given on the basis that it will be governed by the laws of that place; and
- (e) is given as at the date of the communication containing that advice.

We will not notify you of any changes in the law after the date on which the advice was given, unless you specifically ask us to do so.

16 Jurisdiction

The law of Victoria will apply to legal costs in this matter.

You have the right to sign a costs agreement under a corresponding law or to advise us that you require the law of another jurisdiction to apply. In such an event, we will inform you of any variation of our costs.

17 Engagement of another lawyer

We may need to engage on your behalf a barrister or other lawyer, or firms in other jurisdictions to provide specialist advice or services. We will consult you about the terms of this engagement and provide you with a statement setting out the details of this person's fee before incurring the expense.

18 Ending our engagement

You may end our engagement by written notice at any time. If you do this, you must pay our legal costs up until that time.

Circumstances may arise (such as a conflict of interest) which make it impossible for us to continue to act for you. If this happens, we will contact you immediately.

If you do not pay our account or if you fail to pay money in advance if it is requested, we may stop work until we are paid. If the account continues to remain unpaid we may cease to act for you.

If we cease to act for you:

- (a) we will not incur any liability as a result;
- (b) we will remove our name from the court record in any court proceedings (if applicable);
- (c) you will receive a final account which will include all outstanding legal costs which you must pay up until the date when we cease to act; and
- (d) we retain the right to keep your documents until we are paid.