

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COURT OF APPEAL**

SACPI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS (according to the Schedule)

Appellants

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) & ORS (according to the schedule attached)

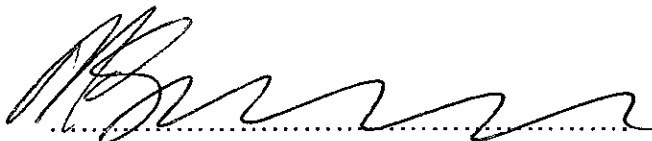
Respondents

EXHIBIT EG-12

Date of document:	19 September 2012
Filed on behalf of:	MRB Equities Pty Ltd, Redvi Pty Ltd and Ferrari Investments Holdings Pty Ltd
MGA Lawyers	Solicitors Code: 104101
Level 9,	Tel: 8631 5555
179 Queen Street	Fax: 8631 5599
MELBOURNE VIC 3000	Ref: MG5400/08

This is the exhibit marked "EG-12" now produced and shown to Eli Goldfinger at the time of swearing his affidavit on 19 September 2012.

Before me:



MARK GEREMIA
Level 9 179 Queen Street, Melbourne VIC 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

MGA Lawyers, Level 9, 179 Queen St, Melbourne Vic
An Australian Legal Practitioner with the meaning of the Legal Practice Act
2001

"EG-12"
First Letter and First Notice to Growers



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Our ref: CJA:MJF:1100297

13 August 2012

Dear Grower

**2002 Timbercorp Almond Project ARSN 099 611 935,
2005 Timbercorp Almond Project ARSN 112 935 092,
2006 Timbercorp Almond Project ARSN 118 387 974,
2007 Timbercorp Almond Project ARSN 122 511 040,
2002 Timbercorp Almond Project (Private Offer No 1),
(collectively, the Almond Projects)**

You are receiving this letter in your capacity as a grower investor in one or more of the Almond Projects (**Grower**).

The Almond Projects are the subject of a dispute between Growers and other parties to Proceeding No APCI 2011 0103 in the Supreme Court of Victoria Court of Appeal (**Almond Land Rights Appeal Proceeding**) in relation to their respective entitlements to the net sale proceeds of the assets used in the Almond Projects. In that proceeding, the interests of all Growers are represented by representative Growers appointed by the Supreme Court of Victoria (**Representative Growers**). Clarendon Lawyers acts on behalf of the Representative Growers.

The parties to the Almond Land Rights Appeal Proceeding have now reached a compromise resolving the dispute between them (**Compromise**). Each Representative Grower, acting on our and our barristers' advice, considers that the Compromise is in the best interests of the Growers they represent. If approved by the Supreme Court of Victoria (or the Court of Appeal) and the compromises in respect of the other Timbercorp Almond Projects, the Timbercorp Olive Projects and the 2005 Timbercorp Citrus Project are also approved, the Compromise will bind all Growers and you will lose any right to seek a different outcome of the dispute.

We have prepared a notice to Growers explaining the Almond Land Rights Appeal Proceeding, the Compromise (including its effect on Growers' rights and entitlements) and the application to be made to the Supreme Court of Victoria (or the Court of Appeal) for approval of the Compromise (**First Notice to Growers**). The First Notice to Growers also provides details on how you can comment on or object to the Compromise or obtain further information.

It is important that you read the First Notice to Growers carefully as, if approved by the Supreme Court of Victoria (or the Court of Appeal), the Compromise will affect your rights and entitlements as a Grower.

You can view the First Notice to Growers on the following websites:

- www.clarendonlawyers.com.au
- www.kordamentha.com/creditor-information/Australia/51
- www.abl.com.au/timbercorp/compromises.htm

If you would like the First Notice to Growers to be sent to you, call the telephone hotline on (03) 8615 1200 or email investorqueries@timbercorp.com.au.

Yours faithfully

Clarendon Lawyers

GAR001_1100297_218

13 August 2012

**DEED OF COMPROMISE FOR THE ALMOND LAND RIGHTS APPEAL PROCEEDING – FIRST
NOTICE TO GROWERS**

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

2002 Timbercorp Almond Project ARSN 099 611 935
2005 Timbercorp Almond Project ARSN 112 935 092
2006 Timbercorp Almond Project ARSN 118 387 974
2007 Timbercorp Almond Project ARSN 122 511 040
2002 Timbercorp Almond Project (Private Offer No 1)
(together, the Almond Projects and each an Almond Project).

Introduction

You may be aware there was a proceeding (the Almond Land Rights Proceeding described in sections 1 and 2 of this notice) issued in the Supreme Court of Victoria (**Supreme Court**) in 2009 concerning the net proceeds arising from the sale of the land on which the Almond Projects were conducted, and related assets. The purpose of the proceeding was to resolve the dispute as to how those net sale proceeds were to be apportioned between the secured creditors, growers and other interested parties claiming an interest in them.

A representative grower was appointed by the Supreme Court in respect of each of the Almond Projects to represent the interests of the growers in that Almond Project in the proceeding. Each such representative grower is acting on the advice of Clarendons Lawyers and counsel retained by Clarendons Lawyers on behalf of the representative growers.

In a judgment delivered on 15 June 2011 the Supreme Court determined that the secured creditors were entitled to the entire amount of the net sale proceeds and that the relevant growers were not entitled to any of those proceeds.

That judgment is now the subject of an appeal presently before the Supreme Court of Victoria Court of Appeal (**Court of Appeal**).

A deed of compromise has been executed by the parties to the proceeding (including the representative growers) as a proposed solution to this dispute subject to certain conditions, including Supreme Court or Court of Appeal approval. The purpose of this notice is to explain the compromise and to help you to understand the impact of the compromise on you should it be approved by the Supreme Court or the Court of Appeal.

If the compromise is approved by the Supreme Court, or the Court of Appeal, and the other conditions are satisfied, you may receive a payment. However, if the compromise is not approved by either



Court, or the other conditions are not satisfied, any entitlement you may have to receive a payment will depend on the outcome of the appeal.

For the reasons set out in section 5 of this notice, each representative grower, on the advice of their legal advisers, considers that the compromise is in the best interests of the growers they represent.

Next steps

The Court of Appeal has been asked to refer the appeal proceeding to the Supreme Court and, if the referral is made, the Supreme Court will be asked to approve the compromise at a hearing currently anticipated to commence in October 2012 at the Supreme Court of Victoria, Melbourne. If the referral is not made, then the Court of Appeal will be asked to approve the compromise. The confirmed date of this hearing, whether in the Supreme Court or the Court of Appeal, will be notified to growers online at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

as soon as it is known.

If the Supreme Court, or the Court of Appeal, approves the compromise and the other conditions are satisfied, you will be bound by the compromise and you will lose any right to argue for an alternative outcome of the dispute. It is therefore important to read this notice carefully.

Answers to some Frequently Asked Questions (FAQ) are available online and a telephone hotline facility and an email facility have been set up to assist growers who:

- wish to comment on the compromise;
- have any questions or wish to obtain further information on the compromise; or
- wish to object to the compromise.

Details of where you can access the FAQ, the telephone hotline facility and the email facility are set out in section 14 of this notice.

If you wish to object to the compromise, you should call the telephone hotline facility or email **as soon as possible before 14 September 2012**. Your objections will be passed on to the lawyers acting for the representative growers.

You are not required to attend or appear at the Court hearing (either in the Supreme Court or the Court of Appeal) at which approval of the compromise will be sought. However, you may wish to attend or appear at that hearing, and/or seek independent legal advice and/or obtain representation at



that hearing (outside the existing representative grower arrangement established by the Supreme Court). If you do so, any legal or other costs of doing so will be at your own expense unless the Court orders otherwise.

The representative growers will keep you informed of future developments regarding the compromise and Court approval of that compromise (see section 6 of this notice).

Important Information for Growers

1 Background to the dispute

Timbercorp Limited (in liquidation) (**Timbercorp**) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus. A member of the Timbercorp Group, Timbercorp Securities Limited (in liquidation) (**TSL**) was the responsible entity of the registered Timbercorp managed investment schemes.

The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the Timbercorp managed investment schemes were conducted, and related assets, were sold in a series of transactions each of which was approved by the Supreme Court.

In approving each of the sale transactions, the Supreme Court, in each case, ordered (among other things) that:

- (a) the net sale proceeds be placed into trust pending a proceeding to determine the rights of the land owners, the secured creditors, the investors in the Timbercorp managed investment schemes (**Growers**) and other interested parties to all, or any part, of those proceeds; and
- (b) neither the release of the secured creditors' securities upon completion of the sale contracts, nor the extinguishment of the Growers' rights, would prejudice those parties' respective rights to the assets sold insofar as they had such rights for the purpose of making a claim to all or any part of the net proceeds.

As a result, five separate proceedings were commenced to determine how the net sale proceeds the subject of each sale transaction were to be apportioned between the land owners, the secured creditors, Growers and other interested parties claiming an interest in those proceeds. These five proceedings, collectively referred to as the **Timbercorp Apportionment Proceedings**, are as follows:

- Supreme Court of Victoria Proceeding No. S CI 2009 10699 (**Almond Land Rights Proceeding**);



- Supreme Court of Victoria Proceeding No. S CI 2011 6604 (**Liparoo and Yungera Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2011 6606 (**Solora Rights Proceeding**);
- Supreme Court of Victoria Proceeding No. S CI 2010 1354 (**BB Olives Rights Proceeding**); and
- Supreme Court of Victoria Proceeding No. S CI 2011 6777 (**Fenceport Rights Proceeding**).

In each of the Timbercorp Apportionment Proceedings, one or more parties has been appointed by the Supreme Court pursuant to Rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) (**Rule 16**) as the representative of the Growers in the Timbercorp managed investment schemes the subject of that proceeding.

As each of the Timbercorp Apportionment Proceedings involves similar issues, it was considered appropriate for one such proceeding to be heard and determined first, with the intention that the result in that proceeding would then form the basis for determination of the other proceedings. This led to the hearing and determination of the Almond Land Rights Proceeding in early 2011. By her judgment in that proceeding, Justice Davies of the Supreme Court found that the Growers in the Almond Projects were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner (**Judgment**). The Judgment has been appealed by the Representative Growers in Supreme Court of Victoria Court of Appeal Proceeding No. APCI 2011 0103 (**Almond Land Rights Appeal Proceeding**). A hearing date for that appeal is yet to be fixed.

2 Almond Land Rights Proceeding

On 15 December 2009, BOSI Security Services Limited as trustee for Australia and New Zealand Banking Group Limited (**ANZ**), BOS International (Australia) Limited and Westpac Banking Corporation (**BOSI**), commenced the Almond Land Rights Proceeding. BOSI was a secured lender with respect to the Almond Projects.

The Almond Land Rights Proceeding was the proceeding which specifically related to the Almond Projects. In the Almond Land Rights Proceeding, BOSI sought, among other things, declarations from the Supreme Court as to:

- its rights;
- the rights of the Growers in the Almond Projects; and



- the rights of other relevant parties,

if any, to the net sale proceeds from the sale of the land on which the Almond Projects were conducted together with the other assets used in the Almond Projects (**Almond Land Assets**). The gross sale proceeds from the sale of the Almond Land Assets were (approx) \$128 million. In accordance with orders of the Supreme Court, certain costs have been deducted from these proceeds, and interest accrued on them, with the balance of the proceeds from time to time being referred to in this document as the **Fund**.

On 22 December 2009, the Supreme Court made orders in the Almonds Land Rights Proceeding pursuant to Rule 16 that the Growers in each of the Almond Projects have their interests represented in that proceeding by particular Growers. The relevant Growers are:

- (a) Graham Goldenberg as representative of the Growers in the 2002 Timbercorp Almond Project;
- (b) Christopher Mark Littley as representative of the Growers in the 2005 Timbercorp Almond Project;
- (c) Constantine Moshopoulos as representative of the Growers in the 2006 Timbercorp Almond Project; and
- (d) David Butterfield as representative of the Growers in the 2007 Timbercorp Almond Project and the 2002 Almond Project (Private Offer No 1).

(collectively, the **Representative Growers** and each a **Representative Grower**).

The other parties to the Almond Land Rights Proceeding, and subsequently the Almond Land Rights Appeal Proceeding, are ANZ (which was separately a secured lender with respect to the Almond Projects), Almond Land Pty Ltd (in liquidation) (**Almond Land**) and its liquidators, Mark Korda and Leanne Chesser. Almond Land was the entity within the Timbercorp Group that owned the land on which the Almond Projects were conducted. The liquidators of Almond Land held the Fund on trust pending the Judgment in the Almond Land Rights Proceeding.

On 15 June 2011, her Honour Justice Davies delivered the Judgment in favour of BOSI and ANZ (**Secured Lenders**) as the secured creditors of Almond Land and, in accordance with the Judgment, the Fund was subsequently paid in full to the Secured Lenders.

The Representative Growers have appealed the Judgment to the Court of Appeal in the Almond Land Rights Appeal Proceeding. A hearing date for the appeal has not yet been fixed.



The Secured Lenders, Almond Land and the Representative Growers have now reached a proposed resolution of the dispute between them as to their respective entitlements to the Fund and have, therefore, agreed to compromise the Almond Land Rights Appeal Proceeding. The compromise is subject to Court approval. The Representative Growers each believe (for the reasons set out in section 5 of this notice) that the compromise is in the best interests of the Growers in the Almond Projects they represent. However, under Rule 16, the Supreme Court, or the Court of Appeal must also approve the compromise before it is binding on all Growers.

3 Details of the Compromise

On 25 July 2012, the parties to the Almond Land Rights Appeal Proceeding entered into a deed of compromise for the Almond Land Rights Appeal Proceeding (**Compromise**). A copy of the deed of compromise may be viewed at any of:

www.clarendonlawyers.com.au
www.kordamentha.com/creditor-information/Australia/51
www.abl.com.au/timbercorp/compromises.htm

The Compromise is conditional on the approval of the Supreme Court, or the Court of Appeal, by 31 December 2012 or such later date as may be agreed between the parties. It is also conditional on the Supreme Court approving similar compromises reached in relation to all of the other Timbercorp Apportionment Proceedings (**Other Compromises**).

If the Supreme Court, or the Court of Appeal, approves the Compromise and the Supreme Court approves the Other Compromises, all Growers will be bound by the Compromise in respect of their claims against the Fund. You will lose any right to argue for an alternative outcome of the dispute and any payment made to you will be in full and final settlement of your claim against the Fund.

Under the terms of the Compromise:

- (a) \$6,000,000 (approximately 5% of the gross sale proceeds of the Almond Land Assets) will be paid by the Secured Lenders to TSL (**Almond Settlement Amount**) as follows:
 - (i) BOSI will pay to TSL 63.65% of the Almond Settlement Amount (being \$3,819,000); and
 - (ii) ANZ will pay to TSL 36.35% of the Almond Settlement Amount (being \$2,181,000).

to be held on trust for Growers for distribution to, or on behalf of, Growers in accordance with their entitlements, as set out in section 8 of this notice.



- (b) The amount set aside for Growers will be divided between Growers on a pro-rated basis according to the number of almondlots held by each such Grower on 2 December 2009 (being the date on which Growers' rights in the Almond Projects were extinguished). The amount payable per almondlot located on the land formerly owned by Almond Land will be \$186.57. 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 Almond Land Rights Appeal Proceeding will be dismissed with no order as to costs.

The amount to which Growers in each Almond Project are entitled will differ depending on the percentage of the almondlots in that Almond Project that were located on land formerly owned by Almond Land. If the Almond Project was also conducted on Liparoo and Yungera land, the Growers' entitlement per lot under the Compromise will be reduced proportionately but those Growers will also have an entitlement under the compromise of the Liparoo and Yungera Rights Proceeding. The FAQ (available from the websites set out in section 13) contains a table showing, for each Almond Project, the Growers' entitlements under each compromise.

In considering the Compromise, Growers should also be aware that the Representative Growers have entered into funding arrangements with litigation funders regarding the Almond Land Rights Appeal Proceeding. The litigation funders have notified the Representative Growers that they intend to bring a claim for payment out of the Almond Settlement Amount of amounts said to be owing to them under those arrangements (**Litigation Funders' Claim**). Further details about the Litigation Funders' Claim and its potential impact on the amount payable to Growers under the Compromise are set out in section 9 of this notice.

If the Supreme Court, or the Court of Appeal, does not approve the Compromise and the Other Compromises:

- the Compromise ceases to have any effect;
- any documents prepared or circulated pursuant to the Compromise and/or for the purposes of the application to the Supreme Court, alternatively the Court of Appeal, for approval of the Compromise may not be referred to or tendered in evidence in the Almond Land Rights Appeal Proceeding; and
- the Almond Land Rights Appeal Proceeding will continue and the Growers' entitlement (if any) to the Fund will be determined by the Court of Appeal.



The parties to the Almond Land Rights Appeal Proceeding are presently awaiting notification from the Court of Appeal of the date for the hearing of the appeal. It is unlikely that the Almond Land Rights Appeal Proceeding would be heard and determined before mid-2013.

4 Court approval

If the Supreme Court, or the Court of Appeal, approves the Compromise of the Almond Land Rights Appeal Proceeding, it will be binding on all Growers in each of the Almond Projects, even though only the Representative Growers (but not all Growers) are parties to the Almond Land Rights Appeal Proceeding. The Supreme Court, or the Court of Appeal, may approve the Compromise if it is satisfied that the Compromise is for the benefit of the Growers.

5 Benefit of the Compromise to the Growers

The Representative Growers have appointed Clarendon Lawyers, and counsel retained on their behalf by Clarendon Lawyers, to act for them in the Almond Land Rights Proceeding and the Almond Land Rights Appeal Proceeding. The Representative Growers have obtained legal advice from Garry Bigmore QC and Sam Hopper of counsel and from their instructing solicitors, Clarendon Lawyers, with respect to the Compromise. In coming to their advice counsel have taken into account (among other things) the Judgment and the appeal of the Judgment. Having regard to this advice, the certainty of the payments to be made under the Compromise once approved by the Supreme Court and the cost and delay before the Almond Land Rights Appeal Proceeding would be finally heard and determined by the Court of Appeal, the Representative Growers consider that the Compromise is for the benefit of the Growers in the Almond Projects.

The representative Growers hold this view irrespective of whether the Litigation Funders' Claim (see section 9 below) is successful in whole or in part.

6 Application to the Court for approval of the Compromise (Approval Application)

If the Court of Appeal refers the Almond Land Rights Appeal Proceeding to the Supreme Court, the Secured Lenders, Almond Land and the Representative Growers will apply to the Supreme Court for approval of the Compromise. The parties anticipate that a directions hearing will be held in or shortly after the week beginning 27 August 2012 and that, at that directions hearing, the Supreme Court will make orders (among other things) confirming the date on which the Approval Application will be heard. Notice of the date of this hearing will be posted at each of:

www.clarendonlawyers.com.au

www.kordametha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

shortly after the conclusion of the directions hearing.



It is proposed that the hearing of the applications for approval of the Other Compromises will be held concurrently with the hearing of the Approval Application. The current expectation is that the concurrent hearings will not be before October 2012 but will be at the earliest opportunity thereafter convenient to the Supreme Court.

If the Court of Appeal does not refer the Almond Land Rights Appeal Proceeding to the Supreme Court for this purpose, the Court of Appeal itself will be asked to approve the Compromise. Should this occur, notice of the date of the hearing before the Court of Appeal will be posted at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

as soon as it is known.

7 Rights of Growers in connection with the Approval Application

Although the Representative Growers believe that the Compromise is for the benefit of Growers in the Almond Projects (as outlined in section 5 of this notice), some Growers may wish to comment on, raise questions in relation to, or object to the Compromise. Without prejudice to any other course Growers may be advised by their own advisers to take, Growers may:

- (a) address any comments on the Compromise, the Litigation Funders' Claim (see section 9 below) the Approval Application or their individual circumstances;
- (b) ask any questions or obtain further information on the Compromise, the Litigation Funders' Claim or the Approval Application; or
- (c) raise any objection to the Compromise or the Litigation Funders' Claim,

to the Representative Growers by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au. The telephone hotline facility will be staffed by representatives of TSL (see section 12).

Before calling the telephone hotline facility or emailing, we suggest that you read and carefully consider this notice and the FAQ available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm



for answers to your queries. If you do not find a suitable response and you call the hotline facility or email, you will receive a reply and your comments or objections will be noted and passed on to the Representative Growers for the purposes of the hearing of the Approval Application.

If you wish to object to the Compromise, you should notify the Representative Growers by calling the telephone hotline on (03) 8615 1200 or by emailing investorqueries@timbercorp.com.au as soon as possible before 14 September 2012.

At the hearing of the Approval Application, the Representative Growers will disclose to the Supreme Court, or the Court of Appeal, all material facts relating to the Compromise, including all comments or objections they have received from Growers prior to the hearing of the Approval Application in relation to the Compromise, the Litigation Funders' Claim or the Approval Application. Any such comments or objections will be considered by the Court in the context of determining whether the Compromise is for the benefit of Growers.

You are not required, but are able, to attend or appear at the Supreme Court, or the Court of Appeal for the hearing of the Approval Application. Any Grower who objects to the Compromise and/ or the Litigation Funders' Claim may raise their objection at the Approval Application. Growers may choose to appear in person, or have their own lawyers represent them. If you wish to appear or have your own lawyers appear on your behalf, you should seek legal advice in relation to the steps that you will be required to take in order for this to happen.

Shortly after the Supreme Court or the Court of Appeal delivers its decision in respect of the Approval Application the Representative Growers will publish a further notice setting out the consequences of the decision (**Second Notice**) and will notify you of the publication of the Second Notice by post or email.

8 Distribution of the Almond Settlement Amount to Growers

If the Approval Application is successful (either before the Supreme Court or the Court of Appeal) and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the terms of the Compromise require the Almond 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 almondlots in the Almond Projects held by that Grower on 2 December 2009 (for each Grower, its **Almond Settlement Entitlement**). The Almond Settlement Entitlement for each Grower will be subject to the amount, if any, of the Litigation Funders' Claim approved by the Supreme Court or Court of Appeal for payment out of the Almond Settlement Amount (see section 9 below).

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 Almond Projects (TFL Indebtedness); or
- (b) TSL as owing amounts to TSL (Timbercorp Indebtedness),

will be able (should they choose) to direct that their Almond 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 by the offer of settlement made by TFL to relevant Growers by letter dated 8 February 2012.

A direction to pay form is available at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.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.

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 Almond 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 almondlots you held in the Almond Projects on 2 December 2009 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.

To receive your Almond 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.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.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.

9 **Litigation Funders' Claim**

To pursue the appeal of the Judgment, the Representative Growers entered into an agreement with MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd (**Litigation Funders**) to manage and fund the Almond Land Rights Appeal Proceeding (**Litigation Funding Agreement**).

Under the Litigation Funding Agreement, in return for assuming the cost and risk associated with the Almond Land Rights Appeal Proceeding, the Litigation Funders are entitled, if and to the extent approved by the Supreme Court or the Court of Appeal, to be reimbursed the costs they have paid to fund the Appeal plus 25% of the amount payable to Growers (**Litigation Funders' Fee**) if an amount is payable to Growers because the Appeal is won or settled.

The Litigation Funders have notified the Representative Growers that they intend to bring a claim for payment of the Litigation Funders' Fee. The Litigation Funders have indicated that the amount of the Litigation Funders' Fee is currently approximately \$1.68 million. Once the Litigation Funders' Claim is brought by the Litigation Funders, details of the claim and copies of all relevant documents will be posted at each of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

The Representative Growers will not oppose the Litigation Funders' Claim, however individual Growers or other interested parties may seek to make submissions in relation to it. It is not presently known if the Supreme Court or the Court of Appeal (as appropriate) will hear and determine the Litigation Funders' Claim at the time of considering the Approval Application or at a later time. If at a later time, the Court may well require the full amount of the Almond Settlement Amount, or that amount which corresponds with the amount of the Litigation Funders' Claim claimed by the Litigation Funders, to be held on trust by TSL pending that determination.

Should the Court approve any payment of the Litigation Funders' Claim to the Litigation Funders from the Almond Settlement Amount before any distribution to or on behalf of Growers (including in payment of any Grower's TFL Indebtedness or Timbercorp Indebtedness), the practical consequence is that this will reduce the amount available for Growers. The amount of the reduction will depend on whether the Court approves the full amount of the Litigation Funders' Claim claimed or only part of it and the priority afforded to any such approved amount.



By way of example only, if the Litigation Funders' Claim is \$1.68 million and the Court determines that the full amount of the Litigation Funders' Claim is payable from the Almond Settlement Amount before any distribution to or on behalf of Growers, the amount set aside for Growers will be reduced to \$134.33 per almondlot. If the Court determines that none of the Litigation Funders' Claim is payable from the Almond Settlement Amount before any distribution to or on behalf of Growers, the amount set aside for Growers will remain at \$186.57 per almondlot. The Court may determine that only part of the Litigation Funders' Claim is payable, which will mean that the amount set aside for Growers is reduced accordingly to an amount between \$134.33 and \$186.57 per almondlot.

10 **Timing of payments to Growers**

If the Approval Application is successful and the necessary Supreme Court approvals are obtained in relation to each of the Other Compromises, the Second Notice will notify you of (among other things) the anticipated timing of payments to Growers. The timing of a Grower's payment of their Almond Settlement Entitlement will depend, in part, on their individual circumstances. It may also depend on the outcome of the Litigation Funders' Claim.

If a Grower does not have any TFL Indebtedness, TSL will pay the Grower's Almond 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 approval of the Compromise by the Supreme Court, or the Court of Appeal, and the necessary approvals being obtained from the Supreme Court in respect of the Other Compromises.

If a Grower has any TFL Indebtedness and:

- (a) has directed TSL to pay its TFL Indebtedness, to the extent possible, out of its Almond Settlement Entitlement, TSL will, as soon as practicable, use the Grower's Almond Settlement Entitlement to pay, to the extent possible, the TFL Indebtedness as soon as practicable and remit the balance of the Grower's Almond 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 Almond 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 Almond 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 Almond Settlement Entitlement to TFL, TSL will hold that Grower's Almond 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 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' Almond 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 Almond Settlement Entitlement to pay its TFL Indebtedness, that Grower's Almond 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 Almond 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 Almond 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.

11 Tax consequences of the Compromise

The Compromise and payment of the Almond 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 Almond Settlement Entitlement and any choice you may make to give directions to pay your Almond Settlement Entitlement to TFL or TSL or both.

12 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 has established a telephone hotline facility and email facility so that Growers may address any comments or questions, or raise any objections, with the Representative Growers. TSL will provide the Representative Growers with details of the comments, questions and objections that are received through the telephone hotline or email facilities.

The Representative Growers have agreed a protocol with TSL as to the comments, questions or objections which TSL may answer or respond to without further reference to



Representative Growers and those which will be referred to the Representative Growers for the preparation of an appropriate response.

TSL will record in appropriate detail, in an affidavit to be filed with the Supreme Court or the Court of Appeal on behalf of the Representative Growers in connection with the Approval Application, the tasks it has undertaken at the request and on the instruction of the Representative Growers, the substance of all comments and questions raised to it by the Growers and their responses to those Growers, and the nature of any objections made to it by Growers and the responses provided by it to those Growers.

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

TSL has agreed to pay, from its own funds, the Representative Growers' costs relating to the Approval Application and certain other costs relating to the Almond Land Rights Appeal Proceeding. These costs will not be deducted from the Fund, the Almond Settlement Amount or individual Grower's Almond Settlement Entitlements.

13 Further information

The Representative Growers have prepared answers to what they believe will be frequently asked questions. These questions and answers are available online at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm

or can be obtained by calling the telephone hotline on (03) 8615 1200 or emailing investorqueries@timbercorp.com.au.

14 Key contacts

Telephone Hotline Facility

(03)8615 1200

Email address

investorqueries@timbercorp.com.au

Frequently Asked Questions
and Notices to Growers

Available online at any of:

www.clarendonlawyers.com.au

www.kordamentha.com/creditor-information/Australia/51

www.abl.com.au/timbercorp/compromises.htm