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27 September 2012

Clarendon Lawyers
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Our Ref: MG:GT:09341/12
Your Ref: MJF:CL:1100297

Dear Sirs,

Deed of Compromise for the Almonds Appeal Proceeding

As you are aware, we act on behalf of MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd (**"the Funders"**).

At the hearing before Judd J on 3 and 4 October 2012, the Funders will not be making any submissions in respect of whether the compromise reached between the parties to the appeal ought be approved by the Court. The Funders will, however, be making submissions to the effect that the Court ought declare that the Funders are entitled to an indemnity secured by an equitable lien over the settlement proceeds (which, under the Compromise Agreement, is to be held at first instance by Timbercorp Securities Limited (in Liq) to secure the following payments:

- (a) the Appellants' costs and disbursements incurred in respect of the appeal in the amount of \$186,796.95;
- (b) the costs paid to the Respondents upon the Appellants not proceeding with the application in respect of a pre-emptive costs order in the amount of \$25,000; and
- (c) the amount to which the Funders are entitled by reason of clause 8(a)(III) of the Funding Agreement in the amount of \$1,500,000.

If his Honour is not prepared to fix the amounts in paragraphs (a) or (b) then the Funders will seek orders that those amounts be taxed.

The Funders' claims are based on two separate grounds:

- (i) In accordance with the principles of agency by necessity, the representative parties entered into the Funding Agreement with the Funders as agents for the other growers in the relevant almond schemes.
- (ii) Because the settlement could not have been obtained without the funding provided by by the Funders, and the settlement would not have been achieved, the Funders are entitled to claim their costs and fees from the settlement proceeds on the basis that a person works or incurs expenses to care for, preserve or realise property to create a fund, that person is entitled to claim their costs and fees from the fund.

Further, in either case, the Funders' entitlements would be supported by an equitable lien.

Liability limited by a scheme
approved under
Professional Standards
Legislation

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Our submissions, due on 28 September 2012, will set out in greater detail the reasons why the Funders say that orders of this nature are appropriate.

In the meantime, if you have any queries, please do not hesitate to contact us.

Yours faithfully,



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