

10 June 2014

## DEED OF COMPROMISE FOR THE KANGARA RIGHTS PROCEEDING – SECOND NOTICE TO GROWERS

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

**2004 Timbercorp Citrus Project ARSN 108 887 538**

**2005 Timbercorp Citrus Project ARSN 114 091 299**

**(together, the Citrus Projects and each, a Citrus Project)**

### 1 Introduction

We notified you in March 2014 that (among other things):

- (a) the Citrus Projects were the subject of the Kangara Rights Proceeding and that the interests of all Growers were represented in that proceeding by representative Growers (known as the **Representative Growers**) appointed by the Supreme Court of Victoria (**Supreme Court**);
- (b) the Kangara Rights Proceeding is the proceeding which specifically relates to the Citrus Projects. In the Kangara Rights Proceeding, The Trust Company (Nominees) Ltd (**The Trust Company**) (a secured lender with respect to the Citrus Projects which holds its security interests for the benefit of holders of debentures (**Debenture Holders**) issued by Align Funds Management Limited (formerly Orchard Investments Management Limited) in its capacity as the responsible entity for the Timbercorp Orchard Trust (Receiver and Manager Appointed) (**Align**) pursuant to the Timbercorp Orchard Trust Debenture Trust Deed (**Trust Deed**)) sought, among other things, declarations from the Supreme Court as to:
  - its rights;
  - the rights of the Growers in the Citrus Projects; and
  - the rights of other relevant parties,

if any, to the net sale proceeds from the sale of the land on which the Citrus Projects were conducted (that land being situated in New South Wales) and associated water

rights and other assets (**Citrus Assets**) (in accordance with orders of the Supreme Court, inclusive of interest on them and less certain costs) (**Fund**);

- (c) the parties to the Kangara Rights Proceeding had reached a compromise resolving the dispute between them (**Compromise**) and that an application would be made to the Supreme Court for the approval of the Compromise (**Approval Application**); and
- (d) the conditions precedent to the Compromise binding all Growers (**Conditions Precedent**) are that:
  - (i) the Compromise is approved by the Debenture Holders;
  - (ii) the compromise of Supreme Court of Victoria Proceeding No. S CI 2013 01477 (**Bella Vista Rights Proceeding**) is approved by the Debenture Holders;
  - (iii) the Compromise is approved by the Supreme Court; and
  - (iv) the Supreme Court also approves the application made for approval of the compromise the subject of the Bella Vista Rights Proceeding (together with the Approval Application, the **Approval Applications**).

In this notice, the compromise of each of the Kangara and Bella Vista Rights Proceedings are referred to collectively as the **Compromises**. The terms of each such compromise are, in each case, set out in a deed of compromise executed by the relevant parties on 14 January 2014 (individually, a **Deed of Compromise** and, together, the **Deeds of Compromise**).

## **2 Debenture Holder approval and satisfaction of the first two Conditions Precedent**

As notified in our March 2014 notice, the first two Conditions Precedent listed above were satisfied on 6 February 2014 when, in accordance with the Trust Deed, Debenture Holder approval was attained in respect of each of the Compromises.

## **3 Orders of the Honourable Justice Dixon handed down on 19 May 2014 and satisfaction of the final two Conditions Precedent**

His Honour Justice Dixon of the Supreme Court heard the Approval Applications on 19 May 2014. In his orders handed down on 19 May 2014 in relation to those applications (**Orders**), and in satisfaction of the final two Conditions Precedent, his Honour determined to approve each of the Compromises and bind absent Growers because it is in their best interests to do so. Accordingly, all Growers are now bound by the terms of the Compromise.

On 27 May 2014, His Honour delivered a joint judgment in the Kangara and Bella Vista Rights Proceedings substantiating the Orders.

A copy of the Orders and the judgment of His Honour dated 27 May 2014 can be found at any of:

[www.mk.com.au](http://www.mk.com.au)

[www.kordamentha.com/creditor-information/Australia/51/06](http://www.kordamentha.com/creditor-information/Australia/51/06)

[www.kordamentha.com/creditor-information/Australia/51/15](http://www.kordamentha.com/creditor-information/Australia/51/15)

[www.abl.com.au/timbercorp/timbercorp.htm](http://www.abl.com.au/timbercorp/timbercorp.htm)

#### 4 Grower Entitlements

The amount each Grower is entitled to receive under the Compromise in respect of each lot they hold in a Citrus Project is **\$271.98**.

The conditions and timing of the payments to Growers are governed by the terms of the Deed of Compromise which are addressed further below.

#### 5 Features of the Compromise

In accordance with the Deed of Compromise:

- (a) The following payments will be made from the Fund:
  - (i) **to the Receiver:** for his unpaid remuneration and expenses in connection with or arising from his appointment as receiver and manager of Align, his management, maintenance and (in accordance with the Deeds of Compromise) disbursement of the Fund, and his costs of and incidental to the Court approval applications for the Compromise, the Bella Vista Compromise and the two proceedings generally (the quantum of which will either be agreed by The Trust Company or approved by the Court);
  - (ii) **to TSL:** \$1,043,321.00 (approximately 5% of the relevant gross sale proceeds of the Citrus Assets) (**Kangara Settlement Amount**) to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements; and
  - (iii) **to The Trust Company:** the balance of the Fund for distribution to the Debenture Holders.
- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of lots held by each such Grower on 2 June 2011 (being the date on which Growers' rights in the Citrus Projects were extinguished). The amount payable per lot will be **\$271.98**. This amount will be in full and final settlement of the Growers' claim to any part of the Fund.

- (c) Each party to the Compromise will release all other parties from any further claim in relation to their entitlement to the Fund or the allocation and disbursement of the Fund. The Representative Growers provide and receive these releases on behalf of the Growers.
- (d) The proceeding will be dismissed with the legal costs and disbursements of The Trust Company and the Representative Growers being paid by the Receiver on an indemnity basis from the net sale proceeds of the Fund, subject to a bill of costs calculated on an indemnity basis as prepared and certified by an appropriately qualified costs consultant agreed by the parties.

## 6 Distribution of the Kangara Settlement Amount to Growers

The terms of the Deed of Compromise require the Kangara Settlement Amount to be paid to TSL on trust for the Growers for distribution to, or on behalf of, the Growers in accordance with their entitlements. As noted above, each Grower's entitlement will be calculated on a pro-rated basis based on the number of lots in the Citrus Projects held by that Grower on 2 June 2011 (for each Grower, its **Kangara Settlement Entitlement**).

Growers who are recorded in the books and records of:

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

will be able (should they choose) to direct that their Kangara Settlement Entitlements are paid, in whole or in part, to TFL or TSL to pay, to the extent possible, their TFL Indebtedness or Timbercorp Indebtedness (as applicable). The amount of your TFL Indebtedness may be affected if you accept any offer of settlement made by TFL to you.

A direction to pay form is available at any of:

[www.mk.com.au](http://www.mk.com.au)

[www.kordamentha.com/creditor-information/Australia/51/06](http://www.kordamentha.com/creditor-information/Australia/51/06)

[www.kordamentha.com/creditor-information/Australia/51/15](http://www.kordamentha.com/creditor-information/Australia/51/15)

[www.abl.com.au/timbercorp/timbercorp.htm](http://www.abl.com.au/timbercorp/timbercorp.htm)

If you are recorded as having any TFL Indebtedness or Timbercorp Indebtedness you can (if you choose) give your directions to TSL by completing and returning a direction to pay form. To arrange for a direction to pay form to be sent to you, call the telephone hotline on (03) 8615 1200 or email [investorqueries@timbercorp.com.au](mailto:investorqueries@timbercorp.com.au).

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Kangara Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a court order, about the manner in which the entitlement is to be disbursed.

If you wish to confirm whether you have any, or the extent of your, TFL Indebtedness or Timbercorp Indebtedness, the number of lots you held in the Citrus Projects on 2 June 2011 or any other private information which TSL holds in relation to your individual circumstances in respect of the Compromise, you should call the Timbercorp telephone hotline on (03) 8615 1200 or email [investorqueries@timbercorp.com.au](mailto:investorqueries@timbercorp.com.au).

To receive your Kangara Settlement Entitlement (if payable to you having regard to your TFL Indebtedness and Timbercorp Indebtedness, if any), you must notify TSL of the bank account you nominate to receive payment. You can notify TSL of your bank account details by completing and returning the bank account nomination form available at any of:

[www.mk.com.au](http://www.mk.com.au)

[www.kordamentha.com/creditor-information/Australia/51/06](http://www.kordamentha.com/creditor-information/Australia/51/06)

[www.kordamentha.com/creditor-information/Australia/51/15](http://www.kordamentha.com/creditor-information/Australia/51/15)

[www.abl.com.au/timbercorp/timbercorp.htm](http://www.abl.com.au/timbercorp/timbercorp.htm)

To arrange for a bank account nomination form to be sent to you, call the telephone hotline on (03) 8615 1200 or email [investorqueries@timbercorp.com.au](mailto:investorqueries@timbercorp.com.au).

## **7 Timing of payments to Growers**

The timing of a Grower's payment of their Kangara Settlement Entitlement will depend, in part, on their individual circumstances.

If a Grower does not have any TFL Indebtedness, TSL will pay the Grower's Kangara Settlement Entitlement to its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness) as soon as practicable following the receipt by TSL of the Kangara Settlement Amount.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Kangara Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Kangara Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Kangara Settlement Entitlement (if any) to the Grower into its nominated bank account (or, if directed by the Grower, to TSL in payment of any Timbercorp Indebtedness).

- (b) has directed TSL to use its Kangara Settlement Entitlement to pay only part of the Grower's TFL Indebtedness, TSL will, as soon as practicable, pay to TFL that part of the Grower's TFL Indebtedness and retain the balance of the Grower's Kangara Settlement Entitlement (if any) on trust pending an agreement between TFL and the Grower or court order as to whom it should be paid.
- (c) has not directed TSL to pay any part of its Kangara Settlement Entitlement to TFL, TSL will hold that Grower's Kangara Settlement Entitlement on trust pending agreement between TFL and the Grower or court order as to whom it should be paid.

Accordingly, there is an important difference between the treatment of a Grower's TFL Indebtedness and the treatment of a Grower's Timbercorp Indebtedness. This is because, in relation to those Growers with a TFL Indebtedness, TFL asserts that it has a proprietary and/or secured claim over those Growers' Kangara Settlement Entitlements, whereas the claim of TSL is merely contractual and unsecured. For this reason, if a Grower who has TFL Indebtedness chooses not to direct TSL to use its Kangara Settlement Entitlement to pay its TFL Indebtedness, that Grower's Kangara Settlement Entitlement will be held on trust pending agreement or Court order.

A Grower who has both TFL Indebtedness and Timbercorp Indebtedness may not give any direction to TSL to pay all or part of their Timbercorp Indebtedness out of its Kangara Settlement Entitlement before there is an agreement in writing between TFL and the Grower, or a Court order, about the manner in which the entitlement is to be disbursed.

Importantly, if a Grower gives a direction to TSL to use its Kangara Settlement Entitlement to pay TFL all or part of its TFL Indebtedness, that direction does not constitute an admission of liability by the Grower to TFL in respect of its TFL Indebtedness and is without prejudice to the Grower's rights (if any) in relation to its TFL Indebtedness. Similarly, nothing in the receipt by TFL of any such payment will constitute a waiver of any rights that TFL has in respect of a Grower's remaining TFL Indebtedness.

## **8 Tax consequences of the Compromise**

The Compromise and payment of the Kangara Settlement Entitlement may have tax consequences for each Grower. The consequences for each Grower will depend on the Grower's individual circumstances. You may wish to seek advice from your personal financial or taxation adviser about the potential tax consequences of receiving your Kangara Settlement Entitlement and any choice you may make to give directions to pay your Kangara Settlement Entitlement to TFL or TSL or both.

## **9 Role of TSL**

At the request of the Representative Growers, TSL has agreed to perform various administrative roles in connection with the Compromise and the Approval Application. In addition to distributing this notice on behalf of the Representative Growers, TSL will make

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

## **10 Effect of the Judgment on your rights**

Now that the Supreme Court has approved each of the Compromises, all of the Growers are bound by the terms of the Compromise in respect of their claims against the Fund. Consequently, with the exception of their entitlement to the Kangara Settlement Amount, the Growers have no further interest in the Fund and their interest in the Citrus Projects is extinguished. The Growers no longer have any right to argue for an alternative outcome of the dispute and any payment made to you under the terms of the Deed of Compromise is in full and final settlement of your claim against the Fund.

## **11 Further information**

If you have any questions regarding the payment of your Kangara Settlement Entitlement you can call the Timbercorp telephone hotline on (03) 8615 1200 or email [investorqueries@timbercorp.com.au](mailto:investorqueries@timbercorp.com.au).

## **12 Key contacts**

Telephone Hotline Facility	(03) 8615 1200
Email address	<a href="mailto:investorqueries@timbercorp.com.au">investorqueries@timbercorp.com.au</a>
Frequently Asked Questions and Notices to Growers	Available online at any of: <a href="http://www.mk.com.au">www.mk.com.au</a> <a href="http://www.kordamentha.com/creditor-information/Australia/51/06">www.kordamentha.com/creditor-information/Australia/51/06</a> <a href="http://www.kordamentha.com/creditor-information/Australia/51/15">www.kordamentha.com/creditor-information/Australia/51/15</a> <a href="http://www.abl.com.au/timbercorp/timbercorp.htm">www.abl.com.au/timbercorp/timbercorp.htm</a>