

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:  
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(Leon Zwier [lwier@abl.com.au](mailto:lwier@abl.com.au)/  
Lucy Kirwan [lkirwan@abl.com.au](mailto:lkirwan@abl.com.au))

This is the exhibit marked 'MAK-51' 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 Practitioners Act 1994

**Exhibit 'MAK-51'**

**Copy of Notice of Meeting of the Growers  
in the 2001-2007 Almond Projects**

**Timbercorp Securities Limited (ACN 092 311 469) (In Liquidation) (TSL)  
as Responsible Entity of each Almond Scheme  
Notice of Meeting of Members of each Almond Scheme**

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In accordance with the order of Robson J of the Supreme Court of Victoria dated 21 July 2009, **NOTICE IS GIVEN** pursuant to section 252A of the *Corporations Act* 2001 (Cth) (Act) that concurrent Meetings of Members (Growers) of:

2001 Timbercorp Almond Project (ARSN 095 649 746);  
2002 Timbercorp Almond Project (ARSN 099 611 935);  
2003 Timbercorp Almond Project (ARSN 103 197 299);  
2004 Timbercorp Almond Project (ARSN 108 336 670);  
2005 Timbercorp Almond Project (ARSN 112 935 092);  
2006 Timbercorp Almond Project (ARSN 118 387 974); and  
2007 Timbercorp Almond Project (ARSN 122 511 040)  
(together the "Almond Schemes" and each an "Almond Scheme")

will be held in Victoria -

**Date:** Friday, 31 July 2009

**Registration:** 9:30am at AEDT

**Meeting commences:** 10.00 am at AEDT

**Location:** Etihad Stadium, Victory Room Level 1, Gate 9, Docklands Melbourne

Directions to the venue are available at:

[http://www.etihadstadium.com.au/site/\\_content/document/00000119-source.pdf](http://www.etihadstadium.com.au/site/_content/document/00000119-source.pdf)

The Timbercorp Growers Group has requested TSL and the liquidators of TSL put resolutions referred in "Special Business" below to the Growers. Without accepting the validity or efficacy of any of the resolutions, TSL and the liquidators of TSL have agreed to do so. Explanatory Statements for and against the resolutions will be posted on the liquidators' website at [www.kordamentha.com](http://www.kordamentha.com) and the Timbercorp website at [www.timbercorp.com.au](http://www.timbercorp.com.au).

### **Special Business**

At each of the Meetings, in accordance with the order of Robson J of the Supreme Court of Victoria dated 21 July 2009, the following resolutions will be put to Growers:

**Resolution 1:** a resolution that the Scheme continue and not be wound up;

**Resolution 2:** a special resolution that the constitution of the Scheme be modified as follows:

(I) Inserting after Clause 11 the following clause:

**"11A Responsible Entity's additional powers**

The Responsible Entity has the power to:

- a. borrow, for the limited purpose provided in sub-clause (d) below (and repay such borrowing and pay interest and costs in relation to such borrowing from monies in the Agency Account);
- b. grant security over the moneys in the Agency Account, for the limited purpose provided in sub-clause (d) below;
- c. advance funds using the moneys in the Agency Account, for the limited purpose provided in sub-clause (d) below;
- d. seek out, negotiate and implement any restructure proposal and working capital funding proposal to be approved by Growers by ordinary resolution;"

(II) Inserting after Clause 14 the following clause:

**"14A Responsible Entity's entitlements**

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The Responsible Entity is entitled to pay or be reimbursed for expenses reasonably and properly incurred in relation to sub-clause 11A(d) out of the Agency Account."

(iii) replacing the words, "five months after 30 June each year" in sub-clause 13.7(d) with the words, "eleven months after 30 June each year".

**Resolution 3:** Subject to Resolution 2 being passed, an ordinary resolution approving a working capital funding proposal in the terms put to such meeting.

**Resolution 4:** Subject to Resolution 2 being passed, an ordinary resolution:

(i) that it is in the best interests of Growers to have the opportunity to consider a restructure proposal which may or may not include all or any of the following:

- (A) converting Growers' interests to ownership interests;
- (B) the issue of listed or unlisted securities in exchange for Growers' interests; and
- (C) the convening of meetings under section 411 of the Corporations Act for Growers to approve a compromise of their contractual claims against Timbercorp Securities Limited (In Liquidation) ACN 092 311 469 and related bodies corporate as defined in the Corporations Act.

(ii) that the Responsible Entity take or cause to be taken all necessary and incidental actions to allow the restructure proposal to be submitted to Growers for their consideration at one or more meetings of Growers (whether in their capacity as members of the Scheme, creditors of the Timbercorp Group (all In Liquidation) or otherwise).

**Resolution 5:** A resolution that proposed resolutions 6 and 7 be held over to an adjournment of the meeting.

**Resolution 6:** An extraordinary resolution that TSL be removed as responsible entity.

**Resolution 7:** An extraordinary resolution choosing a company to be the new responsible entity.

**Resolution 8:** Alternatively, a resolution that the TGG prosecute the Interlocutory Processes forthwith.

## **1. Terms**

Terms used in this Notice have the following meanings:

**Almond Schemes** has the meaning set out on page 1 of this Notice.

**Almond Scheme Meeting** means each meeting of Growers of an Almond Scheme.

**Growers** means members of an Almond Scheme.

**TGG** means The Timbercorp Growers Group.

**TSL** means Timbercorp Securities Limited (ACN 092 311 469) (in Liquidation) in its capacity as Responsible Entity of each of the Almond Schemes.

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**2. Material accompanying this notice**

Accompanying this notice is a Proxy Form.

**3. Voting and required majority**

- (a) In accordance with the order of Robson J, Supreme Court of Victoria dated 21 July 2009, the time specified in sections 252F and 252J of the Act for notice of the Almond Scheme Meetings and the resolutions to be proposed thereat be abridged pursuant to section 1322(4)(d) of the Act to 7 days, or in the case of notice sent by post, to 4 days.

(b) **Special Resolution 2**

In accordance with sections 9, 252J and 253J of the Act and the Court Order referred to in paragraph 3(a), for special resolution 2 to be effective:

- (i) each resolution must be passed at a meeting of which the required days notice specifying the intention to propose the resolution has been given and the notice sets out the resolution; and
- (ii) each resolution must be passed by not less than 75% of all the votes cast by members entitled to vote (whether present in person or by proxy, attorney or representative).

(c) **Extraordinary Resolutions 6 and 7 (Inclusive)**

In accordance with the sections 9, 252J and 253J of the Act and the Court Order referred to in paragraph 3(a), for extraordinary resolutions 6 and 7 to be effective:

- (i) each resolution must be passed at a meeting of which the required days notice specifying the intention to propose the resolution has been given and the notice sets out the resolution; and
- (ii) each resolution must be passed by at least 50% of the total votes that may be cast by members entitled to vote (including members who are not present in person or by proxy).

(d) **Ordinary Resolutions 1, 3, 4, 5 and 8 (Inclusive)**

In accordance with the Court Order referred to in paragraph 3(a), sections 252J and 253J of the Act, for ordinary resolutions 1, 3, 4, 5 and 8 (inclusive) to be effective:

- (i) each resolution must be passed at a meeting of which the required days notice specifying the intention to propose the resolution has been given; and
- (ii) the resolution must be passed by at least 50% of votes cast by members entitled to vote on the resolution (whether present in person or by proxy, attorney or representative).

- (e) All resolutions will be decided on a poll.

- (f) Subject to paragraph 5(d), on a poll every member has one vote for each dollar value of their Almondlot held in the Almond Scheme and, on a show of hands every member has one vote.

**4. Growers Eligible to Vote**

The Responsible Entity has determined that, for the purposes of each Almond Scheme Meeting, all Almondlots in each of the Almond Schemes will be taken to be held by the persons registered at 10:00 am AEDT on Wednesday, 29 July 2009 (the **Effective Time**).

**5. Proxies and Representatives**

- (a) All members at the Effective Time who are entitled to attend and vote at the Almond Scheme Meeting may appoint a proxy for that purpose.
  - (b) A proxy need not be a member of the Almond Scheme.
  - (c) The Proxy Form relating to the relevant Almond Scheme Meeting accompanying this Notice should be used.
  - (d) A member who is entitled to cast 2 or more votes at an Almond Scheme Meeting, may appoint up to 2 proxies and may specify the proportion or number of votes that each proxy is entitled to exercise. If a member **does not** specify the proportion or number of that member's votes each proxy may exercise, each proxy will be entitled to exercise half of the votes. An additional Proxy Form will be supplied by the Responsible Entity on request or can be downloaded from the KordaMentha website.
  - (e) Members wishing to appoint a proxy should read the instructions on the Proxy Form carefully and then complete and return the Proxy Form to the Responsible Entity by the due date and time set out in paragraph 5(h) below and the Proxy Form.
  - (f) Any member may appoint an attorney to act on the member's behalf. The power of attorney, or a certified copy of it, must be received by the Responsible Entity as set out in paragraph 5(h) below.
  - (g) Any corporation which is a member of an Almond Scheme may appoint a representative to attend and vote for that corporation at the Almond Scheme Meeting. Appointments of representatives by corporations must be received by the Responsible Entity as specified in paragraph 5(h) at any time before the time for holding the Almond Scheme Meeting or adjourned meeting or at the Almond Scheme Meeting.
  - (h) Proxies and powers of attorney granted by members must be received by the Responsible Entity by no later than the **4:00pm on Thursday 30 July 2009**:
    - (i) at the office of KordaMentha – GPO Box 2985, Melbourne, Victoria, 3001; or
    - (ii) by fax to the office of KordaMentha – fax number (03) 8623 3399 (within Australia) and +61 3 8623 3399 (outside Australia); or
    - (iii) by email to [grower@kordamentha.com](mailto:grower@kordamentha.com).
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**TIMBERCORP SECURITIES LIMITED (ACN 092 311 469) (IN LIQUIDATION) AS RESPONSIBLE  
ENTITY OF THE 2001 TIMBERCORP ALMOND PROJECT (ARSN 095 649 746)**

Registered Office of Responsible Entity: Timbercorp Limited  
Level 8, 461 Bourke Street, Melbourne, VIC 3000

**PROXY FORM**

I/We \_\_\_\_\_

of \_\_\_\_\_

being a member of the 2001 Timbercorp Almond Project (ARSN 095 649 746) (the "2001 Almond Scheme") and holding  
\_\_\_\_\_ Almondlots

hereby appoint/s \_\_\_\_\_

of \_\_\_\_\_

or failing such person the Chairperson of the meeting as my/our proxy to vote for and on my/our behalf at the Meeting of Members of the 2001 Almond Scheme to be held in Victoria at Etihad Stadium, Victory Room, Level 1, Gate 9, Docklands, Melbourne on Friday 31 July, 2009 commencing at 10.00 a.m. and at any adjournment thereof and I/we direct my/our proxy to vote as follows in respect of the following resolutions set out in the Notice of Meeting of Members:

Business	For	Against	Abstain
Resolution 1: Scheme to continue	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2: Amendment to Constitution	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 3: Approve a working capital funding proposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 4: Members to have opportunity to consider restructure proposal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 5: Resolutions 6 and 7 to be held over to an adjourned meeting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 6: Removal of TSL as Responsible Entity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 7: Appointment of new Responsible Entity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 8: TGG to prosecute the Interlocutory Processes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 2009.

\* Please sign below if individuals or joint members

.....  
Signature of Member

.....  
Signature of Member

\* Please sign below if a corporate member

EXECUTED by \_\_\_\_\_ )

\_\_\_\_\_  
Signature of director/sole director  
and sole secretary (delete as applicable)

\_\_\_\_\_  
Signature of director/company secretary  
Signature of sole director and sole secretary  
(delete as applicable)

\_\_\_\_\_  
Name of director/sole director  
and sole secretary (delete as applicable) (print)

\_\_\_\_\_  
Name of director/company secretary or sole  
director/sole secretary (delete as applicable) (print)

## PROXY NOTES

- 1 A member entitled to attend and cast 2 or more votes at the meeting is entitled to appoint 2 proxies. If a member does not specify the proportion or number of votes each proxy may exercise, each proxy may exercise half of the votes.
  - 2 A proxy need not be a member of the 2001 Almond Scheme.
  - 3 **Unless a member specifically directs the proxy how to vote, the proxy may vote as he or she thinks fit or abstain from voting.**
  - 4 In the case of an individual, a proxy must be under the hand of the individual or his or her attorney duly authorised in writing and, in the case of a corporation, a proxy must be under either the common seal of that corporation or under the hand of its duly authorised officer/s or attorney.
  - 5 Proxies and powers of attorney granted by members must be received by the Responsible Entity by no later than 4pm AEDT on Thursday, 30 July 2009:
    - (a) at the office of KordaMentha – GPO Box 2985, Melbourne, Victoria, 3001; or
    - (b) by fax to the office of KordaMentha – fax number (03) 8623 3399 (within Australia) and +61 3 8623 3399 (outside Australia); or
    - (c) by email to [grower@kordamentha.com](mailto:grower@kordamentha.com).
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