

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY

NOTICE OF FILING

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CASE DETAILS

Case Number:

Case Description:

District Registry:

Document Type:



Warwick Soden

Dated:

Registrar

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the document served on each party to the proceeding.

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. 595



IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENTS SCHEME LISTED IN SCHEDULE 2
First Plaintiff

MARK ANTHONY KORDA
Second Plaintiff

LEANNE KYLIE CHESSER
Third Plaintiff

ORDER

(Order 36, rule 4)

JUDGE: The Honourable Justice Finkelstein

DATE OF ORDER: 18 August 2009

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

- 1 The Second and Third Plaintiffs are justified in procuring the First Plaintiff as responsible entity to amend the constitutions of the managed investment schemes listed in Schedules 1 and 2 to this Order, pursuant to section 601GC(1)(b) of the *Corporations Act 2001* (Cth) by executing a deed in the form contained in Schedule 3 for each of the constitutions.

THE COURT ORDERS THAT:

- 2 Each Plaintiff be indemnified out of the scheme property of each scheme specified in Schedules 1 and 2 to this Order (**Forestry Schemes**) for its costs and expenses of, and incidental to the application, including the reasonable costs (including legal costs on an indemnity basis), expenses and remuneration of the Second and Third

Filed on behalf of the Plaintiffs

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(Leon Zwier)



Plaintiffs incurred in causing the First Plaintiff to bring the application and such expenses and remuneration to be paid in priority to any other amounts paid out of the scheme property of each of the Forestry Schemes.

- 3 Reserve for further consideration the question whether the Plaintiffs' costs should be borne by any particular beneficiary or class of beneficiary of the scheme property.
Reserve the costs of David Sydney Butterfield and the Timbercorp Growers Group

Date that entry is stamped:

Deputy District Registrar



SCHEDULE 1

REGISTERED MANAGED INVESTMENT SCHEMES

1. 1997 Timbercorp Eucalypts Project (ARSN 112 309 234);
2. 1998 Timbercorp Eucalypts Project (ARSN 112 309 216);
3. 1999 Timbercorp Eucalypts Project (ARSN 085 827 872);
4. 2000 Timbercorp Eucalypts Project (ARSN 091 172 093);
5. 2001 Timbercorp Eucalypts Project (ARSN 094 392 000);
6. 2002 Timbercorp Eucalypts Project (ARSN 098 233 571);
7. 2003 Timbercorp Eucalypts Project (ARSN 103 183 446);
8. 2004 Timbercorp Eucalypts Project (ARSN 108 099 645);
9. 2004 Timbercorp Timberlot (Single Payment) Project (ARSN 108 336 830);
10. 2005 Timbercorp Timberlot (Single Payment) Project (ARSN 111 683 491); and
11. 2007/2008 Timbercorp Timberlot (Single Payment) Project (ARSN 122 510 981).



SCHEDULE 2

UNREGISTERED MANAGED INVESTMENT SCHEMES

1. 1999 Timbercorp Eucalypts Double Rotation Project (Private Offer)(Unregistered).

SCHEDULE 3

Timbercorp Securities Limited (in liquidation)
ACN 092 31



Amendment Deed

[insert name of Project]
ARSN **[insert]**

THIS DEED POLL is made on

2009



PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)

ACN 092 311 469
of Level 8, 461 Bourke Street, Melbourne 3000
("TSL")

BACKGROUND

- A TSL was appointed the responsible entity of the [insert name of Project] (ARSN insert) pursuant to the Constitution.
- B TSL is desirous of disposing of its assets including various leases granted by third parties.
- C In order to give clear and free title to the assignee of any lease, any sub-leases of the leased land may need to be surrendered.
- D TSL considers it appropriate that it be granted the power to surrender each sub-lease on behalf of the Growers.
- E TSL and the liquidators of TSL applied to the Federal Court of Australia for a direction that the liquidators of TSL would be justified in executing or procuring TSL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this Deed.
- F On 18 August 2009, Justice Finkelstein of the Federal Court of Australia gave the direction sought.
- G In accordance with section 601GC of the *Corporations Act* and the directions of the Court, TSL has executed this deed to modify the Constitution in the manner set out in this deed.

AGREED TERMS



1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

“**Constitution**” means the constitution dated [insert date] (as amended).

“**Effective Date**” means the date this deed is lodged with the Australian Securities and Investments Commission.

1.2 Interpretation

Clause 1.2 of the Constitution applies to the interpretation of this deed.

2 Amendment

The Constitution is amended with effect on and from the Effective Date by inserting after clause 11(f) the following clause:

“(fa) to assign, terminate, surrender or otherwise deal with any Sub-lease;”.

2.1 Remains in effect

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

2.2 Read as a single document

With effect on and from the Effective Date:

- (a) the parties are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

3 General

3.1 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

3.2 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or



circumstance that might affect his or her authority to execute this document under that power.

3.3 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as a DEED

EXECUTED by **TIMBERCORP**)
SECURITIES LIMITED (in liquidation) by)
being signed in its name and on its behalf)
by **MARK ANTHONY KORDA** in his)
capacity as liquidator in the presence of:)

Signature of witness

Signature of liquidator

Name of witness (print)

Date that entry is stamped:

.....
An officer acting with the authority of the
DISTRICT REGISTRAR

Version 1