

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

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This is the exhibit marked '**MAK-52**' now produced and shown to MARK ANTHONY
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me:

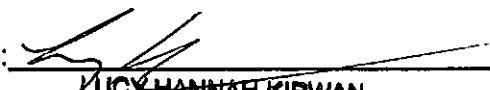

LUCY HANNAH KIRWAN
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An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit 'MAK-52'

Copy of TGC's explanatory statement

TIMBERCORP ALMOND SCHEMES MEETINGS IMPLICATIONS OF VOTING

This statement is prepared by the Timbercorp Growers Group and relates the resolutions proposed by the Timbercorp Growers Group for the meetings of the 2001 to 2007 Timbercorp Almond Schemes on 31 July 2009.

Background

The Timbercorp Growers Group has been established to promote outcomes which are agreed to by the growers in each scheme and to oppose the wind up of the schemes, unless this is the collective will of the growers.

The resolutions to be put to the meetings of the growers in the almond schemes have been drafted according to a strategy which will allow growers to express their will and, if it is the will of the growers that the schemes continue, provide a basis for proceeding to the next stage.

Marking Your Proxy Form

For each resolution, you may mark your proxy form as FOR, AGAINST or ABSTAIN, or you may leave the all the boxes unmarked for one or more resolutions.

Having fought a costly legal battle to ensure you have this right to express your will, the Timbercorp Growers Group does favour a positive vote FOR or AGAINST.

Resolution 1

This is an ordinary resolution to the effect that the scheme continue and not be wound up.

- ☐ Vote **FOR** if you want the scheme to continue for the time being. This does not close out options for changing the scheme or winding the scheme up in future. This vote may well involve some further financial contributions. Click where shown on the Home Page for a presentation by the independent expert relevant to the viability of the schemes.
- ☐ Vote **AGAINST** if you would prefer that the scheme be wound up forthwith, with Timbercorp Securities Limited (in liquidation) as the responsible entity. Click where shown on the Home Page for an explanation by the Timbercorp Growers Group of the implications of winding up.

Resolution 2

This is a special resolution to amend the constitution.

- ☐ Vote **FOR** if you want the constitution to be amended to allow the proceeds of the 2009 crop to be possibly used for working capital or as security to obtain working capital to fund the process of continuing cultivation of the orchard and production of the 2010 almond crop.

- ☐ Vote **AGAINST** if you would prefer to maintain the current rules preventing the proceeds of the 2009 crop being used to fund the production of next year's crop. This would imply that the net proceeds, after paying the reasonable costs of the responsible entity, would be payable to growers. This does not mean that payment will occur straight away.

Resolution 3

This is an ordinary resolution to approve a proposal to fund the working capital for the scheme over the coming months.

- ☐ Vote **FOR** if you want the proceeds of the 2009 crop to be made available as working capital or as security for provision of working capital. A vote for this resolution can only be effective if resolution 2 is passed.
- ☐ Vote **AGAINST** if you do not want the proposal to provide working capital to be implemented.

Resolution 4

This is an ordinary resolution stating that it is in the interests of members to have the opportunity to consider one or more restructure proposals.

- ☐ Vote **FOR** if you want the responsible entity to seek out, refine and put to a meeting of growers, proposals for financial restructuring the scheme. Click where shown on the Home Page for a presentation on the Align proposal, which is one such proposal. A vote for the resolution is not a vote in favour of the Align proposal, which must be put to a future or adjourned meeting of growers.
- ☐ Vote **AGAINST** if you would prefer that the scheme continue in its present form as an MIS and no restructure proposals should be entertained.

Resolution 5

This is an ordinary resolution to adjourn the meeting before putting the resolutions relating to a change in responsible entity.

- ☐ Vote **FOR** this resolution, The Timbercorp Growers Group makes this recommendation for the following reasons:
 - the resolutions to remove and replace to responsible entity require an affirmative vote from growers in each and every scheme holding 50% of all almondlots, which is a lot of votes to be collected;
 - there has been very short notice for this meeting and, although a majority of those voting may be in favour of changing the responsible entity, the target 50% may not be reached in all schemes;
 - If the resolutions are lost because the required majority has not been obtained, and Timbercorp Securities Limited (in liquidation) remains as responsible entity, a further meeting will have to be called to change responsible entity and the expenses of calling these meetings will be

borne by growers (the Timbercorp Growers Group does not have funding for this purpose);

- if the meeting is adjourned, the adjourned meeting can be resumed to vote on the change of responsible entity and the extra time used to ensure the required majority of votes; and
 - if Timbercorp Securities Limited (in liquidation) remains as the responsible entity for the time being, this will not affect the implementation of the Align proposal or any other restructure proposal.
- ☐ Vote **AGAINST** if you would prefer that the vote on the responsible entity is dealt with in the meeting and not deferred.

Resolution 6

This is an extraordinary resolution to remove the current responsible entity – Timbercorp Securities Limited (in Liquidation).

- ☐ Vote **FOR** if you want to change the responsible entity.
- ☐ Vote **AGAINST** if you would prefer Timbercorp Securities Limited (in liquidation) remain as the responsible entity.

Resolution 7

This is an extraordinary resolution to appoint a replacement responsible entity. Huntley Management Limited has given consent to act as temporary responsible entity and appears to have the required Australian Financial Services Licence.

- ☐ Vote **FOR** if you voted for Resolution 6 and this will propose Huntley Management Limited as the responsible entity (not the temporary responsible entity).
- ☐ Vote **AGAINST** if you voted against Resolution 6.

Resolution 8

If resolutions 6 and 7 do not receive the required majority or are not put, this resolution is an ordinary resolution to direct the Timbercorp Growers Group to resume the court proceedings to appoint a temporary responsible entity.

- ☐ Vote **FOR** if you want the Timbercorp Growers Group to resume the Court action. This may involve additional calls on growers to contribute to the fighting fund, depending on the legal costs.
- ☐ Vote **AGAINST** if you would prefer that the legal action remain adjourned, subject to the vote at a future meeting of growers.

Further Information

For further information consult your financial adviser or explore the Timbercorp Growers Group website.

TIMBERCORP ALMOND SCHEMES MEETINGS IMPLICATIONS OF WINDING UP

This statement is prepared by the Timbercorp Growers Group and relates the resolutions proposed by the Timbercorp Growers Group for the meetings of the 2001 to 2007 Timbercorp Almond Schemes on 31 July 2009.

Background

The Timbercorp Growers Group has been established to promote outcomes which are agreed to by the growers in each scheme and to oppose the wind up of the schemes, unless this is the collective will of the growers.

Implications of Winding Up

If the responsible entity winds up the scheme, either by vote of the growers or at the direction of the Court, the following are important considerations for growers:

- ☐ the costs of winding up will come out of the proceeds (if any) payable to growers;
- ☐ the winding up process is likely to terminate the interests of the growers – it is arguable whether this occurs at the commencement of the winding up process or at some later time;
- ☐ while the responsible entity and the liquidators of the other Timbercorp companies may seek directions from the Court as to the entitlements of the growers to a share in the realised value from the sale of the orchards, it is not certain that there would be any entitlement at all;
- ☐ the value realised from the sale of the orchards may be insufficient to cover the amounts owed by the Timbercorp companies to secured creditors and this may also weaken the claim of growers to a share; and
- ☐ once the process of winding up has commenced, it is very difficult for Growers to halt or reverse the process.