

3 January 2013

Deed of compromise for the Almond Land Rights Appeal Proceeding – second notice to growers

This notice is for growers in one or more of the following Almond Projects:

2002 Timbercorp Almond Project ARSN 099 611 935
2005 Timbercorp Almond Project ARSN 112 935 092
2006 Timbercorp Almond Project ARSN 118 387 974
2007 Timbercorp Almond Project ARSN 122 511 040
2002 Timbercorp Almond Project (Private Offer No 1)
(together, the **Almond Projects** and each an **Almond Project**).

1 Introduction

We notified you in August 2012 that (among other things):

- (a) the Almond Projects were the subject of the Almond Land Rights Proceeding and that the interests of all Growers were represented in that proceeding by representative Growers (known as the **Representative Growers**) appointed by the Supreme Court of Victoria (**Supreme Court**);
- (b) Her Honour Justice Davies determined in the Almond Land Rights Proceeding that the Growers were not entitled to share in any of the net proceeds arising from the sale of the land on which the Almond Projects were conducted and related assets (in accordance with orders of the Supreme Court, inclusive of interest accruing on them and less certain costs) (**Fund**) and that the entire Fund be paid to the secured lenders in that proceeding (**Secured Lenders**);
- (c) the Almond Land Rights Appeal Proceeding relates to the appeal by Representative Growers of the decision of Her Honour Justice Davies in the Almond Land Rights Proceeding;
- (d) the parties to the Almond Land Rights Appeal Proceeding had reached a compromise resolving the dispute between them (**Compromise**) and that an application would be made to the Supreme Court (or the Court of Appeal) for the approval of the Compromise (**Approval Application**); and
- (e) a condition precedent to the Compromise binding all Growers (**Condition Precedent**) is that:

- (i) the Compromise is approved by the Supreme Court (or the Court of Appeal); and
- (ii) the Supreme Court also approves the applications made for approval of the compromise of each of the following four proceedings (together with the Almond Land Rights Appeal Proceeding, the **Timbercorp Apportionment Proceedings**):
 - (a) Supreme Court of Victoria Proceeding No. S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**);
 - (b) Supreme Court of Victoria Proceeding No. S CI 2011 6606 (**Solara Rights Proceeding**);
 - (c) Supreme Court of Victoria Proceeding No. S CI 2010 1354 (**BB Olives Rights Proceeding**); and
 - (d) Supreme Court of Victoria Proceeding No. S CI 2011 6777 (**Fenceport Rights Proceeding**)

(together with the Approval Application, the **Approval Applications**).

In this notice, the compromise of each of the Timbercorp Apportionment Proceedings are referred to collectively as the **Compromises**. The terms of each such compromise are, in each case, set out in a deed of compromise executed by the relevant parties on 25 July 2012 (individually, a **Deed of Compromise** and, together, the **Deeds of Compromise**).

As part of its determination of the Approval Application, the Supreme Court considered the additional issue of whether or not the parties that agreed to fund the Almond Land Rights Appeal Proceeding on behalf of the Representative Growers (**Litigation Funders**) were entitled to certain payments (**Litigation Funders' Fee**) in accordance with the terms of the management and funding agreement between the Litigation Funders and the Representative Growers.

2 Judgment of his Honour Justice Judd delivered on 12 December 2012 and related orders

His Honour Justice Judd of the Supreme Court heard the Approval Applications on 2 and 3 October 2012. In his judgment delivered on 12 December 2012 in relation to those applications (**Judgment**), his Honour determined:

- (a) to approve each of the Compromises and bind absent Growers because it is in their best interests to do so; and
- (b) that, on proper application, the Litigation Funders would be entitled to be paid the Litigation Funders' Fee.

The full text of the Judgment can be found at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

To give effect to his Honour's Judgment, orders were made by his Honour on 12 December 2012 (authenticated on 18 December 2012) in each of the Timbercorp Apportionment Proceedings by which the Condition Precedent has been satisfied. Accordingly, all Growers are now bound by the terms of the Compromise.

A copy of the orders made by His Honour on 12 December 2012 can be found at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

3 Grower Entitlements

The amount each Grower is entitled to receive under the Compromise in respect of each lot they hold in an Almond Project is set out in the following table:

Timbercorp Almond Project	Almond Land Compromise entitlement per lot (subject to claim by the Litigation Funders)	Liparoo & Yungera Compromise Grower entitlement per lot	Tree purchase per lot	Total Grower entitlement per lot
2002 Almond (Private Offer No 1)	\$37.84	\$371.93	-	\$409.77
2002 Almond	\$38.85	\$367.93	-	\$406.78
2005 Almond	\$85.81	\$182.54	-	\$268.35
2006 Almond	\$132.04	-	-	\$132.04
2007 Almond	\$132.04	-	-	\$132.04

The conditions and timing of the payments to Growers are governed by the terms of the Compromise which are addressed further below.

4 Features of the Compromise

The terms of the Compromise are set out in the Deed of Compromise for the Almond Land Rights Appeal Proceeding, as amended by Deed of Amendment executed by the relevant parties on 17 December 2012 (the Deed of Compromise as amended being the **Amended Deed of Compromise**). Under the terms of the Amended Deed of Compromise together with the order made by his Honour Justice Judd on 12 December 2012 in the Almond Land Rights Appeal Proceeding:

- (a) \$6,000,000 (approximately 5% of the Fund) will be paid by the Secured Lenders to TSL (**Almond Settlement Amount**);
- (b) Subject to a lien in favour of the Representative Growers in respect of the Litigation Funders' Fee due to the Litigation Funders, the Almond Settlement Amount is to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements under the Amended Deed of Compromise, as outlined in section 5 of this notice;
- (c) In satisfaction of the lien referred to in sub-paragraph (b) above, TSL will pay \$1,753,443.25 to the Representative Growers on account of the Litigation Funders' Fee due to the Litigation Funders;
- (d) The balance of the Almond Settlement Amount will be distributed to, or on behalf of, Growers on a pro-rated basis according to the number of lots held by each such Grower on 2 December 2009 (being the date on which Growers' rights in the Almond Projects were extinguished). The amount payable per lot located on the land formerly owned by Almond Land will be:
 - (i) \$37.84 per lot for Growers in the 2002 Almond (Private Offer No 1) Project;
 - (ii) \$38.85 per lot for Growers in the 2002 Almond Project;
 - (iii) \$85.81 per lot for Growers in the 2005 Almond Project; and
 - (iv) \$132.04 per lot for Growers in the 2006 Almond and 2007 Almond Projects.

This amount will be in full and final settlement of the Growers' claim to any part of the Fund;

- (e) Upon the making of the above payments, the Secured Lenders and the Representative Growers on behalf of the Growers will release each other from any further claim in relation to their entitlement to the Fund and the allocation and disbursement of the Fund; and
- (f) The Almond Land Rights Appeal Proceeding will be dismissed with no order as to costs.

The amount to which Growers in each Almond Project are entitled will differ depending on the percentage of the lots in that Almond Project that were located on land formerly owned by Almond Land. If the Almond Project was also conducted on Liparoo and Yungera land, the Growers' entitlement per lot under the Compromise will be reduced proportionately but those Growers will also have an entitlement under the compromise of the Liparoo and Yungera Rights Proceeding.

5 Distribution of the Almond Settlement Amount to Growers

The terms of the Amended Deed of Compromise require the Almond Settlement Amount to be paid to TSL on trust for the Growers for distribution to, or on behalf of, the Growers in accordance with their entitlements. As noted above, each Grower's entitlement will be calculated on a pro-rated basis based on the number of lots in the Almond Projects held by that Grower on 2 December 2009 (for each Grower, its **Almond Settlement Entitlement**).

Growers who are recorded in the books and records of:

- (a) Timbercorp Finance Limited (in liquidation) (**TFL**) as owing amounts under an outstanding loan from TFL in connection with their investment in the Almond Projects (**TFL Indebtedness**); or
- (b) TSL as owing amounts to TSL (**Timbercorp Indebtedness**),

will be able (should they choose) to direct that their Almond Settlement Entitlements are paid, in whole or in part, to TFL or TSL to pay, to the extent possible, their TFL Indebtedness or Timbercorp Indebtedness (as applicable). The amount of your TFL Indebtedness may be affected by the offer of settlement made by TFL to relevant Growers by letter dated 8 February 2012.

A direction to pay form is available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

If you are recorded as having any TFL Indebtedness or Timbercorp Indebtedness you can (if you choose) give your directions to TSL by completing and returning a direction to pay form. To arrange for a direction to pay form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Almond Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a court order, about the manner in which the entitlement is to be disbursed.

If you wish to confirm whether you have any, or the extent of your, TFL Indebtedness or Timbercorp Indebtedness, the number of lots you held in the Almond Projects on 2 December 2009 or any other private information which TSL holds in relation to your individual circumstances in respect of the Compromise, you should call the Timbercorp telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

To receive your Almond Settlement Entitlement (if payable to you having regard to your TFL Indebtedness and Timbercorp Indebtedness, if any), you must notify TSL of the bank account you nominate to receive payment. You can notify TSL of your bank account details by completing and returning the bank account nomination form available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

To arrange for a bank account nomination form to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

6 Timing of payments to Growers

The timing of a Grower's payment of their Almond Settlement Entitlement will depend, in part, on their individual circumstances.

If a Grower does not have any TFL Indebtedness, TSL will pay the Grower's Almond Settlement Entitlement to its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness) as soon as practicable following the receipt by TSL of the Almond Settlement Amount.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Almond Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Almond Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Almond Settlement Entitlement (if any) to the Grower into its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness).
- (b) has directed TSL to use its Almond Settlement Entitlement to pay only part of the Grower's TFL Indebtedness, TSL will, as soon as practicable, pay to TFL that part of the Grower's TFL Indebtedness and retain the balance of the Grower's Almond Settlement Entitlement (if any) on trust pending an agreement between TFL and the Grower or court order as to whom it should be paid.
- (c) has not directed TSL to pay any part of its Almond Settlement Entitlement to TFL, TSL will hold that Grower's Almond Settlement Entitlement on trust pending agreement between TFL and the Grower or court order as to whom it should be paid.

Accordingly, there is an important difference between the treatment of a Grower's TFL Indebtedness and the treatment a Grower's Timbercorp Indebtedness. This is because, in relation to those Growers

with a TFL Indebtedness, TFL asserts that it has a proprietary and/or secured claim over those Growers' Almond Settlement Entitlements, whereas the claim of TSL is merely contractual and unsecured. For this reason, if a Grower who has TFL Indebtedness chooses not to direct TSL to use its Almond Settlement Entitlement to pay its TFL Indebtedness, that Grower's Almond Settlement Entitlement will be held on trust pending agreement or Court order.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Almond Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a Court order, about the manner in which the entitlement is to be disbursed.

Importantly, if a Grower gives a direction to TSL to use its Almond Settlement Entitlement to pay TFL all or part of its TFL Indebtedness, that direction does not constitute an admission of liability by the Grower to TFL in respect of its TFL Indebtedness and is without prejudice to the Grower's rights (if any) in relation to its TFL Indebtedness. Similarly, nothing in the receipt by TFL of any such payment will constitute a waiver of any rights that TFL has in respect of a Grower's remaining TFL Indebtedness.

7 Tax consequences of the Compromise

The Compromise and payment of the Almond Settlement Entitlement may have tax consequences for each Grower. The consequences for each Grower will depend on the Grower's individual circumstances. You may wish to seek advice from your personal financial or taxation adviser about the potential tax consequences of receiving your Almond Settlement Entitlement and any choice you may make to give directions to pay your Almond Settlement Entitlement to TFL or TSL or both.

8 Role of TSL

At the request of the Representative Growers, TSL has agreed to perform various administrative roles in connection with the Compromise and the Approval Application. In addition to distributing this notice on behalf of the Representative Growers, TSL will make the payments to or on behalf of Growers as required under the Amended Deed of Compromise and hold amounts in trust pending their distribution. Under the terms of the Amended Deed of Compromise, TSL will only be released by each Grower upon distribution in full of that Growers' Almond Settlement Entitlement to the Grower or at the direction of, or on the authorisation of, the Grower.

9 Effect of the Judgment on your rights

Now that the Supreme Court has approved each of the Compromises, all of the Growers are bound by the terms of the Compromise in respect of their claims against the Fund. The Supreme Court has found that whatever rights the Growers had in the Almond Projects are no longer of any value. Consequently, with the exception of their entitlement to the Almond Settlement Amount, the Growers have no further interest in the Fund and their interest in the Almond Projects is extinguished. The Growers no longer have any right to argue for an alternative outcome of the dispute and any payment

made to you under the terms of the Amended Deed of Compromise is in full and final settlement of your claim against the Fund.

10 Further information

If you have any questions regarding the payment of your Almond Settlement Entitlement you can call the Timbercorp telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

11 Key contacts

Timbercorp hotline

Email address

Notices to Growers

(03)8615 1200

investorqueries@timbercorp.com.au

Available online at any of:

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