

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

LIST D  
S CI 2011 6604

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS  
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 and others (according to the schedule  
attached)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 20 September 2012  
Filed on behalf of: The First and Second Defendants  
Prepared by:  
**Maddocks**  
Lawyers  
140 William Street  
Melbourne VIC 3000

Solicitor's Code: 230  
DX 259 Melbourne  
Tel: (03) 9288 0555  
Fax: (03) 9288 0666  
Ref: 5885053.001  
Attention: Philip Jones  
Email: philip.jones@maddocks.com.au

This is the exhibit marked "ADF-5" now produced and shown to **Alan David Fisher** at the time of  
swearing his affidavit on 20 September 2012.

Before me:

  
Signature of person taking affidavit

**STEVEN MICHAEL TANG**  
**140 William St Melbourne 3000**  
**An Australian Legal Practitioner**  
**within the meaning of the**  
**Legal Profession Act 2004.**

**Exhibit "ADF-5"**  
**Copy of Notice of Crystallisation of Bondholders'**  
**Charge**

17 September 2009

By post and email

The Directors  
Align Funds Management Limited  
Level 33  
360 Collins Street  
MELBOURNE VICTORIA 3000

**Attention:** Mr. Trevor Moyle  
Chief Executive Officer

Dear Trevor,

**Re:** Align Funds Management Limited ACN 105 684 231  
("Align")  
**Matter:** Fixed and Floating Charge over the Assets of  
Timbercorp Primary Industry Fund ("Charge")  
**Trust Deed:** Trust deed dated 30 September 2005  
("Bond Trust Deed")  
**Events of Default:** Appointment by ANZ Bank pursuant to the facility  
agreement dated 12 April 2006 ("Facility  
Agreement") of Receivers to OIM #5 Pty Ltd as  
trustee of the Timbercorp Orchard Trust #5("TOT  
#5") on 15 September 2009, to OIM #2 Pty Ltd as  
trustee of the Timbercorp Orchard Trust #2("TOT  
#2") on 16 September 2009 and to OIM #2 Pty Ltd  
as trustee of the Timbercorp Orchard Trust  
#3("TOT #3") on 16 September 2009

**NOTICE UNDER CLAUSE 4.7 OF THE BOND TRUST DEED DATED 30  
SEPTEMBER 2005 FIXING THE CHARGE**

We refer to our letter to you dated 8 September 2009, which requested a  
certificate in accordance with Clause 7.2(n) of the Bond Trust Deed.

We have received the following documents:

1. Notice to Company of Appointment of Receiver of 15 September 2009  
over OIM #5 Pty Ltd as trustee of the Timbercorp Orchard Trust #5;
2. Notice to Company of Appointment of Receiver of 16 September 2009  
over OIM #2 Pty Ltd as trustee of the Timbercorp Orchard Trust #2;
3. Notice to Company of Appointment of Receiver of 16 September 2009  
over OIM #2 Pty Ltd as trustee of the Timbercorp Orchard Trust #3;
4. the certificate under clause 7.2(n) of the Bond Trust Deed signed by  
two Directors of Align and dated 16 September 2009 in respect to the

- Events of Default resulting from the appointment of Receivers to TOT#5; and
5. the certificate under clause 7.2(n) of the Bond Trust Deed signed by two Directors of Align and dated 17 September 2009 in respect to the Events of Default resulting from the appointment of Receivers to TOT#2 and TOT#3.

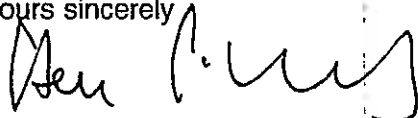
We note that the appointment of a Receiver over the Land as defined in the Bond Trust Deed is an Event of Default under clause 12.1 (e) (i) and clause 12.1(o) of the Bond Trust Deed. This is confirmed by the two above Directors' Certificates.

Each of the above subsisting Events of Default entitles the Trustee to give notice pursuant to clause 4.7 of the Bond Trust Deed to Align to convert the floating aspect of the Charge into a fixed charge.

Pursuant to Clause 4.7 of the Bond Trust Deed, the Trustee gives Align notice that the floating charge under the Charge created by clause 4.1 of the Bond Trust Deed is hereby fixed over all assets of Align as the responsible entity of the Timbercorp Primary Industry Fund (and formerly known as the Timbercorp Agribusiness Trust) including without any limitations all cash and other assets described in clause 4.2(a) of the Bond Trust Deed and in particular all proceeds from the sale of the Land receivable by the Timbercorp Primary Industry Fund from the sale of the Land by the receivers or the ANZ Bank under its securities over the Land, including the Facility Agreement.

We advise that the Trustee may at any time and without any further notice take any actions it is empowered to under the Charge and the Bond Trust Deed. The Trustee reserves all its rights under the Charge, the Bond Trust Deed and at law.

Yours sincerely



**Sten Silavecky**  
**Head of Structured Finance Services**