

13 August 2012

DEED OF COMPROMISE FOR THE BB OLIVES RIGHTS PROCEEDING – FIRST NOTICE TO GROWERS

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

**2006 Timbercorp Olive Project ARSN 119 182 179;
2007 Timbercorp Olive Project ARSN 123 155 715; and
2008 Timbercorp Olive Project ARSN 129 307 722,
(together, the Olive Projects and each an Olive Project).**

Introduction

As you may be aware, there is a proceeding (the BB Olives Rights Proceeding described in sections 1 and 2 of this notice) presently before the Supreme Court of Victoria (**Supreme Court**) concerning the net proceeds arising from the sale of the land on which the Olive Projects were conducted. The purpose of the proceeding is to resolve the dispute as to how those net sale proceeds are to be apportioned between the secured creditor, growers and other interested parties claiming an interest in them.

A representative grower has been appointed by the Supreme Court in respect of each of the Olive Projects to represent the interests of the growers in that Olive Project in the proceeding. Each such representative grower is acting on the advice of Clarendons Lawyers and counsel retained by Clarendons Lawyers on behalf of the representative growers.

A deed of compromise has been executed by the parties to the proceeding (including the representative growers) as a proposed solution to this dispute subject to certain conditions, including Supreme Court approval. The purpose of this notice is to explain the compromise and to help you to understand the impact of the compromise on you should it be approved by the Supreme Court.

If the compromise is approved by the Supreme Court and the other conditions are satisfied, you may receive a payment. However, if the compromise is not approved by the Supreme Court or the other conditions are not satisfied, any entitlement you may have to receive a payment will depend on the outcome of the contested trial of the dispute.

For the reasons set out in section 5 of this notice, each representative grower, on the advice of their legal advisers, considers that the compromise is in the best interests of the growers they represent.

Next steps

The Supreme Court will be asked to approve the compromise at a hearing currently anticipated to commence in October 2012 at the Supreme Court of Victoria, Melbourne. The confirmed date of this hearing will be notified to growers online at each of:



www.clarendonlawyers.com.au
www.kordamentha.com/creditor-information/Australia/51
www.abl.com.au/timbercorp/compromises.htm

as soon as it is known.

If the Supreme Court approves the compromise and the other conditions are satisfied, you will be bound by the compromise and you will lose any right to argue for an alternative outcome of the dispute. It is therefore important to read this notice carefully.

Answers to some Frequently Asked Questions (**FAQ**) are available online and a telephone hotline facility and an email facility have been set up to assist growers who:

- wish to comment on the compromise;
- have any questions or wish to obtain further information on the compromise; or
- wish to object to the compromise.

Details of where you can access the FAQ, the telephone hotline facility and the email facility are set out in section 13 of this notice.

If you wish to object to the compromise, you should call the telephone hotline facility or email **as soon as possible before 14 September 2012**. Your objections will be passed on to the lawyers acting for the representative growers.

You are not required to attend or appear at the Supreme Court hearing anticipated to commence in October 2012. However, you may wish to attend or appear at that Supreme Court hearing, and/or seek independent legal advice and/or obtain representation at that hearing (outside the existing representative grower arrangement established by the Supreme Court). If you do so, any legal or other costs of doing so will be at your own expense unless the Supreme Court orders otherwise.

The representative growers will keep you informed of future developments regarding the compromise and the Supreme Court approval of that compromise (see section 7 of this notice).

Important Information for Growers

1 Background to the dispute

Timbercorp Limited (in liquidation) (**Timbercorp**) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus. A member of the Timbercorp Group, Timbercorp Securities Limited (in liquidation) (**TSL**) was the responsible entity of the registered Timbercorp managed investment schemes.



The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the Timbercorp managed investment schemes were conducted, and related assets, were sold in a series of transactions each of which was approved by the Supreme Court.

In approving each of the sale transactions, the Supreme Court, in each case, ordered (among other things) that:

- (a) the net sale proceeds be placed into trust pending a proceeding to determine the rights of the land owners, the secured creditors, the investors in the Timbercorp managed investment schemes (**Growers**) and other interested parties to all, or any part, of those proceeds; and
- (b) neither the release of the secured creditors' securities upon completion of the sale contracts, nor the extinguishment of the Growers' rights, would prejudice those parties' respective rights to the assets sold insofar as they had such rights for the purpose of making a claim to all or any part of the net proceeds.

As a result, five separate proceedings were commenced to determine how the net sale proceeds the subject of each sale transaction were to be apportioned between the land owners, the secured creditors, Growers and other interested parties claiming an interest in those proceeds. These five proceedings, collectively referred to as the **Timbercorp Apportionment Proceedings**, are as follows:

- Supreme Court of Victoria Proceeding No. S CI 2009 10699 (**Almond Land Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6606 (**Solara Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2010 1354 (**BB Olives Rights Proceeding**); and
- Supreme Court of Victoria Proceeding No. S CI 2011 6777 (**Fenceport Rights Proceeding**).

In each of the Timbercorp Apportionment Proceedings, one or more parties has been appointed by the Supreme Court pursuant to Rule 16.01(2) of the Supreme Court (General



Civil Procedure) Rules 2005 (Vic) (**Rule 16**) as the representative of the Growers in the Timbercorp managed investment schemes the subject of that proceeding.

As each of the Timbercorp Apportionment Proceedings involves similar issues, it was considered appropriate for one such proceeding to be heard and determined first, with the intention that the result in that proceeding would then form the basis for determination of the other proceedings. This led to the hearing and determination of the Almond Land Rights Proceeding in early 2011. By her judgment in that proceeding, her Honour Justice Davies of the Supreme Court found that the Growers in the Timbercorp managed investment schemes the subject of that proceeding were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner. Justice Davies' decision in that proceeding is presently subject to appeal in Supreme Court of Victoria Court of Appeal Proceeding No. APCI 2011 0103 (**Almond Land Rights Appeal Proceeding**), although a hearing date for that appeal is yet to be fixed.

2 BB Olives Rights Proceeding

On 16 March 2010, BOSI Security Services Limited as trustee for Australia and New Zealand Banking Group Limited, BOS International (Australia) Limited and Westpac Banking Corporation (**BOSI**), commenced the BB Olives Rights Proceeding. BOSI was a secured lender with respect to the Olive Projects.

The BB Olives Rights Proceeding is the proceeding which specifically relates to the Olive Projects. In the BB Olives Rights Proceeding, BOSI seeks, among other things, declarations from the Supreme Court as to:

- its rights;
- the rights of the Growers in the Olive Projects; and
- the rights of other relevant parties,

if any, to the net sale proceeds from the sale of the land on which the Olive Projects were conducted together with the other assets used in the Olive Projects (**Boundary Bend Assets**). The gross sale proceeds from the sale of the Boundary Bend Assets were (approximately) \$23.5 million. In accordance with orders of the Supreme Court, certain costs have been deducted from these proceeds, and interest has accrued, with the balance of the proceeds from time to time being referred to in this document as the **Fund**.

On 22 March 2010, the Supreme Court made orders in the BB Olives Rights Proceeding pursuant to Rule 16 that the Growers in each of the Olive Projects have their interests represented in that proceeding by particular Growers. The relevant Growers are:



- (a) Michael Charles Vicary as representative of the Growers in the 2006 Timbercorp Olive Project;
- (b) Pamela Jan Dry as representative of the Growers in the 2007 Timbercorp Olive Project; and
- (c) David Butterfield as representative of the Growers in the 2008 Timbercorp Olive Project;

(collectively, the **Representative Growers** and each a **Representative Grower**).

The other parties to the BB Olives Rights Proceeding are B.B Olives Pty Ltd (in liquidation) (**BB Olives**), Almond Land Pty Ltd (in liquidation) (**Almond Land**) and Timbercorp and their liquidators, Mark Korda, Mark Mentha and Leanne Chesser. BB Olives and Almond Land were the entities within the Timbercorp Group that owned the land on which the Olive Projects were conducted. Timbercorp, additionally, owned some Boundary Bend Assets. The liquidators of BB Olives hold the Fund on trust pending resolution of this dispute.

While the BB Olives Rights Proceeding has been issued and the Representative Growers appointed, no formal steps are being taken in the proceeding while the parties have conferred about a possible compromise of the proceeding.

BOSI, BB Olives, Almond Land, Timbercorp and the Representative Growers have now reached a proposed resolution of the dispute between them as to the allocation of the Fund and have, therefore, agreed to compromise the BB Olives Rights Proceeding. The compromise is subject to Court approval. The Representative Growers each believe (for the reasons set out in section 5 of this notice) that the compromise is in the best interests of the Growers in the Olive Projects they represent. However, under Rule 16, the Supreme Court must also approve the compromise before it is binding on all Growers.

3 Details of the Compromise

On 25 July 2012, the parties to the BB Olives Rights Proceeding entered into a deed of compromise for the BB Olives Rights Proceeding (**Compromise**). A copy of the deed of compromise may be viewed at any of:

www.clarendonlawyers.com.au

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

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

The Compromise is conditional on the approval of the Supreme Court by 31 December 2012 or such later date as may be agreed between the parties. It is also conditional on the



Supreme Court approving similar compromises reached in relation to all of the other Timbercorp Apportionment Proceedings (**Other Compromises**).

If the Supreme Court approves the Compromise and the Other Compromises, all Growers will be bound by the Compromise in respect of their claims against the Fund. You will lose any right to argue for an alternative outcome of the dispute and any payment made to you will be in full and final settlement of your claim against the Fund.

Under the terms of the Compromise:

- (a) The following payments will be made from the Fund:
 - (i) \$1,185,000 (approximately 5% of the gross sale proceeds of the Boundary Bend Assets) will be paid from the Fund to TSL to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements, as set out in section 8 of this notice (**Boundary Bend Settlement Amount**); and
 - (ii) BOSI will be paid the remaining balance of the Fund in repayment of the amount owed to it.
- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of grovelots held by each such Grower on 11 January 2010 (being the date on which Growers' rights in the Olive Projects were extinguished). The amount payable per grovelot will be \$92.43. This amount will be in full and final settlement of the Growers' claim to any part of the Fund.
- (c) Each party to the Compromise will release all other parties from any further claim in relation to their entitlement to the Fund or the allocation and disbursement of the Fund. The Representative Growers provide and receive these releases on behalf of the Growers.
- (d) The BB Olives Rights Proceeding will be dismissed with no order as to costs.

If the Supreme Court does not approve the Compromise and the Other Compromises:

- the Compromise ceases to have any effect;
- any documents prepared or circulated pursuant to the Compromise and/ or for the purposes of the application to the Supreme Court for approval of the Compromise may not be referred to or tendered in evidence in the BB Olives Rights Proceeding; and



- the BB Olives Rights Proceeding will continue and the Growers' entitlement (if any) to the Fund will be determined by the Supreme Court.

No timetable has yet been set down by the Supreme Court for the hearing of the BB Olives Rights Proceeding should the Compromise not be approved. There are a number of preliminary steps which will need to be completed before a date for any hearing is set. It is unlikely that the BB Olives Rights Proceeding would be heard and determined before late 2013. The Fund would therefore remain in trust, in an interest-bearing account, until that time.

4 Court approval

If the Supreme Court approves the Compromise of the BB Olives Rights Proceeding, and also approves each of the Other Compromises, the Compromise will be binding on all Growers in each of the Olive Projects, even though only the Representative Growers (but not all Growers) are parties to the BB Olives Rights Proceeding. The Supreme Court may approve the Compromise if it is satisfied that the Compromise is for the benefit of the Growers.

5 Benefit of the Compromise to the Growers

The Representative Growers have appointed Clarendon Lawyers, and counsel retained on their behalf by Clarendon Lawyers, to act for them in the BB Olives Rights Proceeding. The Representative Growers have obtained legal advice from Garry Bigmore QC and Sam Hopper of counsel and from their instructing solicitors, Clarendon Lawyers, with respect to the Compromise. In coming to their advice, counsel have taken into account (among other things) the decision of her Honour Justice Davies in the Almond Land Rights Proceeding and the appeal of that decision. Having regard to this advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court and the cost and delay before the BB Olives Rights Proceeding would be finally heard and determined by the Supreme Court, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Olive Projects.

6 Application to the Court for approval of the Compromise

BOSI, Almond Land, BB Olives, Timbercorp and the Representative Growers will apply to the Supreme Court for approval of the Compromise (**Approval Application**). The parties anticipate that a directions hearing will be held in or shortly after the week beginning 27 August 2012 and that, at that directions hearing, the Supreme Court will make orders (among other things) confirming the date on which the Approval Application will be heard. Notice of the date of this hearing will be posted at each of:

www.clarendonlawyers.com.au

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



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

shortly after the conclusion of the directions hearing.

It is proposed that the hearing of the applications for approval of the Other Compromises will be held concurrently with the hearing of the Approval Application. The current expectation is that the concurrent hearings will not be before October 2012 but will be at the earliest opportunity thereafter convenient to the Court.

7. Rights of Growers in connection with the Approval Application

Although the Representative Growers believe that the Compromise is for the benefit of Growers in the Olive Projects (as outlined in section 5), some Growers may wish to comment on, raise questions in relation to, or object to the Compromise. Without prejudice to any other course Growers may be advised by their own advisers to take, Growers may:

- (a) address any comments on the Compromise, the Approval Application or their individual circumstances;
- (b) ask any questions or obtain further information on the Compromise or the Approval Application; or
- (c) raise any objection to the Compromise,

to the Representative Growers by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au. The telephone hotline facility will be staffed by representatives of TSL (see section 11).

Before calling the telephone hotline facility or emailing, we suggest that you read and carefully consider this notice and the FAQ available at any of:

www.clarendonlawyers.com.au

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

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

for answers to your queries. If you do not find a suitable response and you call the hotline facility or email, you will receive a reply and your comments or objections will be noted and passed on to the Representative Growers for the purposes of the hearing of the Approval Application.

If you wish to object to the Compromise, you should notify the Representative Growers by calling the telephone hotline on (03) 8615 1200 or by emailing investorqueries@timbercorp.com.au **as soon as possible before 14 September 2012.**



At the hearing of the Approval Application, the Representative Growers will disclose to the Supreme Court all material facts relating to the Compromise, including all comments or objections they have received from Growers prior to the hearing of the Approval Application in relation to the Compromise or the Approval Application. Any such comments or objections will be considered by the Court in the context of determining whether the Compromise is for the benefit of Growers.

You are not required, but are able, to attend or appear at the Supreme Court for the hearing of the Approval Application. Any Grower who objects to the Compromise may raise their objection at the Approval Application. Growers may choose to appear in person, or have their own lawyers represent them. If you wish to appear or have your own lawyers appear on your behalf, you should seek legal advice in relation to the steps that you will be required to take in order for this to happen.

Shortly after the Supreme Court delivers its decision in respect of the Approval Application the Representative Growers will publish a further notice setting out the consequences of the decision (**Second Notice**) and will notify you of the publication of the Second Notice by post or email.

8 Distribution of the Boundary Bend Settlement Amount to Growers

If the Approval Application is successful and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the terms of the Compromise require the Boundary Bend 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 grovelots in the Olive Projects held by that Grower on 11 January 2010 (for each Grower, its **Boundary Bend Settlement Entitlement**).

Growers who are recorded in the books and records of:

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

will be able (should they choose) to direct that their Boundary Bend 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 Boundary Bend 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 grovelots you held in the Olive Projects on 11 January 2010 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 Boundary Bend 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.

9 Timing of payments to Growers

If the Approval Application is successful and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the Second Notice will notify you of (among other things) the anticipated timing of payments to Growers. The timing of a Grower's payment of their Boundary Bend 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 Boundary Bend 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 necessary approvals being obtained from the Supreme Court.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Boundary Bend Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Boundary Bend Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Boundary Bend 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 Boundary Bend 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 Boundary Bend 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 Boundary Bend Settlement Entitlement to TFL, TSL will hold that Grower's Boundary Bend 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 of 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' Boundary Bend 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 Boundary Bend Settlement Entitlement to pay its TFL Indebtedness, that Grower's Boundary Bend 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 Boundary Bend 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 Boundary Bend 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.

10 Tax consequences of the Compromise

The Compromise and payment of the Boundary Bend 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 Boundary Bend Settlement Entitlement and any choice you may make to give directions to pay your Boundary Bend Settlement Entitlement to TFL or TSL or both.

11 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 has established a telephone hotline facility and email facility so that Growers may address any comments or questions, or raise any objections, with the Representative Growers. TSL will provide the Representative Growers with details of the comments, questions and objections that are received through the telephone hotline or email facilities.

The Representative Growers have agreed a protocol with TSL as to the comments, questions or objections which TSL may answer or respond to without further reference to Representative Growers and those which will be referred to the Representative Growers for the preparation of an appropriate response.

TSL will record in appropriate detail, in an affidavit to be filed with the Supreme Court on behalf of the Representative Growers in connection with the Approval Application, the tasks it has undertaken at the request and on the instruction of the Representative Growers, the substance of all comments and questions raised to it by the Growers and their responses to those Growers, and the nature of any objections made to it by Growers and the responses provided by it to those Growers.

TSL will also make the payments to or on behalf of Growers as required under the Compromise and hold amounts in trust pending their distribution to the relevant party. Under the terms of the Compromise, TSL will only be released by each Grower upon distribution in full of that Growers' Boundary Bend Settlement Entitlement to the Grower or at the direction of, or on the authorisation of, the Grower.

TSL has agreed to pay, from its own funds, the Representative Growers' costs relating to the Approval Application and certain other costs relating to the BB Olives Rights Proceeding.



These costs will not be deducted from the Fund, the Boundary Bend Settlement Amount or individual Grower's Boundary Bend Settlement Entitlements.

12 Further information

The Representative Growers have prepared answers to what they believe will be frequently asked questions. These questions and answers are available online at any of:

www.clarendonlawyers.com.au

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

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

or can be obtained by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au.

13 Key contacts

Telephone Hotline Facility	(03) 8615 1200
Email address	investorqueries@timbercorp.com.au
Frequently Asked Questions and Notices to Growers	Available online at any of: www.clarendonlawyers.com.au www.kordamentha.com/creditor-information/Australia/51 www.abl.com.au/timbercorp/compromises.htm