

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

LIST E

SCI 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  
(ACN 007 457 141)

Plaintiff

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(ACN 005 357 522) & ORS (according to the attached Schedule)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 3 March 2010  
Filed on behalf of: the Second, Third and Fourth Defendants


Prepared by:  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
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(Leon Zwier [lzwier@abl.com.au](mailto:lzwier@abl.com.au))  
Lucy Kirwan [lkirwan@abl.com.au](mailto:lkirwan@abl.com.au))

This is the exhibit marked '**MAK-48**' now produced and shown to MARK ANTHONY  
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

  
LUCY HANNAH KIRWAN  
Arnold Bloch Leibler  
Level 21 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2007

**Exhibit 'MAK-48'**

**Copy of Affidavit of Mark Anthony  
Korda sworn on 4 June 2009**

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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**FIRST AFFIDAVIT OF MARK ANTHONY KORDA**

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Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
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333 Collins Street  
MELBOURNE 3000

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Tel: 9229 9999  
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(Leon Zwier)

---

**I, MARK ANTHONY KORDA of Level 24, 333 Collins Street, Melbourne, Chartered Accountant,  
MAKE OATH AND SAY that:**

- 1 I am the Second Plaintiff in this proceeding. I make this affidavit on behalf of myself and the Third Plaintiff, Ms Chesser. Ms Chesser and I are administrators of the First Plaintiff, Timbercorp Securities Limited (TSL).**
- 2 Except where I otherwise indicate, the matters deposed to in this affidavit are deposed to from my own personal knowledge of the facts. Where I depose to matters from information and belief, I believe such matters to be true.**



### Purpose of the application to the Court

3 The primary purpose of this application is to seek a direction as to whether the administrators of TSL should apply to the Court to wind up each of the managed investment schemes listed in Schedule 1 (the **Schemes**) in accordance with their respective constitutions and on the basis that it is just and equitable to do so. On a winding up of the Schemes, according to the Scheme constitutions, the members of the Schemes, the Growers, may not receive any significant returns. Some Scheme members have advised the administrators that they do not wish for the Schemes to be wound up. On the other hand, TSL as the Responsible Entity (RE) is insolvent, as are each of the Schemes. TSL cannot meet its obligations as they fall due. The olive and almond crops the subject of the Schemes will waste if they are not properly cared for and maintained. However, TSL and its administrators are under a duty to act in the best interests of the members of the Schemes (s 601FC of the *Corporations Act 2001* (Cth) (the **Act**)). This primary duty conflicts with the practical problems arising from the insolvency of TSL and the Schemes. The making of this application for directions allows interested parties to argue their contrary views. If the Court is minded to direct that we may make the applications to wind up the Schemes, or it is not controversial to do so, then as alternative relief we will seek their winding up.

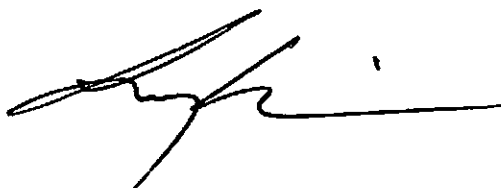

4 Annexed to this affidavit and marked **MAK-A** is a current and historical extract of the records maintained by the Australian Securities and Investments Commission with respect to the First Plaintiff.

### Appointment as administrators

5 I am a chartered accountant and a partner of the firm of KordaMentha. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Insolvency Practitioners Association of Australia. I am a member of the Institute of Chartered Accountants. I have been practising in the area of corporate insolvency and financial reconstructions for 20 years.

6 On 23 April 2009, Ms Chesser and myself were appointed as administrators of TSL.

7 Also on 23 April 2009, the respective directors of Timbercorp Limited (ACN 055 185 067) (Timbercorp) and forty (40) of its wholly owned subsidiaries appointed me and one or more of four other KordaMentha partners, namely Mark Francis Xavier Mentha, Ms Chesser, Craig Peter Shepard and Cliff Stuart Rocke, as administrators of each of those companies (the **administrators**, the **Timbercorp Group** and the **Timbercorp Group Companies**). All of the appointments were made pursuant to section 436A of the Act.

8 TSL is a wholly-owned subsidiary of Timbercorp.

**Background & extension of convening period**

9 Now produced and shown to me marked **MAK-1** is an affidavit I produced in Federal Court of Australia proceeding no. VID 372 of 2009 which was sworn on 18 May 2009 (without exhibits) (my **Earlier Affidavit**). I believe that the matters to which I depose in that affidavit are true and correct.

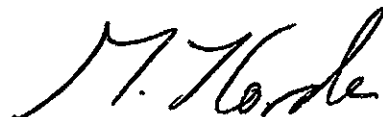
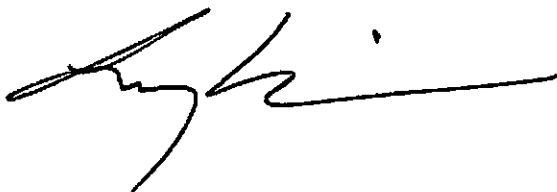
10 My Earlier Affidavit was made in support of an application by the administrators of each of the Timbercorp Group Companies that the convening period within which I must convene the second meeting of creditors of each of the Timbercorp Group Companies under section 439A of the Act (the **Second Meetings**) be extended up to and including 22 June 2009. The Federal Court granted liberty to me to apply to that Court for any further extension of the convening period at any time prior to 22 June 2009. Unless the convening period is further extended by the Court the **Second Meetings** will take place on or before 29 June 2009.

11 My Earlier Affidavit explains the background to the administration of the Timbercorp Group.

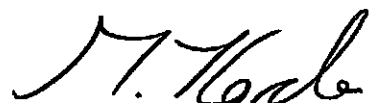
**Timbercorp's managed investment schemes**

12 At paragraphs 15 to 17 of my Earlier Affidavit, I briefly explain that TSL is the responsible entity for a number of horticulture and forestry based managed investment schemes. Those schemes are registered under Part 5C of the Act, with two exceptions. In total, TSL acts as the responsible entity for 22 horticultural schemes and 11 active forestry schemes. The members of the schemes are called "Growers" in the constitutions for the schemes. In addition, there are two other horticultural "schemes" administered by the Timbercorp Group which are not, and were not required to be, registered under Part 5C of the Act (the **Private Offer Schemes**). The present application does not concern the other eight horticultural schemes (which involve mangoes, avocados, table grapes, citrus and "fruit salad"), the **Private Offer Schemes** or the 11 active forestry schemes.

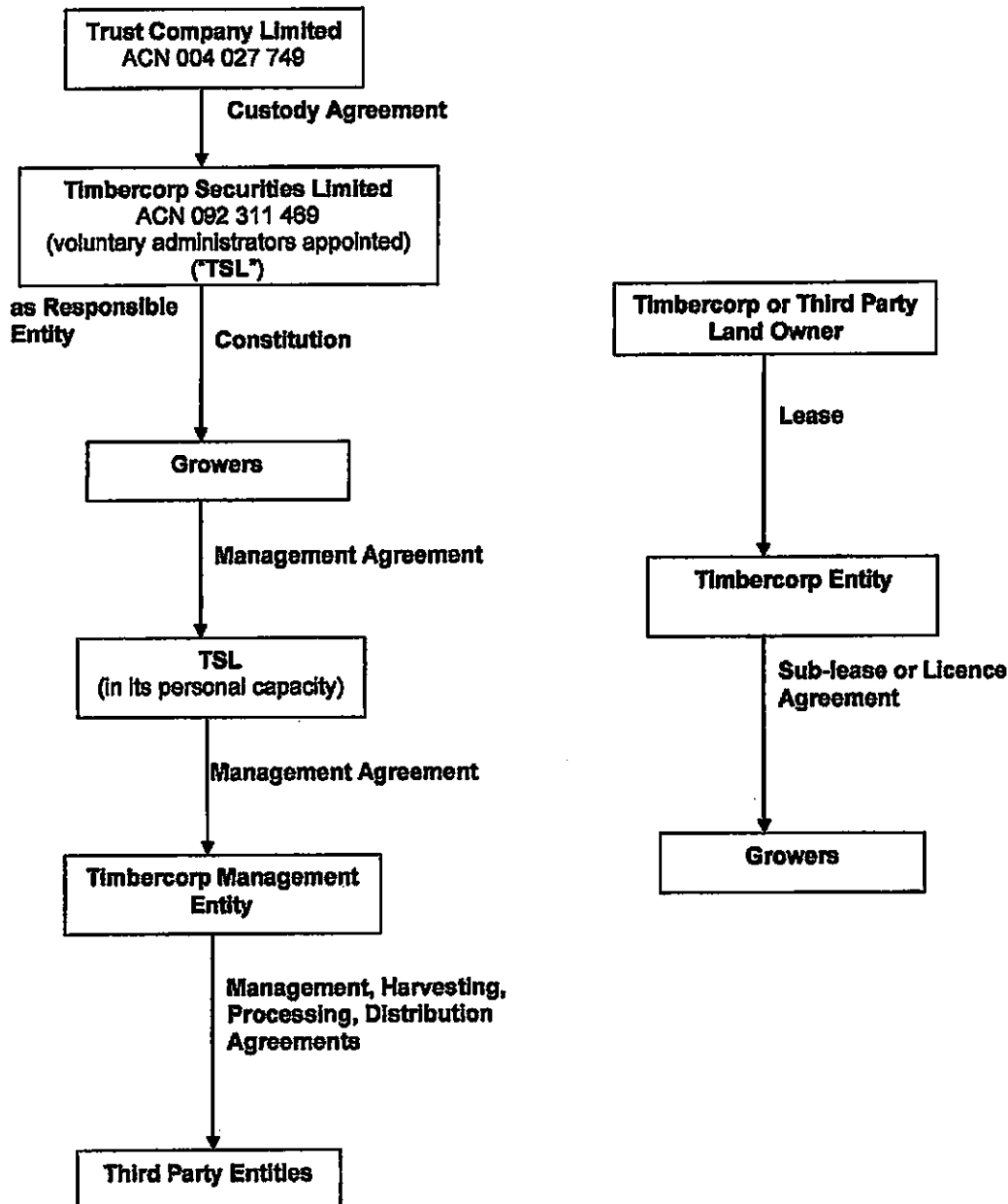
13 This application is made in relation to fourteen (14) of the horticultural schemes, namely the schemes for the growing of olives and almonds (the **Olive Schemes** and the **Almond Schemes**, respectively, and the **Schemes**, collectively). The application may be extended to other schemes operated by TSL, depending upon the outcome of current KordaMentha investigations and following further consultation with stakeholders in the administration of the Timbercorp Group.



- 14 To date, Growers have made net contributions of approximately \$244 million to the Olive Schemes.
- 15 To date, Growers have made net contributions of approximately \$605 million to the Almond Schemes.
- 16 As responsible entity of the Schemes, TSL has a duty to act in the best interests of the members, i.e. the Growers (s 601FC(1)(c) of the Act). This duty overrides any conflicting duty an officer or employee of the responsible entity has under Part 2D.1 of the Act (s 601FC(3) of the Act). Part 2D.1 contains such obligations as the duty of an officer to act in good faith in the best interests of the corporation. Pursuant to s 601FB(1) of the Act, TSL is bound to "operate the scheme[s] and perform the functions conferred on it".
- 17 Apart from "operating" the Schemes, TSL has also entered into various agreements and carried out certain functions in relation to each of the Schemes, in its personal capacity. For example, TSL has entered into head leases with land owners and contracts with each of the Growers under which TSL is obliged to manage the operations of growing crops, and perform certain services in relation to the crops, in relation to each of the Schemes.



- 18 The following diagram illustrates the general structure of the Schemes, the various companies which form part of each Scheme and the agreements governing them. (Some of the Schemes have joint venture structures. This diagram does not represent the structure of those schemes.)



- 19 Arnold Bloch Leibler (ABL) has been giving the administrators legal advice in relation to the Timbercorp managed investment schemes.
- 20 Leon Zwier, a partner of ABL, has told me that ABL has requested all documentation relevant to the Schemes from the General Counsel for Timbercorp. Based on the documents provided to ABL by the General Counsel, ABL has informed me that the

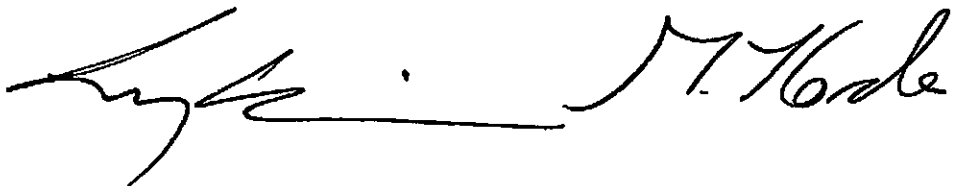
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Schemes are governed by a complex suite of documents. I am informed that while there are many similarities between the documents governing each of the Schemes, they differ to a minor or a material degree.

- 21 Based on the documents provided by Timbercorp to ABL, I am informed that:
- (a) the documents for the Olive Schemes total 154, which is estimated to be about 4000 pages (or eight lever arch folders); and
  - (b) the documents for the Almond Schemes total 223, which is estimated to be about 4000 pages (or eight lever arch folders).
- 22 For example, the review of the Almond Scheme documents by ABL, for the purpose of reviewing the termination provisions for each of the Almond Schemes, took approximately 20 to 25 hours.
- 23 There is an equivalent number of documents for each of the other eight registered Timbercorp horticultural schemes and a greater number of documents for the 11 registered Timbercorp forestry schemes.
- 24 If the Court directs me to do so, I will make those documents available to all stakeholders on the KordaMentha website but I do not intend to exhibit all of them to this affidavit or any further affidavit filed in this proceeding, unless directed by the Court to do so. I note that some of the documents contain the names and addresses of individuals.

**First creditors' meeting of TSL**

- 25 On 5 May 2009, at the first creditors' meeting for TSL, I informed the creditors of TSL that:
- (a) the current position of TSL was bleak, with insufficient funds to continue operations;
  - (b) there are many complex issues ahead for TSL, including a web of legal documents and ownership interests, as well as multiple managed investment schemes at varying stages of their life cycles;
  - (c) TSL has dual functions, to act as the responsible entity and in its personal capacity;

A handwritten signature in black ink, appearing to read 'M. Horde', is written at the bottom of the page.

- (d) due to the complexities of TSL's multiple functions and obligations, it was unclear what assets at that time were available to creditors and when they may be realised;
- (e) in order to continue operations, TSL will be dependent upon funding from multiple sources, and the ongoing provision of corporate head office support from Timbercorp;
- (f) the administrators of TSL needed to analyse assets and liabilities on a scheme by scheme basis to determine the resulting cash flows and no certainty could be given to any creditors at this initial stage.

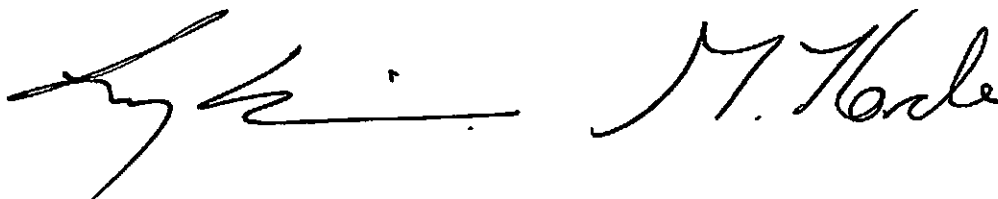
26 In relation to the horticultural schemes, I informed the creditors of TSL that the horticulture operations had insufficient funds to continue operations. I confirmed the majority of head leases of land were paid up until 30 June 2009, and that the Timbercorp intermediary management entities have no funds to meet obligations to third party managers. I concluded by saying that significant amounts are owed to third party service providers and this has the potential to impact on the ability of some service providers to continue managing the schemes.

#### **Insolvency of TSL**

27 Following further investigation by Ms Chesser, me and staff of KordaMentha, it has become apparent that TSL is hopelessly insolvent.

28 TSL's current position can be summarised as follows:

- (a) TSL has no funds on hand, in its own capacity. To the extent that it does come into funds (for example, fees it may be entitled to under scheme documents) such funds will be insignificant compared to the funds required by TSL to meet its obligations as responsible entity. TSL also holds grower proceeds on trust in agency accounts but these funds beneficially belong to Growers and, as such, are not available for use by TSL in its own right;
- (b) TSL, in its own right, has no significant assets;
- (c) TSL has no employees; and
- (d) TSL has no infrastructure.





29 Further:

- (a) the quantum and timing of harvest proceeds of a number of the TSL schemes is uncertain;
- (b) the majority of head leases of the land which is utilised in relation to the Schemes (many of which are with Timbercorp Group Companies and some of which are with third party landowners) are only paid until 30 June 2009;
- (c) due to direct and joint venture ownership in a number of schemes, the Timbercorp Group is required to contribute to ongoing scheme costs; the Timbercorp Group does not have the financial capacity to meet these ongoing obligations;
- (d) Timbercorp has historically borne a portion of the management costs of many of the Schemes pending receipt of harvest proceeds and/or payment by Growers of management fees in arrears, but Timbercorp is not in a position to do so in the future;
- (e) Timbercorp Finance Pty Ltd (Administrators Appointed) (**Timbercorp Finance**), a Timbercorp subsidiary, has historically provided finance to certain Growers, to enable them to pay their ongoing scheme obligations and Timbercorp Finance is no longer in a position to continue to finance Growers.

30 In relation to the Olive Schemes, approximately \$62 million is required for operations, rental and other expenditure ("opex") for the 2010 crop management and harvest. TSL does not have \$62 million in available funds. Under the Scheme constitutions, TSL is not permitted to borrow \$62 million, or any funds. TSL can invoice Growers for estimated opex of the 2010 crop management and harvest. Historically, Timbercorp did so in September each year, requiring Growers to pay their proportionate contributions of opex by the end of October of that year. Timbercorp paid for the opex for the months of July, August, September and October, and then collected the estimated opex from Growers for the period July to June at the end of October in each year. In other words, Timbercorp invoiced Growers four months in arrears and eight months in advance.

31 However, even if TSL now invoiced the Growers for the opex for the 2010 crop management and harvest, we know that it will not be paid in full by them. First, Timbercorp Group Companies own (either as joint venture partners or as holder of lots in their own right) a small percentage of the interests in the Olive Schemes and as those companies are insolvent, they cannot pay any opex charge levied on them by TSL. Secondly, some Growers have previously been able to borrow contributions from Timbercorp Finance but it too is insolvent and cannot make any further advances to



Growers who require financial assistance. Thirdly, a percentage of Growers will, in any event, default in making payments. (As set out below, since the commencement of the administration of the Timbercorp Group of Companies, grower default rates in other schemes have increased.)

32 The \$62 million opex can only be raised if all Growers make their contributions on a timely basis. And the Olive Scheme documents do not permit us to raise additional funds from Growers in excess of their proportionate contribution of estimated opex to meet anticipated defaults. The interdependency of Growers on one another, in the absence of a financially strong responsible entity of the Schemes, makes it extremely difficult for management investment schemes to be financially rehabilitated when they are in financial distress.

33 In relation to the Almond Schemes, approximately \$247 million is required for opex for the 2010 crop management and harvest over the next 12 months. TSL does not have \$247 million. As explained, TSL is not permitted to borrow \$247 million, or any funds at all, as responsible entity. For the reasons referred to above, even if TSL invoiced the Growers for the opex required, the necessary funds cannot be procured.

#### **Grower default rates in forestry & other schemes post Timbercorp voluntary administration**

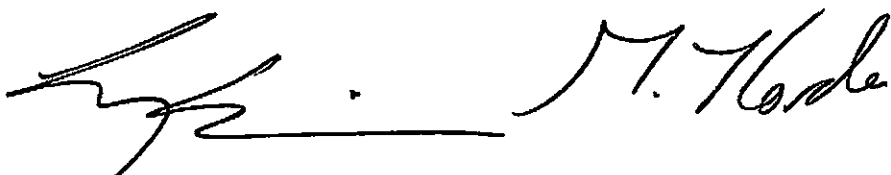
34 In relation to the Timbercorp forestry schemes, approximately \$9.6 million is required for rental expenditure for the period from 1 July 2009 to 30 September 2009. TSL does not have \$9.6 million. On 18 May 2009, KordaMentha sent invoices to the forestry Growers for estimated opex totalling \$16.1 million. Those payments were due on 31 May 2009. To date, only \$5.03 million or about 31% of the total amount invoiced has been received.

35 KordaMentha is still preparing cash flow analyses for the other schemes operated by TSL, and for the Private Offer Schemes.

#### **Insolvency of the Olive and Almond Schemes**

36 Now produced and shown to me marked MAK-2 is a chart which sets out, in relation to each of the Olive Schemes, the net sales for each scheme, the gross proceeds, the total operating expenditure for the 2010 harvest, the net operating cashflow, and operating cashflow over time.

37 Now produced and shown to me marked MAK-3 is a chart which sets out, in relation to each of the Almond Schemes, the net sales for each scheme, the gross proceeds, the total operating expenditure for the 2010 harvest, the net operating cashflow, and operating cashflow over time.



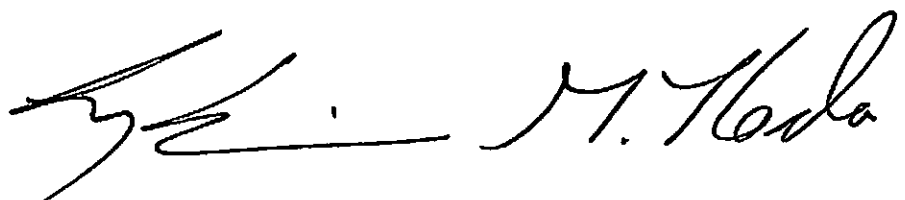
- 38 These charts have been prepared from historical accounts from the Schemes, Timbercorp management budgets and assumptions, and available third party data. It is clear from both of these charts that each of the Olive Schemes and the Almond Schemes are unable to meet their obligations, as and when they fall due. I regard each of these schemes as being insolvent. In simple terms, the proceeds of sale for the olives and almonds to be harvested in 2010 will be less than the costs of growing them.

#### **Further contributions**

- 39 Having regard to the current financial position of TSL, the cash requirements to complete the management and harvest of the 2010 olive and almond crops, the likelihood of Grower defaults and the insolvency of the Timbercorp Group of Companies, I do not believe it is in the best interests of growers for KordaMentha to raise invoices requesting them to pay the estimated opex for the 2010 financial year, on an accelerated basis, or at all.

#### **Secured creditors**

- 40 The Olive Schemes and Almond Schemes each utilise land which is encumbered pursuant to various facility agreements. The various landowners also own water rights, some of which are similarly encumbered.
- 41 In respect of the Olive Schemes, the land and the water rights, are for the most part, owned by companies in the Timbercorp Group.
- 42 In respect of the Almond Schemes, approximately half of the land and water rights are owned by companies in the Timbercorp Group. The other half of the Almond Scheme land and water rights are owned or controlled by Timbercorp Primary Infrastructure Fund (TPIF). (TPIF is a registered managed investment scheme which is listed on the Australian Stock Exchange.) Timbercorp owns approximately 45% of the issued units in TPIF.
- 43 In addition, for some of the Almond Schemes, there are encumbrances over the receipts of rent received from Growers which ultimately secure the rent payable to some of the landowners.
- 44 When administrators were appointed to the Timbercorp Group Companies, this triggered a breach of covenant of the various facility agreements. Such breaches generally entitle the financier to serve a notice of default and to exercise other rights, such as the right to appoint a receiver and manager over the encumbered property. Although the financiers who hold mortgages and other securities over the land, water rights, and rent receipts



have not served notices of default, I expect that the financiers will make formal demands for repayment of their facilities. The secured amount outstanding in relation to the land, water rights and other assets, for the Olive and Almond Schemes alone, is approximately \$285 million.

#### **TSL Committee of Creditors**

45 On 3 June 2009, a meeting of the committee of creditors of TSL was held, concurrently with the meetings for the committees of creditors for other Timbercorp Group Companies. The committee of creditors comprises:

- (a) financiers;
- (b) landlords; and
- (c) Grower/investor representatives.

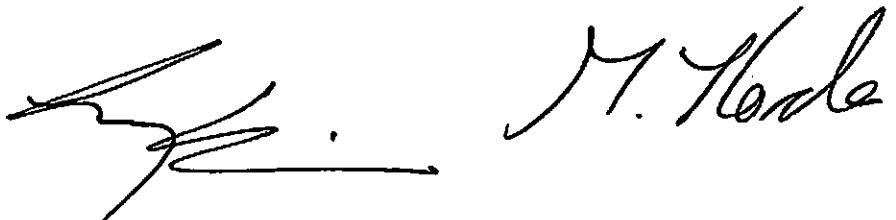
46 I informed TSL's committee of creditors that Ms Chesser and I would be making this application to the Court.

47 I asked the TSL committee members whether they had any questions or comments to make about this application, and generally.

48 One of the Grower/investor representatives on the TSL committee who was at the meeting, complained that if the Timbercorp managed investment schemes were to be wound up, this may leave the growers with nothing, when they have contributed \$2 billion. Leon Zwier explained to him that TSL was insolvent and so too the Olive and Almond Schemes, and that the administrators could not see any alternative other than to make this application and to invite him and others with views contrary to the administrators to be heard by the Court.

49 Following the meeting, the Grower/investor representatives on the TSL creditors' committee sent a letter to Ms Chesser and me. Now produced and shown to me marked **MAK-4** is a letter from TSL Grower representatives to KordaMentha dated 3 June 2009.

50 On 4 June 2009 ABL wrote to Grower/investor representatives. Now produced and shown to me marked **MAK-5** is a letter from ABL to TSL Grower representatives dated 4 June 2009.



**Administrators will consider all bona fide alternative proposals for the Schemes**

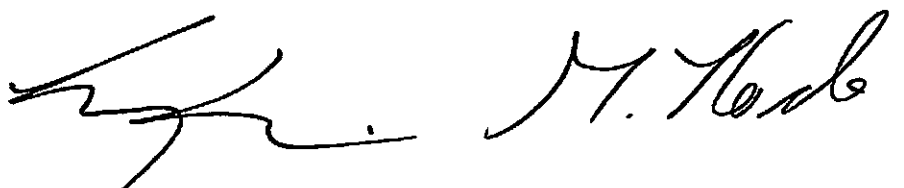
- 51 The Act contemplates a process whereby the responsible entity of a managed investment scheme can be replaced. There are also mechanisms in certain leases and management agreements to which TSL is a party in its own capacity, which allow for the assignment of TSL's interests in those agreements to an entity which replaces it as responsible entity of the relevant Scheme. Schedule 2 to this affidavit lists the Olive and Almond Schemes and the number of Growers in each of those schemes.
- 52 The TSL administrators will consider all bona fide alternative proposals to replace TSL as responsible entity for any one or more of the Schemes if that proposal is in the best interests of Growers. We will also make all necessary information available to bona fide parties who wish to consider such a proposal.
- 53 One of the Grower representatives at the TSL committee of creditors meeting on 3 June 2009 indicated that the Growers may want to vote on any alternative proposals put to the administrators of TSL. Any consideration of this issue will have to be made in the context that TSL currently has no funds to convene Scheme meetings of Growers or to carry out any vote.

**Involvement of ASIC**

- 54 The TSL administrators have informed ASIC of the administrators' intentions in relation to this application.

**Directions**

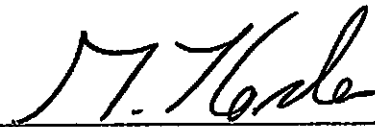
- 55 I note that there are presently 18,300 grower investors across all of the Timbercorp schemes. KordaMentha has email addresses for 11,980 grower investors or their advisers. Some of the advisers pass on information received by them to individual growers.
- 56 At this time, the TSL administrators will seek ex parte directions from the Court, including for the following:
- (a) service of court documents on ASIC;
  - (b) service of Court documents on parties requesting service of Court process;
  - (c) service by email of Court documents on all the Committees of Creditors;
  - (d) service by email of Court documents on the directors of TSL;

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- (e) publication of Court documents on the KordaMentha, Timbercorp and ABL websites;
- (f) notice by email to 11,980 growers of this proceeding including a reference to the KordaMentha, Timbercorp and ABL websites for further information and access to Court documents;
- (g) whether the Court would be assisted by the administrators convening an informal Growers meeting before hearing the application for directions; and
- (h) an early return date for further directions after interested parties are either informed or served with the Court documents.

57 I have been told by Leon Zwier that a copy of the Originating Process and affidavit in support has been late served on ASIC and that ASIC may appear at the first mention of this proceeding.

SWORN by the abovenamed deponent at )  
 Melbourne in the State of Victoria )  
 this 4<sup>th</sup> day of June 2009 )  
 )



Before me:



LUCY HANNAH KIRWAN  
 Arnold Bloch Leibler  
 Level 21, 333 Collins Street  
 Melbourne 3000  
 An Australian Legal Practitioner within the  
 meaning of the Legal Profession Act 2004

## **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)
8. 2001 Timbercorp Almond Project (ARSN 095 649 746)
9. 2002 Timbercorp Almond Project (ARSN 099 611 935)
10. 2003 Timbercorp Almond Project (ARSN 103 197 299)
11. 2004 Timbercorp Almond Project (ARSN 108 336 670)
12. 2005 Timbercorp Almond Project (ARSN 112 935 092)
13. 2006 Timbercorp Almond Project (ARSN 118 387 974)
14. 2007 Timbercorp Almond Project (ARSN 122 511 040)

**SCHEDULE 2**

	<b>Scheme</b>	<b>No. of Growers</b>
1	2001 Timbercorp Olive Project (ARSN 094 382 082)	770
2	2002 Timbercorp Olive Project (ARSN 098 233 455)	606
3	2003 Timbercorp Olive Project (ARSN 104 648 473)	532
4	2004 Timbercorp Olive Project (ARSN 108 744 378)	95
5	2006 Timbercorp Olive Project (ARSN 119 182 179)	351
6	2007 Timbercorp Olive Project (ARSN 123 155 715)	471
7	2008 Timbercorp Olive Project (ARSN 129 307 722)	815
8	2001 Timbercorp Almond Project (ARSN 095 649 746)	183
9	2002 Timbercorp Almond Project (ARSN 099 611 935)	602
10	2003 Timbercorp Almond Project (ARSN 103 197 299)	938
11	2004 Timbercorp Almond Project (ARSN 108 336 670)	663
12	2005 Timbercorp Almond Project (ARSN 112 935 092)	668
13	2006 Timbercorp Almond Project (ARSN 118 387 974)	1,715
14	2007 Timbercorp Almond Project (ARSN 122 511 040)	2,188



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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**ANNEXURE 'MAK-A'**

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Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

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This is the Annexure 'MAK-A' referred to in the affidavit of Mark Anthony Korda sworn on 4 June 2009.

Before me: .....

**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**ASIC Current and Historical Extract as at Date: 29 May 2009 Time: 12:37:44**

This computer produced extract contains information derived from the ASIC database either from documents lodged with the ASIC and processed as at the stated date of the extract, or from records supplied by previous state and/or territory systems.

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The Information Division of the Australian Securities & Investments Commission is certified under the Australian Quality Standard AS 3901 (International Standard ISO 9001).  
Section 1274B

This extract has been prepared by the Australian Securities & Investments Commission from information it obtained, by using a data processor, from the national database.

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The Information Division of the Australian Securities & Investments Commission is certified under the Australian Quality Standard AS 3901 (International Standard ISO 9001).

**092 311 469 TIMBERCORP SECURITIES LIMITED****Document No**

ACN (Australian Company Number): 092 311 469  
Registered in: Victoria  
Previous State Number:  
Registration Date: 04/04/2000  
Next Review Date: 04/04/2010  
Company bound by: Constitution  
Australian Business Number: 12 092 311 469

**Current Organisation Details**

Name : TIMBERCORP SECURITIES LIMITED 025567469  
Name Start: 04/04/2000  
Status : \*\* Under External Administration And/Or Controller Appointed \*\*  
Type : AUSTRALIAN PUBLIC COMPANY  
Class : LIMITED BY SHARES  
Subclass : UNLISTED PUBLIC COMPANY  
DISCLOSING ENTITY: YES

**Organisation Details from 04/04/2000 to 23/04/2009**

Name : TIMBERCORP SECURITIES LIMITED 012905664  
Name Start: 04/04/2000  
Status : Registered  
Type : AUSTRALIAN PUBLIC COMPANY  
Class : LIMITED BY SHARES  
Subclass : UNLISTED PUBLIC COMPANY

**Registered Office**

TIMBERCORP LIMITED LEVEL 8 461 BOURKE STREET MELBOURNE VIC 3000 017174345  
Start Date: 16/07/2001

**Previous Registered Office**

TIMBERCORP LIMITED LEVEL 8 461 BOURKE STREET MELBOURNE VIC 3000 017174345

**ASIC Historical Company Extract**

ABN: 12092311469

Start Date: 16/07/2001 Cease Date: 16/07/2001

LEVEL 5 93-95 QUEEN STREET MELBOURNE VIC 3000  
Start Date: 04/04/2000 Cease Date: 15/07/2001

012905664

**Principal Place of Business**LEVEL 8 461 BOURKE STREET MELBOURNE VIC 3000  
Start Date: 16/07/2001

017174345

**Previous Principal Place of Business**LEVEL 8 461 BOURKE STREET MELBOURNE VIC 3000  
Start Date: 16/07/2001 Cease Date: 16/07/2001

017174345

LEVEL 5 93-95 QUEEN STREET MELBOURNE VIC 3000  
Start Date: 04/04/2000 Cease Date: 15/07/2001

012905664

**Directors**ROBERT JAMES HANCE  
53 NORTH ROAD BRIGHTON VIC 3186  
Born: 23/03/1943 - MELBOURNE VIC  
Appointment Date: 04/04/2000

012905664

GARY WILLIAM LIDDELL  
42 RED BLUFF STREET BLACK ROCK VIC 3193  
Born: 07/01/1941 - GLEN HUNTLY VIC  
Appointment Date: 04/04/2000

012905664

SOL CHARLES RABINOWICZ  
2 TENNYSON AVENUE CAULFIELD NORTH VIC 3161  
Born: 15/01/1967 - MELBOURNE VIC  
Appointment Date: 01/07/2000

022437498

**Previous Directors**JOHN MORTON VAUGHAN  
6 CAVENDISH PLACE BRIGHTON VIC 3186  
Born: 12/02/1942 - MELBOURNE VIC  
Appointment Date: 04/04/2000 Cease Date: 30/06/2008

012905664

DAVID WILLIAM MUIR  
72 ILLAWARRA ROAD HAWTHORN VIC 3122  
Born: 13/05/1948 - MELBOURNE VIC  
Appointment Date: 04/04/2000 Cease Date: 02/07/2001

012905664

**Secretary**MARK HAMILTON PRYN  
10 DEANE STREET BLACKBURN NORTH VIC 3130  
Born: 15/11/1961 - MELBOURNE VIC  
Appointment Date: 28/11/2001

015306804

GIDEON MELTZER  
9 TANTRAM AVENUE ST KILDA EAST VIC 3183  
Born: 01/12/1967 - MELBOURNE VIC  
Appointment Date: 01/07/2008

1F0152405

**Previous Secretary**

SOL CHARLES RABINOWICZ  
 12 FAIRFIELD GROVE CAULFIELD SOUTH VIC 3162  
 Born: 15/01/1967 - MELBOURNE VIC  
 Appointment Date: 04/04/2000 Cease Date: 28/11/2001

012905664

**Appointed Auditor**

059 637 802 DELOITTE TOUCHE TOHMATSU  
 LEVEL 11 180 LONSDALE STREET MELBOURNE VIC 3000  
 Appointment Date: 04/04/2000

020867067  
 (FR 2004)

**Ultimate Holding Company**

055 185 067 TIMBERCORP LIMITED  
 ABN (Australian Business Number) 87 055 185 067

09231146K

**Administrator of a Company Under Administration**

MARK ANTHONY KORDA  
 KORDA MENTHA LEVEL 24 333 COLLINS STREET MELBOURNE VIC 3000  
 Appointment Date: 23/04/2009

025567469

LEANNE KYLIE CHESSEY  
 KORDA MENTHA LEVEL 24 333 COLLINS STREET MELBOURNE VIC 3000  
 Appointment Date: 23/04/2009

025567469

**Share Structure**

Note: For each class of shares issued by a proprietary company, ASIC records the details of the top twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the top twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Class: ORD	09231146K
ORDINARY SHARES	(AR 2000)
Number of Shares/Interests Issued :	50000
Total Amount (if any) Paid / Taken to be Paid:	50000.00
Total Amount Due and Payable :	0.00

**External Administration and/or Appointment of Controller**

Form Type	Date Received	Date Processed	No. Pages	Effective Date	
5011	14/05/2009	21/05/2009	104	05/05/2009	025438998
5011B	COPY OF MINUTES OF MEETING OF MEMBERS, CREDITORS, CONTRIBUTORIES OR COMMITTEE OF INSPECTION UNDER S.436E OR S.439A				
505	24/04/2009	28/04/2009	2	23/04/2009	025567469
505U	NOTIFICATION OF APPT OF ADMINISTRATOR UNDER S.436A, 436B, 436C, 436E(4), 449B, 449C(1), 449C(4) OR 449(6)				

## Charges Registered and Related Documents Received

Note: A charge is some form of security given over the property/assets of the company. In order to obtain details of the 'amount secured by a charge', 'the property charged', the property released from a charge or the documents relating to a satisfaction, assignment or change in details, it is necessary to obtain a 'CHARGES EXTRACT'.

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ASIC Charge Number	: 791156	Status	: Registered
Date and time Registered	: 16/03/2001 16:03:00	Fixed/floating	: Fixed
Date Created	: 26/02/2001		
Chargee/Trustee	: 000 154 441	PERMANENT NOMINEES (AUST) LTD	

Documents Received

Form Type	Description	Date Lodged	Proc'd No. Pages	Document No
309	NOTIFICATION OF DETAILS OF A CHARGE	16/03/2001	YES 35	015980803

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ASIC Charge Number	: 807098	Status	: Satisfied
Date and time Registered	: 28/06/2001 15:23:00	Fixed/floating	: Fixed
Date Created	: 22/06/2001		
Chargee/Trustee	: 004 044 937	NATIONAL AUSTRALIA BANK LIMITED	

309	NOTIFICATION OF DETAILS OF A CHARGE	28/06/2001	YES 36	016352408
312	NOTIFICATION OF RELEASE OF PROPERTY	29/07/2002	YES 1	017380733
312	NOTIFICATION OF DISCHARGE	07/02/2003	YES 1	018812198

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ASIC Charge Number	: 823466	Status	: Satisfied
Date and time Registered	: 27/09/2001 11:44:00	Fixed/floating	: Fixed
Date Created	: 26/09/2001		
Chargee/Trustee	: 004 044 937	NATIONAL AUSTRALIA BANK LIMITED	

309	NOTIFICATION OF DETAILS OF A CHARGE	27/09/2001	YES 33	016352551
312	NOTIFICATION OF RELEASE OF PROPERTY	13/06/2002	YES 1	017514071
312	NOTIFICATION OF RELEASE OF PROPERTY	29/07/2002	YES 1	017380734
312	NOTIFICATION OF DISCHARGE	07/02/2003	YES 1	018812201

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ASIC Charge Number	: 831220	Status	: Satisfied
Date and time Registered	: 14/11/2001 11:37:00	Fixed/floating	: Fixed
Date Created	: 30/10/2001		
Chargee/Trustee	: 004 044 937	NATIONAL AUSTRALIA BANK LIMITED	

309	NOTIFICATION OF DETAILS OF A CHARGE	14/11/2001	YES 35	016352641
312	NOTIFICATION OF RELEASE OF PROPERTY	29/07/2002	YES 1	017380735

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## ASIC Historical Company Extract

ABN: 12092311469

312 07/02/2003 YES 1 018812199  
NOTIFICATION OF  
DISCHARGE

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ASIC Charge Number : 839545 Status : Satisfied  
Date and time Registered : 04/01/2002 12:03:00 Fixed/floating : Fixed  
Date Created : 28/12/2001  
Chargee/Trustee : 004 044 937 NATIONAL AUSTRALIA BANK LIMITED  
309 04/01/2002 YES 36 016352712

NOTIFICATION OF  
DETAILS OF A CHARGE  
312 29/07/2002 YES 1 017380736

NOTIFICATION OF  
RELEASE OF PROPERTY  
312 07/02/2003 YES 1 018812200

NOTIFICATION OF  
DISCHARGE

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ASIC Charge Number : 850917 Status : Satisfied  
Date and time Registered : 13/03/2002 11:44:00 Fixed/floating : Fixed  
Date Created : 28/02/2002  
Chargee/Trustee : 004 044 937 NATIONAL AUSTRALIA BANK LIMITED  
309 13/03/2002 YES 35 016352850

NOTIFICATION OF  
DETAILS OF A CHARGE  
312 29/07/2002 YES 1 017380737

NOTIFICATION OF  
RELEASE OF PROPERTY  
312 07/02/2003 YES 1 018812202

NOTIFICATION OF  
DISCHARGE

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ASIC Charge Number : 1030862 Status : Registered  
Date and time Registered : 26/03/2004 12:04:00 Fixed/floating : Both Fixed & Floating  
Date Created : 23/03/2004  
Chargee/Trustee : 067 417 663 MIRVAC FUNDS MANAGEMENT LIMITED  
Chargee/Trustee : 107 030 348 ASIF (WA) PTY LIMITED  
309 26/03/2004 YES 47 020130917

NOTIFICATION OF  
DETAILS OF A CHARGE  
Altered by 020 128 784  
350 23/07/2004 YES 1 020128784

CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  
PROVISIONAL CHARGE  
Alters 020 130 917

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ASIC Charge Number : 1040070 Status : Registered  
Date and time Registered : 04/05/2004 11:38:00 Fixed/floating : Both Fixed & Floating  
Date Created : 29/04/2004  
Chargee/Trustee : 067 417 663 MIRVAC FUNDS MANAGEMENT LIMITED  
Chargee/Trustee : 107 030 348 ASIF (WA) PTY LIMITED  
309 04/05/2004 YES 16 020160303

NOTIFICATION OF  
DETAILS OF A CHARGE  
Altered by 020 128 783  
350 23/07/2004 YES 1 020128783

CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  
PROVISIONAL CHARGE  
Alters 020 160 303

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ASIC Charge Number : 1142935 Status : Registered

## ASIC Historical Company Extract

ABN: 12092311469

Date and time Registered : 23/03/2005 12:46:00 Fixed/floating : Fixed  
Date Created : 08/03/2005  
Chargee/Trustee : 123 123 124 COMMONWEALTH BANK OF AUSTRALIA  
309 23/03/2005 YES 39 021043381

NOTIFICATION OF  
DETAILS OF A CHARGE

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ASIC Charge Number : 1142936 Status : Registered  
Date and time Registered : 23/03/2005 12:46:00 Fixed/floating : Fixed  
Date Created : 08/03/2005  
Chargee/Trustee : 123 123 124 COMMONWEALTH BANK OF AUSTRALIA  
309 23/03/2005 YES 25 021043380

NOTIFICATION OF  
DETAILS OF A CHARGE

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ASIC Charge Number : 1146152 Status : Registered  
Date and time Registered : 04/04/2005 16:30:00 Fixed/floating : Both Fixed & Floating  
Date Created : 31/03/2005  
Chargee/Trustee : 005 357 522 AUSTRALIA AND NEW ZEALAND BANKING GROUP  
LIMITED  
309 04/04/2005 YES 42 021059918

NOTIFICATION OF  
DETAILS OF A CHARGE

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ASIC Charge Number : 1146155 Status : Registered  
Date and time Registered : 04/04/2005 16:31:00 Fixed/floating : Both Fixed & Floating  
Date Created : 31/03/2005  
Chargee/Trustee : 005 357 522 AUSTRALIA AND NEW ZEALAND BANKING GROUP  
LIMITED  
309 04/04/2005 YES 34 021059921

NOTIFICATION OF  
DETAILS OF A CHARGE

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ASIC Charge Number : 1212023 Status : Registered  
Date and time Registered : 29/09/2005 10:36:00 Fixed/floating : Fixed  
Date Created : 28/09/2005  
Chargee/Trustee : 055 185 067 TIMBERCORP LIMITED  
309 29/09/2005 YES 17 021621769

NOTIFICATION OF  
DETAILS OF A CHARGE

Altered by 022 505 113

350 15/11/2005 YES 1 022505113

CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  
PROVISIONAL CHARGE  
Alters 021 621 769

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ASIC Charge Number : 1303714 Status : Registered  
Date and time Registered : 24/05/2006 14:43:00 Fixed/floating : Fixed  
Date Created : 24/05/2006  
Chargee/Trustee : 091 460 392 ALMOND LAND PTY LTD  
309 24/05/2006 YES 17 022500368

NOTIFICATION OF  
DETAILS OF A CHARGE

Altered by 022 527 451

350 19/07/2006 YES 1 022527451

CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY  
PROVISIONAL CHARGE  
Alters 022 500 368

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## ASIC Historical Company Extract

ABN: 12092311469

ASIC Charge Number : 1364219 Status : Registered  
 Date and time Registered : 06/10/2006 13:53:00 Fixed/floating : Both Fixed & Floating  
 Date Created : 26/09/2006  
 Chargee/Trustee : 091 460 392 ALMOND LAND PTY LTD  
 309 06/10/2006 YES 34 021687018

NOTIFICATION OF  
DETAILS OF A CHARGE

ASIC Charge Number : 1364242 Status : Registered  
 Date and time Registered : 06/10/2006 13:53:00 Fixed/floating : Both Fixed & Floating  
 Date Created : 26/09/2006  
 Chargee/Trustee : 005 357 522 AUSTRALIA AND NEW ZEALAND BANKING GROUP  
 LIMITED  
 309 06/10/2006 YES 43 021687017

NOTIFICATION OF  
DETAILS OF A CHARGE

Note: This extract may not contain all charges for corporations registered prior to 1991 and it may be advisable to also search the State or territory records held by the ASIC.

## Documents Received (except those listed already under Charges)

Form	Type	Date Received	Date Processed	No. Pages	Effective Date	
388		05/01/2009	14/01/2009	28	30/09/2008	025328492
388A	Financial Report	Financial Report - Public Company Or Disclosing Entity				(FR 2008)
484		01/07/2008	02/07/2008	3	02/07/2008	1F0152405
484E	Change to Company Details	Appointment or Cessation of A Company Officeholder				
FS53		17/04/2008	05/05/2008	7	16/04/2008	024474665
FS53A	Notification of Use of Pds - By Afs Licensee					
FS53		04/03/2008	18/03/2008	12	29/02/2008	024613439
FS53A	Notification of Use of Pds - By Afs Licensee					
FS53		03/03/2008	13/03/2008	11	26/02/2008	024537581
FS53A	Notification of Use of Pds - By Afs Licensee					
FS02		06/02/2008	06/02/2008	26	06/02/2008	0L0305308
FS02	Copy of Afs Licence					
388		02/01/2008	18/01/2008	26	30/09/2007	024396998
388A	Financial Report	Financial Report - Public Company Or Disclosing Entity				(FR 2007)
7053		24/12/2007	16/01/2008	5	12/12/2007	024455731
7053	Disclosure Notice					
FS53		13/12/2007	23/01/2008	12	12/12/2007	024311106
FS53A	Notification of Use of Pds - By Afs Licensee					
FS53		12/12/2007	23/01/2008	12	12/12/2007	024311105
FS53A	Notification of Use of Pds - By Afs Licensee					
FS53		05/07/2007	23/07/2007	12	02/07/2007	024029537
FS53A	Notification of Use of Pds - By Afs Licensee					
FS53		12/06/2007	29/06/2007	11	07/06/2007	023681823
FS53A	Notification of Use of Pds - By Afs Licensee					



## ASIC Historical Company Extract

ABN: 12092311469

FS53	23/04/2007	24/05/2007	12	23/04/2007	023729873
FS53A	Notification of Use of Pds - By Afs Licensee				
FS53	08/02/2007	19/02/2007	11	07/02/2007	023532519
FS53A	Notification of Use of Pds - By Afs Licensee				
388	22/12/2006	24/01/2007	25	30/09/2006	023585250
388A	Financial Report Financial Report - Public Company Or Disclosing Entity				(FR 2006)
FS53	06/12/2006	12/12/2006	6	05/12/2006	023535068
FS53A	Notification of Use of Pds - By Afs Licensee				
FS53	29/11/2006	01/12/2006	6	27/11/2006	023530095
FS53A	Notification of Use of Pds - By Afs Licensee				
7053	14/11/2006	17/11/2006	7	14/11/2006	023402558
7053	Disclosure Notice				
350	19/07/2006	19/07/2006	1	19/07/2006	022527451
350	Certification of Compliance With Stamp Duties Law By Provisional Charge				
Alters 022 500 368					
FS53	19/05/2006	02/06/2006	6	18/05/2006	022842872
FS53A	Notification of Use of Pds - By Afs Licensee				
FS53	03/05/2006	22/05/2006	6	03/05/2006	021558778
FS53A	Notification of Use of Pds - By Afs Licensee				
FS53	02/05/2006	20/05/2006	6	01/05/2006	021552765
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	27/04/2006	18/05/2006	6	24/04/2006	022721450
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS02	18/04/2006	18/04/2006	25	18/04/2006	0L0303539
FS02	COPY OF AFS LICENCE				
FS53	06/03/2006	29/03/2006	6	03/03/2006	022599997
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
388	03/01/2006	09/03/2006	27	30/09/2005	022616962
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2005)
FS53	15/12/2005	16/01/2006	11	14/12/2005	022642577
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
350	15/11/2005	15/11/2005	1	15/11/2005	022505113
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
Alters 021 621 769					
484	28/10/2005	02/11/2005	3	02/11/2005	022437498
484A1	CHANGE TO COMPANY DETAILS CHANGE OFFICERHOLDER NAME OR ADDRESS				
7051	03/06/2005	22/06/2005	12	31/03/2005	021412335
7051	HALF YEARLY REPORTS				
FS53	23/05/2005	02/06/2005	6	19/05/2005	021429182
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	12/05/2005	07/06/2005	6	10/05/2005	021264510
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				

## ASIC Historical Company Extract

ABN: 12092311469

FS53	29/04/2005	30/05/2005	6	28/04/2005	021236929
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	03/03/2005	10/03/2005	6	02/03/2005	021076528
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS02	24/02/2005	24/02/2005	25	24/02/2005	0L0302425
FS02	COPY OF AFS LICENCE				
388	23/12/2004	20/01/2005	23	30/09/2004	020867067
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2004)
FS53	02/12/2004	06/12/2004	6	01/12/2004	020904352
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS02	05/11/2004	05/11/2004	24	05/11/2004	0L0302107
FS02	COPY OF AFS LICENCE				
FS02	22/09/2004	22/09/2004	23	22/09/2004	0L0301987
FS02	COPY OF AFS LICENCE				
350	23/07/2004	23/07/2004	1	23/07/2004	020128784
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
Alters 020 130 917					
350	23/07/2004	23/07/2004	1	23/07/2004	020128783
350	CERTIFICATION OF COMPLIANCE WITH STAMP DUTIES LAW BY PROVISIONAL CHARGE				
Alters 020 160 303					
7051	11/06/2004	24/06/2004	12	31/03/2004	020437727
7051	HALF YEARLY REPORTS				
FS53	12/05/2004	20/07/2004	6	12/05/2004	020410385
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	04/05/2004	04/05/2004	6	03/05/2004	019132092
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	19/04/2004	19/05/2004	6	19/04/2004	020277999
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS02	05/04/2004	05/04/2004	23	05/04/2004	0L0301578
FS02	COPY OF AFS LICENCE				
FS02	05/04/2004	05/04/2004	23	05/04/2004	0L0301582
FS02	COPY OF AFS LICENCE				
FS53	24/03/2004	25/03/2004	6	23/03/2004	019994299
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	24/03/2004	25/03/2004	6	23/03/2004	019994298
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
FS53	10/03/2004	11/03/2004	6	09/03/2004	019994179
FS53A	NOTIFICATION OF USE OF PDS - BY AFS LICENSEE				
484	06/02/2004	11/02/2004	3	27/01/2004	019943403
484A	CHANGE TO COMPANY DETAILS CHANGE OF OFFICEHOLDER/MEMBER NAME OR ADDRESS				
FS02	22/12/2003	22/12/2003	23	22/12/2003	0L0300807
FS02	COPY OF AFS LICENCE				

## ASIC Historical Company Extract

ABN: 12092311469

388	19/12/2003	05/01/2004	22	30/09/2003	019910813
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2003)
5122	04/12/2003	05/04/2005	4	04/12/2003	019529542
5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME				
5122	04/12/2003	06/04/2005	4	04/12/2003	019529548
5122	NOTICE OF DECLARATION RE MANAGED INVESTMENT SCHEME				
7051	13/06/2003	19/06/2003	12	31/03/2003	019350474
7051	HALF YEARLY REPORTS				
766C	15/05/2003	16/05/2003	1	15/05/2003	019120002
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 017 512 271				
764C	15/05/2003	16/05/2003	82	23/05/2003	017512271
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 019 120 002				
	Altered by 019 120 002				
754C	13/05/2003	14/05/2003	79	13/05/2003	018806972
754C	REPLACEMENT PROSPECTUS FOR MANAGED INVESTMENT SCHEME				
	Alters 018 806 542				
766C	21/03/2003	24/03/2003	2	21/03/2003	017569858
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 017 569 758				
764C	12/03/2003	12/03/2003	71	20/03/2003	017569758
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 017 569 858				
	Altered by 017 569 858				
766C	25/02/2003	25/02/2003	3	25/02/2003	017569645
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 017 569 548				
7109	18/02/2003	18/02/2003	1	26/02/2003	017569599
7109	NOTICE OF EXTENSION OF EXPOSURE PERIOD UNDER SECTION 727				
	Alters 017 569 548				
752	11/02/2003	12/02/2003	44	11/02/2003	017569557
752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS				
764C	11/02/2003	12/02/2003	79	19/02/2003	017569548
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 017 569 599				
	Altered by 017 569 645				
	Altered by 017 569 645				
766C	23/01/2003	23/01/2003	3	23/01/2003	018792110
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
	Alters 018 806 542				
764C	08/01/2003	08/01/2003	127	16/01/2003	018806542
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 018 792 110				
	Altered by 018 792 110				
	Altered by 018 806 972				
	Altered by 018 806 972				

## ASIC Historical Company Extract

ABN: 12092311469

316	08/01/2003	08/01/2003	3	08/01/2003	0E8245048
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY				(AR 2002)
388	16/12/2002	07/01/2003	22	30/09/2002	018856568
388A	FINANCIAL REPORT FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				(FR 2002)
766C	10/12/2002	10/12/2002	2	10/12/2002	018806500
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 522 313					
852	04/12/2002	04/12/2002	7	04/12/2002	017393419
852A	COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER				
766C	01/11/2002	01/11/2002	0	01/11/2002	018806053
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 522 313					
766C	31/10/2002	11/11/2002	0	31/10/2002	018806160
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 522 313					
7036	18/10/2002	06/11/2002	1	18/10/2002	018546674
7036A	LICENSEE'S NOTICE OF CHANGES TO DETAILS OF PROPER AUTHORITY HOLDERS SECURITIES DEALER				
7036	04/10/2002	22/10/2002	1	04/10/2002	018545726
7036A	LICENSEE'S NOTICE OF CHANGES TO DETAILS OF PROPER AUTHORITY HOLDERS SECURITIES DEALER				
388	27/09/2002	21/11/2002	20	30/06/2002	018338851
388	FINANCIAL REPORT				(FR 2002)
388E	COMPANY - APPOINT CHANGE NAME/ADDRESS OF AUDITOR				
388A	FINANCIAL REPORT - PUBLIC COMPANY OR DISCLOSING ENTITY				
766C	26/09/2002	27/09/2002	1	26/09/2002	017569110
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 512 027					
766C	25/06/2002	26/06/2002	18	25/06/2002	017531352
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 512 027					
766C	14/06/2002	14/06/2002	17	14/06/2002	017523465
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 522 567					
766C	13/05/2002	14/05/2002	5	13/05/2002	017519532
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				
Alters 017 522 567					
752	27/03/2002	27/03/2002	2	27/03/2002	017522778
752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS				
752	27/03/2002	27/03/2002	2	27/03/2002	017522777
752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS				
766C	13/03/2002	15/03/2002	1	13/03/2002	017522650
766C	SUPPLEMENTARY DISCLOSURE DOCUMENT FOR MANAGED INVESTMENT SCHEME				

Alters 017 522 567

752	08/03/2002	13/03/2002	33	08/03/2002	017531201
752	DOCUMENT LODGED IN RELATION TO SHORT FORM PROSPECTUS				
764C	07/03/2002	08/03/2002	78	15/03/2002	017522567
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 017 522 650				
	Altered by 017 522 650				
	Altered by 017 519 532				
	Altered by 017 519 532				
	Altered by 017 523 465				
	Altered by 017 523 465				
764C	15/02/2002	18/02/2002	125	23/02/2002	017522313
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 018 806 053				
	Altered by 018 806 053				
	Altered by 018 806 160				
	Altered by 018 806 160				
	Altered by 018 806 500				
	Altered by 018 806 500				
316	25/01/2002	04/02/2002	3	25/01/2002	09231146L
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY (AR 2001)				
304	06/12/2001	06/12/2001	2	28/11/2001	015306804
304A	NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY				
852	28/11/2001	28/11/2001	7	28/11/2001	012895439
852A	COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER				
764C	23/10/2001	24/10/2001	78	31/10/2001	017512027
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
	Altered by 017 531 352				
	Altered by 017 531 352				
	Altered by 017 569 110				
	Altered by 017 569 110				
205	13/07/2001	23/07/2001	2	09/07/2001	017213088
205J	NOTIFICATION OF RESOLUTION ALTERING THE CONSTITUTION				
304	09/07/2001	11/07/2001	2	02/07/2001	017302525
304A	NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY				
203	04/07/2001	09/07/2001	2	16/07/2001	017174345
203	NOTIFICATION OF				
203A	CHANGE OF ADDRESS				
203G	CHANGE OF ADDRESS - PRINCIPAL PLACE OF BUSINESS				
764C	02/03/2001	02/03/2001	78	10/03/2001	013003605
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
852	02/02/2001	02/02/2001	6	02/02/2001	012895100
852A	COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER				
316	28/12/2000	16/01/2001	3	14/12/2000	09231146K
316G	ANNUAL RETURN - UNLISTED PUBLIC COMPANY (AR 2000)				
764C	03/10/2000	04/10/2000	73	11/10/2000	016358953
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
207	19/09/2000	19/09/2000	1	30/06/2000	016351140
207	NOTIFICATION OF SHARE ISSUE				

## ASIC Historical Company Extract

ABN: 12092311469

764C	18/09/2000	18/09/2000	69	26/09/2000	016358308
764C	PROSPECTUS FOR MANAGED INVESTMENT SCHEME(S)				
852	06/09/2000	06/09/2000	6	06/09/2000	007960405
852A	COPY OF OCCUPATIONAL LICENCE OF SECURITIES DEALER				
304	07/08/2000	09/08/2000	2	01/07/2000	016379169
304A	NOTIFICATION OF CHANGE TO OFFICEHOLDERS OF AUSTRALIAN COMPANY				
218	04/04/2000	04/04/2000	57	04/04/2000	012905665
218	CONSTITUTION OF COMPANY				
201	04/04/2000	04/04/2000	3	04/04/2000	012905664
201A	APPLICATION FOR REGISTRATION AS A PUBLIC COMPANY				

Note: Where no Date Processed is shown, the document in question has not been processed. In these instances care should be taken in using information that may be updated by the document when it is processed. Where the Date Processed is shown but there is a zero under No. Pages, the document has been processed but a copy is not yet available.

## Financial Reports

Balance Date	Report Due Date	AGM Due Date	Extended AGM Due	AGM Held Date	O/Stand
30/06/2002	31/10/2002	Unknown	Unknown	Unknown	Unknown
30/09/2002	31/01/2003	Unknown	Unknown	Unknown	Unknown
30/09/2003	31/12/2003	Unknown	Unknown	Unknown	Unknown
30/09/2004	31/12/2004	Unknown	Unknown	Unknown	Unknown
30/09/2005	31/01/2006	Unknown	Unknown	Unknown	Unknown
30/09/2006	31/01/2007	Unknown	Unknown	Unknown	Unknown
30/09/2007	31/12/2007	Unknown	Unknown	Unknown	Unknown
30/09/2008	31/12/2008	Unknown	Unknown	Unknown	Unknown

Note: Where the expression "Unknown" is shown, the precise date may be available from records taken over on 1 January 1991 and held by the ASIC in paper or microfiche.

\*\*\* End of Extract \*\*\*

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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**


**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked 'MAK-1' now produced and shown to Mark Anthony Korda at the time of swearing his affidavit on 4 June 2009.

Before me: .....  
LUCY HANNAH KIRWAN  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-1"**  
**Affidavit of Mark Korda sworn 18 May 2009**

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY

No: of 2009

IN THE MATTER OF TIMBERCORP LIMITED (ADMINISTRATORS APPOINTED)  
ACN 055 185 067 & ORS

MARK ANTHONY KORDA IN HIS  
CAPACITY AS JOINT AND SEVERAL  
ADMINISTRATOR OF THE COMPANIES  
LISTED IN SCHEDULE 1

Plaintiff

TIMBERCORP LIMITED  
(ADMINISTRATORS APPOINTED)  
ACN 055 185 067 AND THE  
COMPANIES LISTED IN SCHEDULE 1  
Second Plaintiffs

AFFIDAVIT  
(Form 20)  
(Order 14 rule 2)

On 18 May 2009, I, MARK ANTHONY KORDA, of KordaMentha, Level 24, 333 Collins Street, Melbourne, in the state of Victoria, Chartered Accountant, SAY ON OATH that:

**Appointment**

- 1 I am the applicant in this proceeding in my capacity as joint and several administrator of Timbercorp Limited (administrators appointed) ACN 055 185 067 (TL) and 40 of its wholly owned subsidiaries described in schedule 1 of the Originating Process (collectively referred to in this affidavit as the "Timbercorp Group Companies").
- 2 I am a partner of KordaMentha. I am a registered liquidator and official liquidator with in excess of 20 years of experience in corporate insolvency.
- 3 On 23 April 2009, my partners, Mark Francis Xavier Mentha, Leanne Kylie Chessar, Craig Peter Shepard and Cliff Stuart Rocke (collectively referred to in this affidavit as "Administrators") and I were appointed administrators of the various Timbercorp Group Companies by the respective directors of each of the Timbercorp Group Companies pursuant to section 436A of the Corporations Act 2001 (Cth) ("Corporations Act").

FILED ON BEHALF OF: THE PLAINTIFF  
CORRS CHAMBERS WESTGARTH  
Lawyers  
Bourke Place  
600 Bourke Street  
MELBOURNE VIC 3000

Tel: (03) 9672 3000  
Fax: (03) 9672 3010  
Ref: JS/SL/9061899/2  
(John Stragalinis)




- 4 I have been appointed to all 41 Timbercorp Group Companies. Now shown to me and marked "MK-1" is a true copy of a list of the Timbercorp Group Companies which details the administrators appointed to each Timbercorp Group Company.
- 5 I have discussed the need for this application with the Administrators. Each of the Administrators consents to the application and believes that it is in the best interests of creditors that the convening period be extended.
- 6 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by the Administrators to make this affidavit on their behalf. References in this affidavit to "we", "us", "our" or "ourselves" are references to the Administrators and I.
- 7 Now shown to me in a folder marked "MK-2" are true copies of the records of searches of the records maintained by the Australian Securities and Investments Commission (ASIC) in relation to each of the Timbercorp Group Companies.
- 8 On 5 May 2009, the first meetings of creditors of each of the Timbercorp Group Companies were held pursuant to section 438E of the Corporations Act. The first meetings of creditors of each of the Timbercorp Group Companies (save for Timbercorp Securities Limited (Administrators appointed) ACN 092 311 469 (TSL)) were held at 11 am in Melbourne. Approximately 200 creditors and observers attended those meetings of creditors. Now shown to me and marked "MK-3" is a true copy of the minutes (excluding the attendance register) of the first meetings of creditors of each of the Timbercorp Group Companies, with the exception of TSL.
- 9 The first meeting of creditors for TSL was held at 2.00 pm on 5 May 2009. Given TSL is the responsible entity for the registered schemes operated by the Timbercorp Group of Companies, we thought it appropriate to hold a separate meeting for its creditors. Approximately, 1000 creditors and observers attended the first meeting of creditors of TSL, many of those comprising or representing "Grower Investors", being the investors in the registered managed investment schemes and private offerings. Now shown to me and marked "MK-4" is a true copy of the minutes (excluding the attendance register) of the first meeting of creditors of TSL.



## Background

- 10 The Timbercorp Group Companies operated an agribusiness investment company. TL is the parent entity of the Timbercorp Group Companies and is a publicly listed company on the Australian Securities Exchange ("ASX").
- 11 The Timbercorp Group Companies primary business activities were the establishment, development, marketing and management of primary industry based projects, the acquisition of land, water rights and infrastructure to support projects and the provision of finance to "Grower Investors" in projects. The Timbercorp Group Companies have invested more than \$2 billion in agribusiness projects on behalf of 18,500 investors since 1992.
- 12 The activities of the various Timbercorp Group Companies included the establishment, financing and marketing of projects through to harvesting, processing and end-sales. The various Timbercorp Group Companies were major participants in domestic and export markets including almonds, olive oil, citrus, table grapes, mangoes, avocados, garlic and glasshouse tomatoes, as well as Australia's wood fibre exports through eucalypt plantation projects.
- 13 Now shown to me and marked "MK-5" is a true copy of a Timbercorp Group Structure Chart. In summary, the group structure comprises 4 corporate entities, 7 forestry entities and 29 horticulture entities. The operations of the Timbercorp Group of Companies can be broadly categorised as follows: corporate (including head office located at 461 Bourke Street, Melbourne), forestry, almonds, olives, other crops and a loan book.
- 14 Now shown to and marked "MK-6" is a true copy of a chart that summarises the forestry and horticultural assets the Timbercorp Group Companies have under management, by geographical location.
- 15 Generally the investments undertaken by the Timbercorp Group Companies were funded by investors who are commonly described as "Grower Investors". The Grower Investors invested in the various forestry and horticultural registered managed investment schemes ("MIS Schemes"). At the time of the appointment of administrators, the Timbercorp Group Companies operated 33 MIS Schemes.
- 16 TSL acts as the responsible entity for the MIS Schemes. TSL holds an Australian Financial Services Licence, licence number 235653 ("AFS Licence"). The AFS Licence remains in place. TSL has notified the Australian Securities and Investments Commission ("ASIC") of recent breaches of its licence conditions arising from or in connection with the insolvency of TSL.

- 17 By way of a broad example of a typical MIS Scheme, a Grower Investor would invest in an MIS Scheme by:

- (a) applying to become a member of that MIS Scheme;
- (b) sub-leasing identifiable allotments of land, typically from TSL in its personal capacity;
- (c) engaging TSL or another Timbercorp Group Company in its personal capacity to plant, tend, harvest, process and/or sell the timber or horticultural product ("Management Services").

In other instances, Grower Investors were granted licences in their allotments of land or entered into joint venture arrangements with the relevant land owning entity and TSL. TSL delegated many of the Management Services to other Timbercorp Group Companies or third parties.

- 18 Various other Timbercorp Group Companies act as managers for a number of forestry and horticultural projects which are not registered as managed investment schemes ("Private Offer Schemes"). I understand that there are approximately 33 current MIS Schemes and 2 Private Offer Schemes (collectively, the "Schemes"). Our assessment of the Schemes continues to be ongoing and significant resources are being dedicated to understanding the current financial and legal position of these Schemes.

- 19 As at the date of our appointment as administrators, the Timbercorp Group Companies employed 167 employees nationwide, comprising:

- (a) Approximately 130 employees in head office and forestry operations that are employed by TL; and
- (b) Approximately 37 employees in forestry operations that are employed by Timbercorp Forestry Pty Ltd (Administrators appointed) ("Timbercorp Forestry").

- 20 At the time of swearing this Affidavit, all employees remain employed by their respective entities and no employees have been made redundant. The number of employees which remain employed during the administration of the Timbercorp Group Companies will depend on whether the Administrators are able to obtain further funding to continue the limited operations, the outcome of the review of the Schemes and the results of any sale of assets program.

*A. Herdina*

*M. Hard*

## Financial Position

21 Since the date of our appointment, we have undertaken and continue to undertake the following investigations in relation to the financial position of the Timbercorp Group Companies:

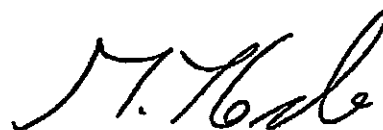
- (a) examining the flow of funds through the various Timbercorp Group Companies and the use of intercompany accounts;
- (b) assessing the process for receipt and distribution of harvest proceeds to the Timbercorp Group Companies and Grower Investors;
- (c) preparation of corporate and operational cash flows to understand the Timbercorp Group Companies monthly commitments; and
- (d) assessing each Scheme to understand the underlying viability of the Scheme from both a Grower Investor and Timbercorp Group Company perspective;
- (e) analysis of the Grower Investor loan arrears.

22 Our initial investigations have revealed the following financial position of the Timbercorp Group Companies (in general terms):

Timbercorp Group Companies Estimated Financial Position	
<b>Liabilities</b>	
Employee entitlements (including redundancy entitlements)	\$5 million
Secured lenders	\$661 million
Unsecured creditors	\$14 million
Other loans, debt notes, etc	\$250 million
Contingent creditors	
• Lessors	Amount unknown
• Growers	Amount unknown
<b>Assets</b>	
• Land (owned and leased)	120,000 ha (Value unknown)
• Water rights (owned and long term leases)	153,000 ML (Value unknown)
• Loan Book	\$478 million
• Plant and equipment	value unknown

*A. Horvath* *M. Todd*

- 23 The value of the Timbercorp Group Companies' assets and liabilities contained in the above table are on a group basis. They are based upon preliminary figures and are subject to further review and investigations.
- 24 Preliminary investigations indicate that the Timbercorp Group Companies have combined liabilities of \$661 million owing to secured lenders, \$250 million owing in other loans and debts, \$14 million owing to unsecured creditors and \$5 million owing in respect of employee entitlements (including redundancy payments). At this stage, there is no current estimate for claims which may be made by Grower Investors or owners of land or plant and equipment leased to the Timbercorp Group Companies in connection with the Schemes.
- 25 Preliminary investigations indicate that the Timbercorp Group Companies have combined assets of 120,000 hectares of large scale forestry and horticulture land (owned or leased), 150,000 mega litres of water rights, \$478 million in loans (mostly due from Grower Investors) and some plant and equipment which is yet to be valued.
- 26 The companies within the Timbercorp Group Companies hold substantial land holdings throughout Australia (approximately, 120,000 hectares). Approximately 64,397 hectares is held as freehold while approximately 66,008 hectares is held as leasehold. There are approximately 700 third party lessors (which includes leasehold land and plant and equipment) and the leases are predominately entered into with either TL or TSL. Our investigations have confirmed that the vast majority of land lease payments under these third party leases are paid up until 30 June 2009. Since the date of our appointment, the Administrators have only "disclaimed" (by issuing a notice pursuant to section 443B of the Corporations Act) one lease, which consisted of a lease of unused office space in the Sydney CBD.
- 27 Investigations are continuing in relation to the position of secured creditors and the security held by each secured creditor. There are a range of secured creditors throughout the companies in the Timbercorp Group Companies. Some secured creditors hold registered fixed and floating charges over the assets of certain companies, some hold registered land mortgages, others hold security over water rights and mortgages over contractual rights.



28 The secured creditors include the following financiers:

- (a) Bank of Scotland International (in its own right and as part of a bank syndicate);
- (b) Australia and New Zealand Banking Corporation (in its own right and as part of bank syndicate);
- (c) Westpac Banking Corporation (as part of a bank syndicate);
- (d) Commonwealth Bank of Australia;
- (e) Permanent Nominees (Aust) Limited (as trustee for numerous bond holders);
- (f) Trust Company Fiduciary Services Limited (formerly known as Permanent Trustee Company Limited) (as trustee for numerous bond and note holders);
- (g) Mirvac Funds Management Limited (as trustee for the Australian Sustainable Forestry Investors 2) and ASIF (WA) Pty Ltd. (as mortgagee under various mortgages of contractual rights).

29 In addition, GE is a lessor of plant and equipment to certain companies in the Timbercorp Group of Companies. This plant and equipment predominately comprises harvesting equipment.

30 The Administrators are in frequent dialogue with all of the secured creditors and GE. No secured creditor (including the bank syndicate) has taken any steps to enforce their security.

#### **Actions and Investigations to Date**

#### **Overall Strategy**

31 Upon our appointment as administrators, we implemented a three point plan which comprised:

- (a) an immediate suspension of forestry and horticulture operations to enable funding options to be determined; and
- (b) commencing the process of assessing the viability of each project and seeking to develop and execute a strategy for each forestry and horticulture project on a project by project basis; and
- (c) attending to statutory reporting, investigations, creditor and shareholder liaison.

*A. Harobina*

*M. Nord*

## **Actions Undertaken**

- 32 Since our appointment, we have undertaken and in many cases continue to undertake, the following tasks in pursuit of this strategy:
- (a) immediately suspended all forestry and horticulture operations;
  - (b) met with various employees of the forestry and horticultural divisions to commence our analysis of the business model and the current status and profitability of each project;
  - (c) making an application to this Honourable Court for directions relating to the 2007 Timbercorp Olive Project and resuming the harvest of olives for all Timbercorp Olive Projects at Boundary Bend;
  - (d) attending to statutory obligations including notifications to:
    - (i) 167 employees;
    - (ii) 5,000 creditors/suppliers;
    - (iii) 18,500 Grower Investors; and
    - (iv) 700 lessors.
  - (e) liaising with key stakeholders including secured creditors, employees, lessors, key suppliers, key customers and joint venture partners to the Timbercorp Group Companies;
  - (f) frequently updated the numerous creditors and Grower Investors by posting and regularly updating "Frequently Asked Questions" on our firm's web site and Timbercorp's web site;
  - (g) handled a significant volume of queries from creditors including Grower Investors;
  - (h) operating a "hotline" for creditors and Grower Investors. At the commencement of the administration we received approximately 1000 calls per day, and currently it receives between 100 to 200 calls a day;
  - (i) continuing to employ all employees of the Timbercorp Group Companies;
  - (j) holding meetings of employees to provide them with updates on the administration;

*A. Harobina*

*M. Nord*

- (k) collecting outstanding monies under the loan book due to the relevant Timbercorp Group Companies, namely, Timbercorp Finance Pty Ltd (Administrators appointed);
- (l) assessing numerous claims by creditors and third parties and the security position of various creditors who assert security against the Timbercorp Group Companies;
- (m) holding the first meetings of creditors of the Timbercorp Group Companies pursuant to section 436E of the Corporations Act;
- (n) liaising and appointing insurance brokers to understand the insurance position of the Timbercorp Group Companies operations;
- (o) seeking and obtaining legal advice where appropriate on a range of issues, including issues concerning the legal rights and obligations of Grower Investors and the Timbercorp Group Companies in relation to the Schemes.

#### **Review of each Scheme**

33 Since our appointment, we have undertaken and continue to undertake a review of the financial and legal position of each Scheme in order to determine a strategy for each Scheme. This review is both complex and time consuming and significant resources have been dedicated to this review. In the course of this review, we have undertaken and continue to undertake, the following tasks:

- (a) reviewing forestry and horticultural land and equipment lease commitments;
- (b) reviewing forestry and horticulture scheme documents pertaining to distribution of harvest proceeds;
- (c) held meetings with horticultural project partners to discuss immediate operational issues in relation to their respective schemes;
- (d) investigating property used in connection with the Schemes and the business, affairs, financial circumstances and viability of the Schemes;

*A. Harokina*

*M. Horde*



- (e) reviewing Schemes from two perspectives, the Grower Investor and the manager of each Scheme and analysing and considering a strategy for each Scheme and considering whether a scheme meeting ought be held.

This analysis will need to be completed before any substantial steps can be undertaken to sell any assets of the Timbercorp Group Companies as the rights and position of Grower Investors will impact on a sale of assets strategy.

#### **Sale of Assets**

- 34 We have also commenced the process of exploring the possibility of selling assets, such as the Forestry division. Given the issues concerning the Schemes and the rights of Grower Investors, any sale process raises complex issues and we will require further time to explore ways to structure and undertake sales in order to maximise the return to all creditors and stakeholders having regard to their respective legal entitlements. To date, we have taken the following steps in this process:

- (a) contacted all parties that submitted offers in the previously unsuccessful sale process for the forestry assets and businesses which was undertaken in the months prior to our appointment;
- (b) received and collated informal expressions of interest from potential purchasers;
- (c) considered and produced a preliminary sale process plan and timetable;
- (d) commenced drafting of an information memorandum; and
- (e) commenced a review and update of data room and other due diligence materials.

#### **Administrator's Investigations**

- 35 During the administration, we have also commenced our investigations of the affairs of the Timbercorp Group Companies. In addition to the investigation of the financial position and review of the Schemes described above, our investigations have included a preliminary examination of the following issues:

- (a) a review of the financial position of each company in the Timbercorp Group of Companies;




- (b) holding various meetings with key employees to assess the Timbercorp Group Companies position, and to correspond with them about pre-appointment entitlements and post-appointment staffing issues;
- (c) sending the Report as to Affairs (RATAs) to the directors of the Timbercorp Group Companies. The completed RATAs have now been received from the directors and we are currently reviewing them;
- (d) Investigating the lease position of the Timbercorp Group Companies and determining the extent of lease liabilities. This task alone took several days of work to complete given the vast number of leases entered into by the Timbercorp Group Companies.

36 Many of the issues impacting on the Timbercorp Group of Companies are very complex and will require further investigation.

37 We have also attended several meetings and had numerous discussions with representatives of ASIC and as requested, we have supplied information to ASIC.

#### Funding

38 At the time of our appointment, the Timbercorp Group Companies had insufficient funds to continue normal operations. Since our appointment we have reviewed the financial position of the entities within the Timbercorp group in order to determine our ability to continue limited operations where possible in order to implement our overall strategy.

39 In general terms, we have attempted to source funding from the following sources:

- (a) Normal incoming receipts.
- (b) Project partners – discussions have taken place with project partners, such as Boundary Bend Limited, in an effort to source funding to continue operations.
- (c) Secured creditors – discussions have taken place with various secured creditors whereby we have requested additional funding from secured creditors. The secured creditors are currently considering our request.
- (d) Collection of the unencumbered loan book – part of the loan book held by the relevant Timbercorp Group companies is unencumbered.
- (e) Reviewing unencumbered assets of the Timbercorp Group of Companies that can be realised.

*A. Handberg*

*M. Horle*

- 40 I believe that it is in the interests of creditors generally for the Timbercorp Group Companies to continue operations on a limited basis during the administration in order to implement our strategy as set out above. Even with limited operations, we estimate that costs will be incurred by the Timbercorp Group of Companies on a group basis. Nonetheless, the Administrators believe that it is in the best interests of creditors generally for these costs to be incurred in order for us to be in a position to complete the review of the Schemes and to undertake sales of assets or a restructure which should maximise the proceeds available to all creditors. We will closely monitor costs and are taking active measures to reduce the costs as quickly as possible including the reduction of operations.
- 41 If the Administrators and I form the view that continuing to incur these costs and/or the continuation of the administrations is not in the best interests of creditors, we will convene the meetings of creditors forthwith.

#### **Possible Deed of Company Arrangement**

- 42 At this stage we have not received any proposals for Deeds of Company Arrangement, nor have we had the opportunity to explore the possibility of putting forward a Deed of Company Arrangement. Given the complex issues that have arisen and will continue to arise in the administration, it may be necessary to restructure the companies or realise the major assets through deeds of company arrangement.

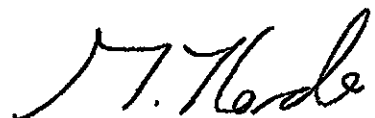
#### **Need for an extension**

- 43 There are a number of reasons as to why we seek an extension of the convening period in relation to the Timbercorp Group Companies which include:
- (a) It is, in my experience, a very large administration that raises many complex issues;
  - (b) the extension will provide us with further time to continue our strategy as set out in this Affidavit. In particular, it will provide us with time to review the financial position of each Scheme, review the various scheme documentation, assess the interests of all stakeholders, determine the willingness of different stakeholders to

make further financial contributions to the operations of Timbercorp Group Companies or individual Schemes, progress the sale of any asset/business as a going concern (which may be more difficult if the Timbercorp Companies were placed into liquidation);




- (c) there are a complex web of legal documents (numbering many thousand) and various interests which need to be considered in detail, particularly in relation to the Schemes. Each of the Schemes is structured and functions in a different manner, to minor or material degrees;
  - (d) there are various complexities we need to further investigate including TSL's separate roles as responsible entity to the MIS Schemes, lessor to the Grower Investors and provider of Management Services to the Grower Investors;
  - (e) it will allow us to explore the possibility of restructuring the Timbercorp Group Companies and/or one or more of the Schemes or realising assets through deeds of company arrangement if appropriate;
  - (f) it will allow us to investigate the financial affairs of the Timbercorp Group Companies;
  - (g) should the extension be granted, the Administrators and I will be in a far better position to prepare a reasoned and meaningful statement setting out our opinion in accordance with section 439A(4) of the Corporations Act, whether it would be in the interests of creditors of each of the Timbercorp Group Companies to resolve to:
    - (i) execute a Deed of Company Arrangement;
    - (ii) end the administration; or
    - (iii) wind the company up.
- 44 Under subsection 439A(3) of the Corporations Act, I am required to convene a meeting of creditors of each of the Timbercorp Group Companies pursuant to section 439A or to apply to the Court to extend the convening period for each meeting on or before the end of the convening period.
- 45 Pursuant to section 439A(5)(b) of the Corporations Act, the convening period for each of the Timbercorp Group Companies ends on 21 May 2009.
- 46 Accordingly, we seek to have the convening period extended by 120 days to 21 September 2009 for each of the Timbercorp Group Companies.

- 47 In the event that we are able to convene a meeting of creditors of each of the Timbercorp Group Companies before 21 September 2001, we will do so. An order to accommodate such an eventuality is also sought from the Court.

#### Committee of Creditors

- 48 Various of the Timbercorp Group Companies have formed Committee of Creditors. The members of the Committee of Creditors comprise representatives of the following classes of creditors:
- (a) Secured creditors;
  - (b) Grower investors;
  - (c) Lessors;
  - (d) Trade creditors; and
  - (e) Employees.
- 49 Now shown to me and marked "MK-7" is a true copy of the list of the Timbercorp Group Companies in administration distinguishing between those which have formed committee of creditors and those which have not. From our initial investigations, it appears that those companies which have not formed committee of creditors have few creditors (apart from inter company loans) and are not key trading entities.
- 50 Now shown to me and marked "MK-8" is a true copy of a circular to creditors dated 15 May 2009 sent to the members of the Committee of Creditors of the various Timbercorp Group Companies in relation to this application. We have invited the Committee of Creditors, to raise any objections or queries in relation to this application by 5pm on Monday, 18 May 2009. I propose to file a further affidavit setting out any responses received by the Committee of Creditors to the circular.
- 51 Should the extension be granted, we will continue to report regularly to the Committee of Creditors of the various Timbercorp Group Companies on the progress of our overall strategy, particularly on, the funding of operations, our review of the Schemes and its impact on the sales of assets or restructure strategy. Should the extension be granted, we will also seek the input of the Committee of Creditors of the various Timbercorp Group Companies as to when the meetings of creditors should be convened.
- 
- 52 For the reasons set out in this affidavit, and having regard to the fact that the Administrators and I believe that it is in the best interests of creditors to do so, I respectfully request this Court to make orders in the terms set out in the accompanying application.


*A. Handina*

*M. Hodge*


### Reasons for Urgent Application

- 53 I respectfully request that our application be heard as matter of urgency as any application to extend the convening period should be made to the Court during the convening period. The convening period for the Timbercorp Group Companies ends on Thursday, 21 May 2009. If an extension is not granted we will need sufficient time to prepare our report to creditors and prepare notices of meeting in order to convene the meeting of creditors. Accordingly, I seek to have this application heard on Tuesday, 19 May 2009.

SWORN by Mark Anthony Korda  
at Melbourne in Victoria on 18  
May 2009:



Before me:



**Silvana Paula Anna Larobina**  
Corrs Chambers Westgarth  
600 Bourke Street, Melbourne Vic 3000  
An Australian Legal Practitioner within  
meaning of the Legal Profession Act 2004

**Silvana Paula Anna Larobina**  
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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL & EQUITY DIVISION  
COMMERCIAL COURT**

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked 'MAK-2' now produced and shown to Mark Anthony Korda at the time of swearing his affidavit on 4 June 2009.

Before me. ....

**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-2"**

**Olive Schemes Cashflow Chart**

## Provisional Report Pending Validation

## Timbercorp Olive Projects - Forecast 2010 Harvest Result

Gross Sales	9,424,345	5,004,518	1,918,845	5,537,797	900,246	1,139,288	23,925,038						
less: JV Partners Share	(942,434)	(500,452)	(191,884)	0	0	0	(1,634,771)						
Gross Grower Proceeds	8,481,910	4,504,066	1,726,960	5,537,797	900,246	1,139,288	22,290,267	5,131,894	2,894,307	661,895	8,191,539	16,679,635	39,169,901
less: Sales & Related Costs	(359,365)	(190,830)	(73,169)	(234,628)	(38,142)	(68,270)	(944,403)	(217,430)	(122,627)	(28,043)	(347,063)	(715,163)	(1,659,567)
less: Processing Fee	(812,255)	(431,324)	(205,724)	(662,896)	(107,763)	(136,377)	(2,357,338)					0	(2,357,338)
less: Storage Fee	(267,850)	(142,134)	(54,536)	(174,878)	(28,429)	(35,978)	(703,903)					0	(703,903)
Growers Net Proceeds	7,042,441	3,739,679	1,392,532	4,465,395	725,912	918,653	18,284,622	4,914,464	2,771,680	633,851	7,844,476	16,164,471	34,449,058
Tim Mgmt Fee	(348,272)	(135,867)	(50,647)	(150,809)	(24,516)	(47,732)	(937,843)	(198,579)	(100,788)	(23,049)	(235,334)	(355,750)	(1,513,593)
Admin Fee	(334,631)	(164,448)	(53,053)	(183,642)	(29,854)	(51,894)	(847,521)	(220,308)	(188,906)	(42,743)	0	(449,956)	(1,297,477)
Farm Operating Costs	(5,071,431)	(2,419,897)	(927,843)	(2,995,785)	(487,003)	(649,305)	(12,751,243)	(4,658,620)	(3,043,410)	(685,693)	(7,028,000)	(15,426,023)	(28,177,266)
Technical Fee	(117,261)	(55,953)	(21,454)	(71,578)	(11,636)	(20,712)	(288,595)	(80,752)	(81,206)	(18,571)	0	(190,525)	(489,124)
SR Management Fee	(571,621)	(272,756)	(104,581)	(348,927)	(56,718)	(100,967)	(1,455,573)	(457,324)	(183,000)	(41,850)	0	(582,174)	(2,187,748)
Temp Water	(1,018,450)	(485,966)	(188,330)	(621,679)	(103,053)	(179,891)	(2,593,379)	(851,078)	(602,488)	(169,275)	0	(1,622,841)	(4,216,220)
Licence Fee	(1,976,573)	(1,228,043)	(470,859)	(1,824,448)	(296,585)	(628,966)	(8,423,578)	(1,745,605)	(1,330,905)	(304,864)	(3,514,000)	(5,894,877)	(13,318,456)
ADA Levy	(13,227)	(6,311)	(2,420)	(8,074)	(1,313)	(2,336)	(33,680)	0	0	0	0	0	(33,680)
Total Operating Expenditure	(9,671,565)	(4,769,240)	(1,827,187)	(6,204,922)	(1,003,698)	(1,879,803)	(25,361,413)	(8,220,265)	(5,528,707)	(1,253,843)	(10,777,394)	(25,822,151)	(51,183,564)
Grower Net Operating Cashflow before CAPEX	(2,629,125)	(1,029,562)	(434,655)	(1,738,528)	(282,784)	(961,140)	(7,076,791)	(3,305,601)	(2,757,027)	(661,994)	(2,932,858)	(9,657,680)	(16,794,471)
2010 Capital Expenditure	(63,663)	(30,378)	(11,648)	(34,975)	(5,686)	(10,121)	(156,470)	(2,944,375)	(2,830,338)	(601,529)	(4,935,930)	(11,113,172)	(11,269,842)
Net Operating Cashflow after CAPEX	(2,692,788)	(1,059,939)	(446,302)	(1,773,503)	(288,470)	(971,260)	(7,233,261)	(6,250,176)	(5,587,365)	(1,263,523)	(7,869,788)	(20,770,852)	(28,064,113)

Year 1	(23,526,000)	(10,659,000)	(4,086,800)	(8,416,271)	(1,368,182)	(2,061,563)	(50,117,916)	(14,787,280)	(11,613,277)	(3,511,640)	(36,417,831)	(67,800,028)	(117,417,944)
Year 2	(8,220,900)	(3,085,500)	(1,183,050)	(5,087,154)	(1,366,288)	(1,291,311)	(21,243,183)	(4,319,581)	(3,770,922)	(862,351)	(10,542,000)	(19,494,844)	(40,738,027)
Year 3	(8,274,420)	(3,085,500)	(967,283)	(5,075,467)	(561,829)	(1,291,311)	(20,285,810)	(4,179,811)	(3,770,898)			(7,950,705)	(28,205,519)
Year 4	(4,853,496)	(2,522,761)	(924,149)	(3,458,052)	(594,353)	(1,272,783)	(13,383,595)	(4,743,812)				(4,743,812)	(18,129,411)
Year 5	(3,448,258)	(2,403,606)	22,819	(3,410,077)	(120,609)	(1,168,704)	(10,528,638)						(10,528,638)
Year 6	584,121	144,453	(1,370,279)	(741,916)	(805,306)	(1,144,850)	(3,334,771)						(3,334,771)
Year 7	169,949	(3,573,794)	(1,094,044)	(4,939,931)			(9,457,820)						(9,457,820)
Year 8	(7,221,658)	(2,831,631)					(10,053,290)						(10,053,290)
Year 9	(6,272,565)						(6,272,565)						(6,272,565)
Year 10							0						0
Total	(60,872,291)	(28,017,342)	(9,603,080)	(33,148,848)	(4,777,989)	(6,250,522)	(144,647,592)	(27,932,094)	(20,173,097)	(4,374,001)	(46,959,831)	(99,491,393)	(244,138,685)

Number of Grovelots	3,919	1,870	717	2,153	350	623	9,932	2,795	2,440	538	7,028	12,821	22,453
Cumulative Cashflow per Grovelot													
Year 1	(6,003)	(5,700)	(5,700)	(3,909)	(3,909)	(3,309)	(5,203)	(5,273)	(3,178)	(6,293)	(5,182)	(5,249)	(5,229)
Year 2	(2,100)	(1,650)	(1,650)	(2,827)	(3,904)	(2,073)	(2,205)	(1,345)	(1,345)	(1,545)	(1,500)	(1,521)	(1,814)
Year 3	(2,111)	(1,650)	(1,349)	(2,822)	(1,605)	(2,073)	(2,103)	(1,495)	(1,545)			(620)	(1,256)
Year 4	(1,187)	(1,349)	(1,269)	(1,605)	(1,584)	(2,043)	(1,389)	(1,693)				(370)	(807)
Year 5	(880)	(1,285)	32	(1,584)	(345)	(1,876)	(1,093)						(469)
Year 6	149	77	(1,911)	(345)	(2,304)	(1,838)	(348)						(149)
Year 7	43	(1,911)	(1,526)	(2,304)			(882)						(421)
Year 8	(1,843)	(1,514)					(1,044)						(448)
Year 9	(1,601)						(651)						(279)
Year 10							0						0
Total	(15,533)	(14,883)	(15,393)	(15,836)	(13,830)	(19,211)	(15,017)	(10,012)	(8,288)	(7,839)	(6,684)	(7,780)	(10,879)



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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**


**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked 'MAK-3' now produced and shown to Mark Anthony Korda at the time of swearing his affidavit on 4 June 2009.

Before me:

  
**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-3"**

**Almond Schemes Cashflow Chart**

### **Timbercorp Almond Projects - Forecast 2010 Harvest Result**

**Net Operating Cashflow Incurred to Date**

Operating Cashflow before Tax														
Year 1	(4,359,145)	(12,639,500)	(3,910,500)	(20,483,185)	(4,063,600)	(19,063,398)	(18,291,839)	(100,366,146)	(74,099,990)	(58,650,039)	(7,820,011)	(38,785,503)	(187,688,838)	(228,051,664)
Year 2	(2,379,700)	(5,639,101)	(1,743,185)	(9,238,827)	(1,842,833)	(13,320,038)	(10,189,138)	(44,831,880)	(19,760,089)	(19,689,548)	(1,713,634)	(8,174,827)	(49,409,918)	(93,925,293)
Year 3	(1,930,700)	(5,639,101)	(1,743,185)	(9,238,827)	(1,742,838)	(13,298,217)	(10,189,138)	(43,960,526)	(19,760,089)	(19,630,197)			(19,440,268)	(83,400,812)
Year 4	(1,951,210)	(4,850,631)	(1,534,580)	(8,739,302)	(1,124,287)	(11,851,857)	(13,944,976)	(47,012,903)	(27,533,852)				(74,606,755)	(27,593,852)
Year 5	(1,842,906)	831,261	(1,343,287)	(5,636,609)	(1,313,825)	(14,425,527)	(11,709,602)	(35,889,215)					0	(35,889,215)
Year 6	(179,233)	852,077	(408,366)	(6,584,349)	(987,785)	(11,643,464)		(19,631,104)					0	(19,631,104)
Year 7	417,738	13,647	72,462	(4,851,907)				(4,548,320)					0	(4,348,320)
Year 8	5,629	(2,647,644)	(1,697,947)					(3,839,562)					0	(3,839,562)
Year 9	(1,515,318)							(1,515,318)					0	(1,515,318)
Total	(14,279,896)	(30,481,072)	(12,132,248)	(64,754,955)	(18,079,732)	(85,802,487)	(12,683,833)	(821,194,274)	(141,214,010)	(108,243,775)	(9,703,865)	(44,960,439)	(204,123,585)	(505,317,695)
Allocated	838	2,297	812	3,715	757	4,906	1,452	14,837	11,163	10,824	780	4,436	27,213	42,050
By Allocated														
Year 1	(3,435)	(5,500)	(4,816)	(3,514)	(3,397)	(9,882)	(24,994)	(8,783)	(6,838)	(6,384)	(10,449)	(8,182)	(6,897)	(6,850)
Year 2	(2,650)	(2,433)	(2,149)	(2,434)	(2,408)	(2,715)	(7,141)	(3,001)	(1,770)	(1,819)	(2,443)	(1,818)	(2,234)	
Year 3	(2,150)	(2,433)	(2,149)	(2,486)	(2,302)	(2,711)	(7,141)	(2,983)	(1,770)	(1,818)			(1,449)	(1,883)
Year 4	(2,173)	(2,112)	(1,915)	(1,483)	(9,027)	(9,804)	(3,163)		(2,472)				(1,014)	(1,774)
Year 5	(2,133)	168	(1,634)	(1,517)	(1,735)	(2,940)	(8,064)	(2,418)					0	(833)
Year 6	(200)	153	(503)	(1,772)	(1,275)	(2,416)		(1,325)					0	(487)
Year 7	485	6	89	(3,306)				(293)					0	(143)
Year 8	5	(1,083)	(1,644)					(268)					0	(94)
Year 9	(1,687)							(102)					0	(36)
Total	(18,895)	(13,261)	(16,941)	(17,433)	(14,631)	(17,489)	(56,945)	(20,300)	(12,650)	(10,001)	(13,293)	(10,000)	(11,178)	(14,328)

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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**TIMBERCORP SECURITIES LIMITED  
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IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE  
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
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MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked 'MAK-4' now produced and shown to Mark Anthony Korda at the time of swearing his affidavit on 4 June 2009.

Before me: .....

**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-4"**

**Letter from TSL Grower representatives to  
KordaMentha dated 3 June 2009**

**Representatives of Investors**  
**Timbercorp Securities Limited Creditors' Committee**  
C/- Clarendon Lawyers  
Level 17 Rialto North Tower  
525 Collins Street  
**MELBOURNE VIC 3000**  
Telephone (03) 8681 4400

3 June 2009

Mark Korda & Leanne Chesser  
KordaMentha  
Level 24  
333 Collins Street  
**MELBOURNE VIC 3000**

Dear Sir/Madam

**Timbercorp Securities Limited**

We write to you as the grower representatives on the Creditors Committee of Timbercorp Securities Limited.

You have stated in your report to the Committee today that you are proposing to make application to the Federal Court for directions concerning the winding of the Timbercorp almond and olive managed investment schemes.

You have not discussed any such proposal with the grower representatives on the Committee. Nor have you supplied any other information to the Committee concerning the schemes, other than the olive schemes.

We also understand that you have had approaches from various persons wishing to become responsible entity of different schemes and have refused or failed to supply them with sufficient information.

Can you advise:

1. Are you proposing to apply to the court for directions to wind up the forestry schemes?
2. If not, are you proposing to apply to court for any other directions or orders within the next few days?
3. When are you going to provide the Committee with information concerning all of the schemes?
4. Have you been approached by persons who may be potential responsible entities for any of the schemes (including the almonds and olives) requesting information concerning the schemes?
5. Have you provided them with the information they have requested?

We believe it is appropriate for us to represent growers at court and to be independently represented at court by lawyers of our choosing and for the costs of such representation to be borne by Timbercorp.

We also request that you undertake to give us two clear business days notice of any proposed application.

Can you provide your advice on the above and confirm your acceptance of our request for independent representation at court at your earliest convenience and no later than 4pm Thursday 4 June 2009.

Yours faithfully

Tony Bergin

Kerree Bezencon

Neil Cox

Chris Garnaut

George Kalil

Harold Maksoudian

Colin Vickers

Neil White

The Investor Representatives

on behalf of

Timbercorp Securities Limited Creditors Committee

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

**LIST E**

No of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION)**

**ACN 092 311 469**

**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  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE KYLIE CHESSER  
Second and Third Plaintiffs**

**CERTIFICATE IDENTIFYING EXHIBIT**

Date of document: 4 June 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011499489  
(Leon Zwier)

This is the exhibit marked 'MAK-5' now produced and shown to Mark Anthony Korda at the time of swearing his affidavit on 4 June 2009.

Before me: .....

**LUCY HANNAH KIRWAN**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000

An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

**Exhibit "MAK-5"**

**Letter from ABL to TSL Grower  
representatives dated 4 June 2009**

# Arnold Bloch Leibler

Lawyers and Advisers

4 June 2009

Timbercorp Securities Limited Creditors' Committee  
C/- Clarendon Lawyers  
Level 17  
Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

Your Ref  
Our Ref LZ  
File No. 011489489

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Dear All

## Timbercorp Securities Limited

I act on behalf of the Timbercorp Securities Limited Administrators.

Thank you for your letter of 3 June 2009 which was sent following the meeting of the various Timbercorp committees of creditors held on 3 June 2009.

The Administrators are mindful of their duties under the *Corporations Act* in general and s 601FC in particular.

## Consultative process

Last Thursday, 28 May 2009, the Timbercorp Securities Limited Administrators held an informal meeting with the grower representatives. That meeting lasted 2½ hours. The Administrators provided the grower representatives with an update on the managed investment schemes.

As you will appreciate, the Administrators convened the meetings of the various Timbercorp committees of creditors on 3 June 2009, to consult with them and investors, and to keep the creditors and investors informed of developments in the administration of the Timbercorp Group.

## Responsible Entity Insolvent

As the Administrators explained generally at the meeting:

- TSL, in its own capacity, has no funds on hand;<sup>1</sup>
- TSL, in its own right, has no significant assets;
- TSL has no employees; and
- TSL has no infrastructure.

<sup>1</sup> To the extent that it does come into funds (for example, if it has rights to a share of crop proceeds) they will be insignificant compared to the funds required by TSL to meet its responsible entity obligations. TSL also holds on trust grower proceeds in agency accounts, on behalf of growers, but these funds are not available for use by TSL in its own right.

MELBOURNE  
SYDNEY

Partners  
Mark M Leibler AC  
Henry D Lenz  
Joseph Buranszajn  
Leon Zwiier  
Philip Chasler  
Ross A Peterson  
Stephen L Sharp  
Kenneth A Gray  
Kevin F Frazer  
Michael N Dodge  
Jane C Sheridan  
Steven Klein  
Laurel R Thompson  
Zaven Martirosian  
Jonathan M Wang  
Paul Sokolowski  
Paul Rubenstein  
Peter M Seidel  
Alan King  
John Mitchell  
Dany Merkel  
Nicola Gordon  
Ben Mahoney  
Sam Oulard  
Lily Tell  
Henry Skene  
Andrew Silberberg  
Kishan Vijayakumar  
Lisa Ashcroft

Senior Litigation  
Counsel  
Robert J Heathcote

Special Counsel  
Dariusz Czuchra  
Simone Einfield

Senior Associates  
Kirsten Fraw  
Jonathan Miller  
Julian Saint  
Annabel Bainbridge  
Katie Morrison  
John Mongolian  
Mariane Alderton  
Gus Koo  
Lachlan Blake  
Jorja Cleveland  
Caroline Goulden  
Matthew Lees  
Genevieve Saxon  
Lucy Kieren  
Nicholas Clifton  
Lior Haral  
Jeremy Leibler

Consultants  
Alan Fels AO  
Steven M Skala

### **Olive Schemes and Almond Schemes also Insolvent**

The Administrators also explained that the olive schemes and almond schemes are unable to meet all of their obligations as they fall due for payment. I attach as a courtesy a copy of spreadsheets which explain that cash flow deficiency on a scheme by scheme basis.

### **Proposed application to the Court**

The Administrators advised the committees that in these circumstances they believed it was appropriate for Timbercorp Securities Limited to seek directions from the Court as to whether it is proper for them to apply for the olive and almond schemes to be wound up. They will seek directions about the winding up of the schemes because some growers assert that it may not be in the best interests of growers to wind up the schemes. The Administrators do not see any commercial alternative. However they remain ready to treat with any bona fide party that can propose an alternate arrangement to a winding up of the schemes that produces a better return to growers.

The Administrators intend to make the application in the Supreme Court of Victoria and will initially seek informal directions about service and an early return date post service for further directions. The Administrators propose serving papers by email on ASIC, the committees of creditors, interested growers, and the directors of Timbercorp Securities Limited. The Administrators will also propose emailing all growers notice of the process. The Administrators will post all court papers on the KordaMentha website. If you believe that other parties should be notified please let me know.

### **Information**

The Administrators provided detailed information to the committees of creditors on 3 June 2009 today and explained their reasons for the proposed course.

### **Other potential Responsible entities**

The Administrators will consider any alternate arrangement including the appointment of an alternate Responsible Entity to schemes, if it is in the best interests of growers. But that is not an easy transaction to consummate when the Administrators have no significant money and the various crops will waste without immediate care and maintenance.

The cash flow required on all schemes for the next 12 months exceeds \$300 million.

A new Responsible Entity of any one scheme takes over the liabilities properly incurred by the prior Responsible Entity in relation to that scheme (see s 601FS, *Corporations Act*). The old Responsible Entity can give no warranty about those liabilities and even if it did, it is impecunious.

There is much ill-informed speculation about what the Administrators will or will not do. For the avoidance of doubt the Administrators will treat with any bona



fide party that wishes to take over the Responsible Entity role. The Administrators will provide such information as they deem necessary and appropriate as they would in any transaction. They will act in the best interests of growers. If they regard any issue as legally controversial they will seek directions from the Court as they now propose doing.

#### **Specific questions**

- 1 The application the Administrators will make is for directions as referred to above and alternatively a winding up of the olive and almond schemes. The Administrators will ensure all interested parties are informed of the applications and heard.
- 2 The Administrators will seek only directions concerning service and an early return date on an ex parte basis. They will not serve papers before that mention.
- 3 The Administrators will keep the committees of creditors informed with such information as is reasonably required from time to time.
- 4 The Administrators do not reveal publicly details of parties that wish to treat with them about any assets or rights associated with the Timbercorp Group. But as stated earlier, they are mindful of their obligations to growers.
- 5 The Administrators will provide interested parties with such information as is reasonably required for those with whom they treat.

#### **Representation**

The issue of who should represent growers and whether representative orders should be made is a matter for the Court. However I expect that the Court will wish to hear from a number of parties to ascertain their views before deciding on those issues.

As Timbercorp Securities Limited is insolvent, the Administrators cannot agree to bear the costs of the representation of all the parties. These issues may need to be dealt with by the Court but please do not assume that any costs will or can be paid in the near or longer term.

#### **Prior notice**

As stated above we will give all interested parties adequate prior notice of the first directions hearing. The Administrators wish to ensure that all stakeholders can be heard.

Yours sincerely

  
Leon Zwiener  
Partner

Enc