

**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)

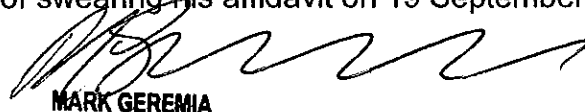
Respondents

EXHIBIT EG-7

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-7" 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-7"

Funding Agreement dated 22 October 2011

**Management and Funding
Agreement for the funding
of the Almonds Appeal
S APCI 2011 0103**

**Graham Goldenberg & Others
(Claimants)**

**MRB Equities Pty Ltd as
trustee for MRB Equities Trust
ACN 102 694 708 & Others
(Managers)**



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Management and Funding Agreement for the funding of the Almonds Appeal S APCI 2011 0103

Date 22 October 2011

Parties Graham Goldenberg, Christopher Littley, Constantine Moshopoulos and David Butterfield

of C/- Clarendon Lawyers, Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000 (Claimants)

MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust

of C/- MAB Corporation Pty Ltd, Level 5, 441 St Kilda Road, Melbourne, Victoria, 3004

Redvil Pty Ltd ACN: 115 017 162

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

Ferrari Investments Holdings Pty Ltd ACN: 133 024 549 as trustee for Ferrari Investments Holdings Trust

of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

(together, Managers)

Background

- (A) The Claimants have lodged an appeal with the Victorian Court of Appeal against the decision of Davies J in BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia & 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) v Australia & New Zealand Banking Group Limited (ACN 005 357 522) & Ors [SCI 2009 10699] (the Apportionment case) and the appeal proceedings are identified as S APCI 2011 0103.
- (B) The Claimants have requested the Managers to provide the management and funding for the Appeal.
- (C) The Managers are prepared to conduct the Project Management and pay the Project Costs pursuant to the terms of this Agreement.
- (D) The Managers propose to appoint the Lawyers to provide the Legal Work to the Claimants on the terms of the Standard Lawyers Terms.
- (E) The Claimants acknowledge that the Managers have, by virtue of their obligations and entitlements (including receiving a percentage of the Resolution Sum) set out in this Agreement, an interest in the Appeal.

1 Definitions and Interpretation

1.1 Definitions

Acquisition	The meaning given to this term in the GST Act.
Adverse Costs Order	Any costs order made in favour of the Respondents against the Claimants in the Appeal in respect of costs incurred during the term of this Agreement.
Almond Land Schemes	The Timbercorp Almond schemes the subject matter of the Apportionment case.
Appeal	The appeal referred to in Recital A.
Commencement Date	6 October 2011.
Consideration	The meaning given to this term in the GST Act.
Costs Order	An order made by a Court requiring one or more parties to the Appeal and/or the Managers to pay the costs incurred by another party or other parties to the Appeal.
Court	The Victorian Court of Appeal.
GST	The meaning given to this term in the GST Act.
GST Act	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Agreement	This agreement between the Claimants and the Managers and, if amended, this agreement as amended, and (for the avoidance of doubt) includes Schedules 1, 2 and 3.
Input Tax Credit	The meaning given to this expression by the GST Act.
Lawyers	Clarendon Lawyers Pty Ltd of Level 17, Rialto North Tower, 525 Collins Street, Melbourne or any firm of solicitors appointed in their place.
Legal Work	Advice and other legal services which the Lawyers consider reasonably necessary to prosecute the Appeal.
Privilege	Unless the context otherwise requires, means legal professional privilege and includes any joint interest privilege or common interest privilege.
Project	The Project Management and the conduct of the Appeal in order to achieve Resolution of the Appeal, with the aim of maximising settlement or judgment proceeds, net of Project Costs, in respect of the Appeal as quickly as possible, having due regard to all risks, and, in particular, the Appeal being unsuccessful.
Project Budget	The budget (inclusive of any GST payable) for the Project prepared by the Lawyers and accepted by the Managers and the Lawyers at the commencement of the Standard Lawyers Terms, which is to be in the form of Schedule 2 to this Agreement, and any amended or varied budget which may subsequently be prepared by the Lawyers and which is accepted by the Managers as replacing the previous budget.

Project Costs	<p>The costs and expenses, including any GST payable on any Supply made by any entity as a result of the cost or expense being incurred, comprising:</p> <ul style="list-style-type: none"> (a) the costs and expenses associated with the Project Management; (b) the costs involved in the provision by the Managers of any security for costs; (c) any Adverse Costs Order paid by the Managers; (d) the reasonable legal costs and disbursements of the Lawyers Incurred (including any costs incurred prior to the Commencement Date) for the sole purpose of prosecuting and resolving the Appeal; and (e) all of the Managers' out of pocket costs and expenses paid or incurred in relation to the Project (other than those already referred to in this definition).
Project Management	The management services described in sub-clause 3(a) of this Agreement.
Resolution	When all or any part of the Resolution Sum is received and where the Resolution Sum is received in parts, a "Resolution" occurs each time a part is received.
Resolution Sum	The amount or amounts of money, or the value of goods, services or benefits, for which the Appeal is Settled, or for which judgement is given, in favour of the Claimants, including any interest and costs.
Respondents	<i>BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia & 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) and Australia & New Zealand Banking Group Limited (ACN 005 357 522) in respect of whom the Appeal was commenced and in respect of whom the Managers accept Adverse Costs Order exposure.</i>
Settlement	Any compromise, discontinuance, waiver, payment, release or other form of settlement whatsoever where value passes from or on behalf of one or more Respondents to the Claimants in circumstances where the Appeal does not continue, as a result of or in connection with the passing of that value and "Settle", "Settles" and "Settled" have corresponding meanings.
Standard Lawyers Terms	Means the terms and conditions attached as Schedule 1 to this Agreement.
Supply	The meaning given to this term in the GST Act.
Taxable Supply	The meaning given to this term in the GST Act.
Termination	A termination in accordance with clauses 12 or 13 and also any completion, failure, avoidance, rescission, annulment or other cessation of effect of this Agreement.
Trust Account	The account referred to in sub-clause 5(a).

1.2 General

- (a) The written terms of this Agreement constitute the entire agreement between the parties.
- (b) Neither the Claimants nor the Managers intend to be partners or fiduciaries with or to each other. Nothing in this Agreement shall constitute the Claimants and the Managers as partners or fiduciaries.
- (c) There will be no variation or amendment to the terms of this Agreement or the Project Budget except in writing signed by each of the Claimants and the Managers.
- (d) A facsimile transmission of this Agreement signed by any party to it will be treated as an original signed by that party.
- (e) If any provision of this Agreement, or the application thereof to any person or circumstances, is or becomes invalid or unenforceable, the remaining provisions will not be affected and each provision shall remain valid and be enforceable to the full extent permitted by law.
- (f) The Claimants and the Managers will promptly execute all documents and do all things that either of them from time to time reasonably requires of the other to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.
- (g) The singular includes the plural in this Agreement and vice versa.
- (h) All references to clauses, sub-clauses and paragraphs are references to clauses, sub-clauses and paragraphs in this Agreement.

2 Condition

This Agreement is conditional upon the approval of the Supreme Court of Victoria.

3 Project Management

- (a) As from the Commencement Date The Managers will provide the following management services in respect of the Project during the term of this Agreement:
 - (i) advising the Claimants on strategy;
 - (ii) retention of service providers (including the Lawyers) for the Project other than barristers and expert witnesses, including, where necessary, personnel to assist in the Project Management;
 - (iii) creating and seeking compliance with the Project Budget;
 - (iv) considering the advice of the Lawyers and providing instructions to the Lawyers subject to clause 9;
 - (v) database and document management;
 - (vi) facilitating periodic meetings between Project participants and reporting to the Claimants in respect of progress;
 - (vii) facilitating non litigious means of resolving the Appeal; and
 - (viii) designing and implementing any process for the resolution of the Appeal other than through legal Appeal.
- (b) If and when requested to do so by the Lawyers, the Claimants will at the cost of the Claimants:
 - (i) provide to the Lawyers all documents and information in the possession, control or power of the Claimants relevant to the Appeal;
 - (ii) provide a written statement of evidence in relation to the Appeal; and
 - (iii) attend the Court to give evidence in relation to the Appeal.

4 Project Costs

- (a) The Managers will pay the Project Costs on the terms of this Agreement.
- (b) The Managers will not seek reimbursement from the Claimants of any internal overheads incurred as part of the Project Costs.
- (c) If the Respondents make any payment by way of costs during the course of the Appeal then such payment will be made into the Trust Account on trust for the Managers and may be utilised by the Managers in paying or reimbursing Project Costs. The Lawyers will make payment of such monies as directed by the Managers from time to time.
- (d) The Managers will pay any Adverse Costs Order. If there is any Resolution Sum or other monies in the Trust Account at the time of the Adverse Costs Order being made then those monies will first be employed to pay the Adverse Costs Order and the Managers will pay any balance outstanding after such payment. The Lawyers will pay out those monies from the Trust Account at the request of the Managers.
- (e) As soon as it is requested to do so by the Lawyers, the Managers will execute a Deed in the form set out in Schedule 3 and will deliver a copy of it to the Respondents and to the Court.
- (f) The Managers will not be required to provide any security for costs in the Appeal to meet the Respondents' costs.

5 Receipt of Resolution Sum

- (a) The Claimants and the Managers agree that the Lawyers will (and will be directed to) receive any Resolution Sum and are to immediately pay any Resolution Sum into a separate trust account kept for that purpose.
- (b) The Lawyers will hold that part of the Resolution Sum disposed of or otherwise due to the Managers under this Agreement on trust for the Managers and the balance on trust for the Claimants to be dispensed in accordance with the directions of the Claimants.
- (c) If, in spite of sub-clause 5(a), the Claimants directly or indirectly receive all or any part of the Resolution Sum, the Claimants will pay it over, together with the reasonable market value of any non-monetary component of the Resolution Sum received, to the Lawyers to be paid into the Trust Account and dealt with on the terms of this Agreement. If there is a dispute in relation to the appropriate amount of any non-monetary component, then the dispute shall be conclusively resolved in accordance with the opinion of the most senior counsel retained by the Lawyers in the Appeal or, if no counsel has been retained, the opinion of Lawyers.
- (d) The obligation in sub-clause 5(c) is a continuing obligation and survives any Termination of this Agreement save for a Termination pursuant to sub-clause 13(a).

6 Application of Resolution Sum

- (a) The Lawyers will forthwith pay out of the Trust Account all amounts referred to in sub-clause 8(a) upon cleared funds being available.
- (b) The obligation imposed by sub-clause 6(a) and sub-clause 8(a) is to be met prior to the payment from the Resolution Sum of any other expenses or obligations of the Claimants, including any other fees or costs.
- (c) If any part or all of the Resolution Sum is not money, the Claimants will, as soon as the part or all of it is received, pay to the Lawyers for deposit in the Trust Account an amount equal to the reasonable market value of the non-monetary component of the

Resolution Sum so received. If there is a dispute in relation to the appropriate amount of any non-monetary component, then the dispute shall be conclusively resolved in accordance with the opinion of the most senior counsel retained by the Lawyers in the Appeal or, if no counsel has been retained, the opinion of Lawyers.

7 Retrial

If there is a final judgment in the Appeal in favour of the Claimants which orders a retrial, then the Managers may elect to fund the legal costs and disbursements of the retrial. If the Managers so elect, the Claimants will cause the Lawyers to prosecute the retrial in the name of the Claimants. The Claimants and the Lawyers will take all reasonable steps to expeditiously prosecute the retrial. The Managers will pay any Adverse Costs Order if the retrial is funded by the Managers and is lost by the Claimants.

8 Project Costs and Commission

- (a) Upon Resolution, and before any other payments are made from the Resolution Sum, the Claimants will pay to the Managers from the Resolution Sum:
- (i) an amount equal to the total Project Costs (reduced by an amount equal to the sum of any Input Tax Credits received or receivable by the Managers on Acquisitions made in incurring the Project Costs, including pursuant to sub-clause 8(c));
 - (ii) an amount equal to an additional amount, on account of GST, being the amount obtained by multiplying the prevailing rate of GST (currently 10%) by an amount equal to the Consideration to be received by the Managers for any Taxable Supply made by the Managers under or in connection with this Agreement (apart from any Consideration to be provided pursuant to this paragraph 8(a)(ii));
 - (iii) an amount equal to the percentage of the Resolution Sum determined as follows:
 - (A) if the Appeal proceeds to judgment in the Appellants' favour, 35% of any judgment amount on the Appeal or \$5,000,000, whichever is the lesser; or
 - (B) If a Settlement is reached and approved by the Court:
 - (1) if the Court approves the Resolution Sum as a global amount in resolution of all Timbercorp horticultural schemes, or, for all Timbercorp Olive and Almond schemes, without allocating apportionments between discrete schemes, then 17½% of the Resolution Sum; or
 - (2) if the Court apportions the Resolution Sum between schemes and allocates a discrete portion to the Almond Land Schemes, then 35% of the amount apportioned to the schemes the subject of the Appeal.
- (b) The Claimants hereby dispose of and assign to the Managers, as Consideration for the financing of the Appeal, that part of the Resolution Sum equal to the total of the amounts referred to in paragraphs 8(a)(i) to 8(a)(ii), but where that total is greater than the amount of the balance of the Resolution Sum after the disposition and assignment referred to in this paragraph 8(b) (provided that disposition and assignment has not been terminated), then limited to that balance;
- (c) The Claimants will, at the Managers' request, pay to the Managers any Input Tax Credit to which the Claimants are entitled under the GST Act in respect of the incurrence of the Project Costs. Any such amount is payable at the earliest time the Claimants can claim the benefit of the Input Tax Credit from the Commissioner of Taxation. If upon Resolution, there is any Input Tax Credit not paid to the Managers, that is payable, or would be payable if the Managers had made a request, under this

sub-clause, then the Managers will be entitled to receive payment of the GST (paid by the Managers) to which that Input Tax Credit relates or would relate, under sub-clause 8(a);

- (d) Subject to sub-clause 8(c), no fees or commissions will become due or owing by the Claimants to the Managers unless and until Resolution and then will not exceed the Resolution Sum.

9 The Lawyers' Retainer and Settlement

- (a) The Managers will appoint the Lawyers to provide the Legal Work to the Claimants on the terms of the Standard Lawyers Terms.
- (b) The Claimants agree that if there is any inconsistency between the terms of any retainer agreement between the Claimants and the Lawyers and this Agreement or the Standard Lawyers Terms, the terms of this Agreement or the Standard Lawyers Terms, as applicable, will prevail.
- (c) The Managers will give day to day instructions concerning the Appeal, however the Claimants may override the instructions given by the Managers by the Claimants giving instructions to the Lawyers.
- (d) Except in relation to Settlement, which is dealt with below, if the Lawyers notify the Managers and the Claimants that the Lawyers believe that circumstances have arisen such that they may be in a position of conflict with respect to any obligations they owe to the Managers and those they owe to the Claimants, the Claimants and the Managers agree that, in order to resolve that conflict, the Lawyers may:
 - (i) seek instructions from the Claimants, which instructions will override those that may be given by the Managers;
 - (ii) give advice to the Claimants and take instructions from the Claimants, even though such advice and instructions are or may be contrary to the Managers' interests; and
 - (iii) refrain from giving the Managers advice and from acting on the Managers' instructions, where that advice or those instructions are or may be contrary to the Claimants' instructions.
- (e) Nothing in sub-clauses 9(c) or 9(d) entitles the Claimants to breach, or authorises the breach of, any terms of this Agreement.
- (f) In recognition of the fact that the Managers have an interest in the Resolution Sum, if the Claimants:
 - (i) want to Settle the Appeal for less than the Managers consider appropriate; or
 - (ii) do not want to Settle the Appeal when the Managers consider it appropriate for the Claimants to do so;then the Managers and the Claimants must seek to resolve their difference of opinion by referring it to counsel for advice on whether, in counsel's opinion, Settlement of the Appeal on the terms and in the circumstances identified by either the Managers or the Claimants or both, is reasonable in all of the circumstances.
- (g) In the first instance counsel will be the most senior counsel of those retained by the Lawyers. If no counsel has been retained then the Lawyers in consultation with the Claimants and the Managers will appoint senior counsel for that purpose. If the Managers and the Claimants are unable to agree on the selection of a senior counsel then the senior counsel will be one appointed by the President of the Victorian Bar Association for that purpose.
- (h) The opinion of counsel will be final and binding on both the Claimants and the Managers. Counsel may proceed as he or she sees fit to inform himself or herself before forming and delivering his or her opinion. If counsel's opinion is that the Settlement is reasonable then the parties agree that the Lawyers will be instructed to do all that is necessary to Settle the Appeal on that basis.

- (i) The Managers will pay the costs of counsel providing his or her opinion as part of the Project Costs.
- (j) The Managers and the Claimants agree that, should any conflict arise as between the interests of the Managers and the interests of the Claimants, then the Lawyers may continue to provide the Legal Work to the Claimants and the Managers will raise no objection to them doing so.

10 Confidentiality and Provision of Documents

- (a) In providing to the Managers any documents or information about the Appeal, the Claimants do not intend to waive any Privilege that may attach to such documents or information.
- (b) The Managers agree that information, communications and documentation provided to them or that is generated by the Managers in the course of the Project Management or that is provided to them by the Claimants, the Lawyers or any counsel instructed by the Lawyers, is provided, acquired or generated in circumstances where the Claimants are contemplating, participating in or conducting litigation against the Respondents, and the Managers and the Claimants acknowledge that all such information, communications and documentation are confidential within the meaning of equity and the communications are "confidential communications" and any documents are "confidential documents" within the meaning of Part 3.10 of the *Evidence Act 2008* (Vic) unless already in the public domain. The Managers agree to preserve that confidentiality unless disclosure is authorised, agreed to or contemplated by this Agreement, or is otherwise required by law.

11 Duration of Agreement

Subject to clauses 12 and 13, this Agreement commences on the Commencement Date and continues in operation until:

- (a) the Appeal has concluded; and
- (b) the Managers have complied with all of their obligations pursuant to this Agreement, and the Resolution Sum (if any) has been disbursed in accordance with this Agreement.

12 Termination by the Manager

- (a) If the Claimants commit a serious breach of this Agreement and do not remedy the breach within 30 days after receiving written notice from the Managers requiring them to do so, the Managers may terminate this Agreement forthwith by giving 7 days' written notice to the Claimants.
- (b) If the Managers terminate their obligations pursuant to sub-clause 12(a), then the disposition and assignment referred to in paragraph 8(b) will be terminated and the Managers will not be entitled to any amount pursuant to paragraph 8(a)(iii) but they will continue to be entitled to receive amounts pursuant to paragraphs 8(a)(i) and 8(a)(ii) from any Resolution Sum. The Claimants will notify the Managers upon receipt by the Claimants of all or any part of the Resolution Sum. The obligations in this clause survive any Termination of this Agreement.
- (c) All obligations of the Managers under this Agreement cease on the date the Managers' termination becomes effective, save for obligations accrued to that date.
- (d) The accrued obligations of the Managers referred to in sub-clauses 12(a) and 12(c) comprise:
 - (i) payment of any outstanding Project Costs pursuant to sub-clause 4(a) incurred up to the date the notice of termination becomes effective; and
 - (ii) payment of any quantified Adverse Costs Order (which, for the avoidance of doubt, relates only to costs which arise in, or are attributed to, the period

beginning on the Commencement Date and ending on the date the notice of termination becomes effective).

13 Termination by the Claimants

- (a) If the Managers commit a serious breach of this Agreement and do not remedy the breach within 30 days after receiving written notice from the Claimants requiring them to do so, the Claimants may terminate this Agreement forthwith by giving 7 days' written notice to the Managers.
- (b) If this Agreement is terminated by the Claimants pursuant to sub-clause 13(a), then:
 - (i) the Managers remain liable for the obligations referred to in sub-clause 12(d); and
 - (ii) the dispositions and assignments referred to in sub-clause 8(b) will be terminated and the Claimants will not be required to make any payment to the Managers under sub-clause 8.

14 Miscellaneous

- (a) The Claimants and the Managers will, save as otherwise expressly provided in this Agreement, not do or permit to be done anything likely to deprive any party of the benefit for which the party entered this Agreement.
- (b) Each Claimant will use his, her or its best endeavours to cause any Resolution Sum to be received or recovered as quickly as possible and particularly after any Settlement or judgment in respect of the Appeal.
- (c) If this Agreement or any part thereof is annulled, avoided or held unenforceable, the Claimants will forthwith do all things necessary, including without limitation executing any further or other agreement or Instrument, to ensure that the Managers receive any remuneration, entitlement or other benefit to which this Agreement refers or which is contemplated by this Agreement. The Claimants irrevocably agree that production of a copy of this Agreement shall be conclusive evidence of the Claimants' obligation as set out in this clause.
- (d) The Claimants will not seek any order from any court that may detrimentally affect the Managers' rights under this Agreement other than with the consent of the Managers or as arises out of any breach by the Managers of this Agreement.
- (e) If the Claimants act in breach of this Agreement, clauses 6 and 8 will continue to apply to any payment received by the Claimants in respect of the Appeal.
- (f) The Claimants and the Managers will keep the contents of this Agreement confidential in so far as it concerns the terms of the relationship between the Claimants and the Manager, except where disclosure to the Australian Securities Exchange or to a Court is required or disclosure is, in the Manager's absolute discretion, made by the Managers to the Respondents or the Respondents' agent or agents.

15 Governing Law

This Agreement is entered into in Victoria and is to be construed in accordance with and governed by the laws of Victoria and the parties submit to the jurisdiction of the courts of that State.

16 Notices

- (a) All notices given under this Agreement shall be in writing and may be served personally, by post, facsimile or by email.
- (b) The address for service of each of the Managers is as follows:

MRB Equities Pty Ltd

MAB Corporation Pty Ltd
Level 5,
441 St Kilda Road
Melbourne, Victoria 3004

Redvill Pty Ltd

EGA Corporate Advisers Pty Ltd
Level 18,
499 St Kilda Road
Melbourne, Victoria 3004

Ferrari Investments Holdings Pty Ltd

EGA Corporate Advisers Pty Ltd
Level 18,
499 St Kilda Road
Melbourne, Victoria 3004

- (c) The address for service of the Claimants is:
Clarendon Lawyers

Level 17, Rialto North Tower
525 Collins Street
Melbourne, Victoria 3000

- (d) Notices shall be deemed to be received on the day after they are posted and the day they are transmitted by facsimile or email.

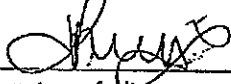
17 Acknowledgement

By executing this Agreement the Claimants acknowledge that the Managers recommended to the Claimants that the Claimants first obtain legal advice as to its meaning and effect.

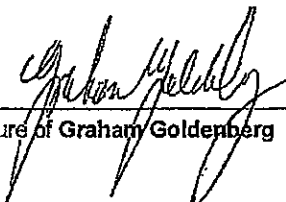
Signing page

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the presence of:


Signature of witness

Tania Phillips
Name of witness (please print)


Signature of Graham Goldenberg

SIGNED by CHRIS MARK LITTLE in the presence of:

Signature of witness

Signature of Chris Littley

Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of:

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of:

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the presence of :

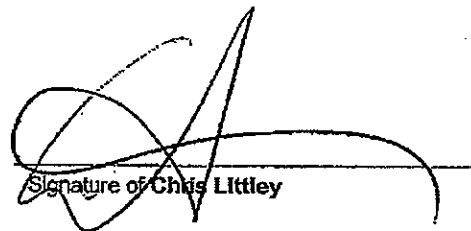
Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

SIGNED by CHRIS MARK LITTLE in the presence of :


Signature of witness


Signature of Chris Little

Marija Lakowska
Name of witness (please print)

SIGNED by CONSTANTINE MOSHOPOULOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the presence of :

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Signing page

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the
presence of :

Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

SIGNED by CHRIS MARK LITTLE in the
presence of :

Signature of witness

Signature of Chris Little

Name of witness (please print)

SIGNED by CONSTANTINE
MOSHOPOLLOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the
presence of :

Signature of witness

Signature of David Butterfield

Name of witness (please print)

Signing page

Executed as an Agreement

SIGNED by GRAHAM GOLDENBERG in the
presence of :

Signature of witness

Signature of Graham Goldenberg

Name of witness (please print)

SIGNED by CHRIS MARK LITTLE in the
presence of :

Signature of witness

Signature of Chris Littley

Name of witness (please print)

SIGNED by CONSTANTINE
MOSHOPOULOS in the presence of :

Signature of witness

Signature of Constantine Moshopoulos

Name of witness (please print)

SIGNED by DAVID BUTTERFIELD in the
presence of :

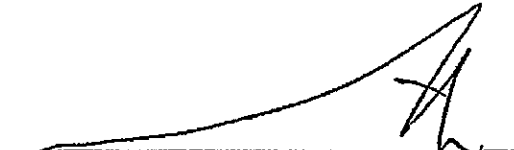
Signature of witness

Signature of David Butterfield

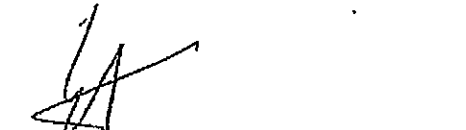
MICHAEL FERNOW

Name of witness (please print)

EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the *Corporations Act 2001* by being signed by Michael Raymond Buxton, who states that he is the sole director:


Signature of Michael Raymond Buxton

EXECUTED by REDVIL PTY LTD in accordance with the *Corporations Act 2001* by being signed by Eli Goldfinger, who states that he is the sole director:


Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the *Corporations Act 2001* by being signed by Peter Ferrari who states that he is the sole director:


Signature of Peter Ferrari

Schedule 1 – Standard Lawyers Terms

This agreement is made the 22nd day of October 2011.

BETWEEN: Clarendon Lawyers Pty Ltd ACN 126 880 411 (Lawyers).
of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, Victoria, 3000

AND: MRB Equities Pty Ltd ACN 102 694 708 as trustee for MRB Equities Trust
of Level 5 441 St Kilda Road, Melbourne, Victoria, 3004

Redvile Pty Ltd ACN: 115 017 162
of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

Ferrari Investments Holdings Pty Ltd ACN: 133 024 549 as trustee for Ferrari Investments Holdings Trust
of C/- EGA Corporate Advisers Pty Ltd, Level 18, 499 St Kilda Rd, Melbourne, Victoria, 3004

(together, Managers)

RECITALS

- A. The Managers have entered into or propose to enter into the Management & Funding Agreement.
- B. The Lawyers are aware of the contents of the Management & Funding Agreement and have agreed to act consistently with, and in accordance with, the terms of the Management & Funding Agreement.
- C. The Management & Funding Agreement provides that the Managers will appoint the Lawyers to provide the Legal Work and the Managers propose to do so on these Terms.
- D. These Terms set out the basis on which the Lawyers are appointed by the Managers to provide the Legal Work to the Claimants.

1 Definitions

In these Terms, unless the contrary intention appears:

- (a) **Management & Funding Agreement** means the agreement between the Managers and Claimants with respect to the management and funding of the Appeal;
- (b) **Term** means a clause, sub-clause or paragraph in this Agreement;
- (c) **Agreement** means this agreement; and
- (d) the definitions of words used in the Management & Funding Agreement will apply to define the meaning of those words as used in these Terms.

2 Appointment of the Lawyers

- (a) The Managers hereby appoint the Lawyers to provide the Legal Work to the Claimants pursuant to these Terms.
- (b) The Lawyers will:
 - (i) act consistently with the terms of the Management & Funding Agreement; and
 - (ii) do all things which the Management & Funding Agreement contemplates the Lawyers will do.
- (c) The Lawyers agree that if there is any inconsistency between these Terms and the terms of any retainer between the Lawyers and the Claimants, these Terms prevail.

3 Commencement of the Project

The Lawyers will inform the Managers in writing of:

- (a) the names of the Lawyers who it is proposed will provide the Legal Work;
- (b) the hourly rates of those Lawyers (inclusive of GST), for the purposes of Term 5(a);
- (c) the hourly and daily rates of barristers retained or proposed to be retained by the Lawyers (inclusive of GST); and
- (d) the Lawyers' estimate of fees and disbursements to prosecute the Appeal (separately identifying the estimated fees of the Lawyers, the barristers and the experts if any, by reference to each event in the Project Budget).

4 Reporting

- (a) The Lawyers will keep the Managers fully informed of all matters concerning the Appeal, including any mediation and Settlement discussions. The Lawyers will ensure that the Managers are given all necessary information and advice in order to facilitate informed instructions and to enable the Managers to provide the Project Management.
- (b) Without limiting Term 4(a), if, after the date of the Management & Funding Agreement, the Lawyers become aware of any information which has or may have a material impact on the Appeal or the potential for any judgement sum to be recovered, the Lawyers will immediately inform the Managers of that information.

5 Costs and Disbursements

- (a) The Lawyers will charge for the Legal Work provided by reference to the time reasonably and properly spent at the hourly rates as notified to the Managers pursuant to Term 3(a), subject to the Lawyers' right to increase the hourly rates by no more than five percent of the initial hourly rates on each anniversary of the date on which these Terms are made. Detailed time records must be kept to facilitate time details being provided in accordance with Term 6 of these Terms.
- (b) The Lawyers will only seek reimbursement from the Managers for expenditure reasonably incurred by the Lawyers in progressing the Appeal and supported by invoices.

6 Invoices

- (a) The Lawyers will render monthly invoices to the Managers with a copy to the Claimants by the 20th day of each month, accompanied by:
 - (i) a summary of the tasks performed in respect of which time was incurred; and
 - (ii) invoices from barristers and experts and for any other disbursements costing at least \$500.

- (b) The monetary details in the monthly invoices will include a charge for the time detailed at the hourly rates notified to the Managers pursuant to Term 3(b) including any GST.
- (c) The Managers will pay:
 - (i) the reasonable legal costs of the Lawyers incurred during the duration of the Management & Funding Agreement for the sole purpose of prosecuting the Appeal; and
 - (ii) the reasonable disbursements incurred during the term of the Management & Funding Agreement for the sole purpose of prosecuting the Appeal;
 - (iii) in so far as those costs and disbursements form part of the Project Costs.
- (d) Provided invoices from the Lawyers comply with these Terms, the Managers will pay them within 30 days from the month in which the Lawyers' invoice is received by the Managers.

7 Priorities, Lien and Insurance

- (a) The Lawyers agree not to seek payment of any amounts outstanding to them in excess of that for which the Managers are liable under these Terms.
- (b) The Lawyers are not entitled to claim a lien in respect of documents in their possession relevant to the Appeal if there are no fees payable pursuant to Term 6(c).
- (c) The Lawyers will maintain professional indemnity insurance in an amount of at least \$10 million for the duration of these Terms plus three years.
- (d) The Lawyers will provide evidence of the insurance to the Managers on the Managers' request from time to time.

8 Termination of Appointment

- (a) The Lawyers may terminate their appointment by the Managers to provide the Legal Work to the Claimants on 7 days' written notice to the Managers and to the Claimants, in the following circumstances:
 - (i) if the Managers fails to pay any costs in accordance with the terms of the Management & Funding Agreement or these Terms after the Managers have been given 30 days' written notice to do so; or
 - (ii) if the Management & Funding Agreement is terminated.

9 Address For Service

- (a) The Managers' addresses for service are as set out in the Management & Funding Agreement.
- (b) The Lawyers' address for service is the address identified above (in identifying the parties to these Terms) or as otherwise notified to the Managers in writing if that address changes.

10 Variation

These Terms may only be varied in writing signed by the Lawyers and the Managers.

Executed as an Agreement


EXECUTED by CLARENDON LAWYERS
PTY LTD in accordance with the
Corporations Act 2001 by being signed by
the following officers:


Signature of Michael Joseph Fernon


Signature of Mark Albert Bland

EXECUTED by MRB EQUITIES PTY LTD
as trustee for MRB EQUITIES TRUST in
accordance with the *Corporations Act 2001*
by being signed by Michael Raymond
Buxton, who states that he is the sole
director:


Signature of Michael Buxton


EXECUTED by REDVILE PTY LTD in
accordance with the *Corporations Act 2001* by
being signed by Eli Goldfinger, who states
that he is the sole director:


Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT
HOLDINGS PTY LTD as trustee for
FERRARI INVESTMENTS HOLDINGS
TRUST in accordance with the *Corporations
Act 2001* by being signed by Peter Ferrari
who states that he is the sole director:


Signature of Peter Ferrari

Schedule 2 – Rates and Contact Details

Rates and Contact Details – Lawyers/Barristers

[Insert investment name]

Name of Lawyer	Title	Email Address	Telephone No.	Hourly Rate (incl GST)
Michael Fernon	Director	Michael.fernon@clarendonlawyers.com.au	+61 3 8681 4419	\$577.50
Catherine Curtain	Solicitor	Catherine.curtain@clarendonlawyers.com.au	+61 3 8681 4442	\$357.50
Yu-chiao Hsueh	Solicitor	Yu-chiao.hsueh@clarendonlawyers.com.au	+61 3 8681 4438	\$357.50

Name of Barrister	Title	Email Address	Telephone No.	Hourly Rate (incl GST)	Daily Rate (incl GST)
Garry Bigmore	Queens Counsel	garry.bigmore@vlcbar.com.au	+61 3 9225 7201	\$847.00	\$8,470.00
Sam Hopper	Junior Barrister	samuel.hopper@vicbar.com.au	+61 3 9225 6857	\$412.50	\$3,300.00

PROJECT BUDGET

Event	Solicitor's fees (incl GST) \$	Jnr Barrister's fees (incl GST) \$	Snr Barrister's fees (incl GST) \$	Disbursements (court fees; printing) \$	TOTAL (incl GST) \$
Draft appeal and filing	3,300	3,300	5,500	2,700	14,800
Appeal book	11,000	3,300	4,235	10,000	28,535
Submissions	2,200	8,900	16,940	0	28,040
Preparation for hearing	4,400	3,300	8,470	0	16,170
Hearing	4,400	3,300	8,470	0	16,170
Interlocutory Applications	2,200	3,300	0	0	5,500
Miscellaneous	5,500	6,600	5,500	1,500	19,100
TOTALS	33,000	33,000	49,115	14,200	129,315

Schedule 3 – Deed

PARTY NAMES

	MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST
ACN	102 694 708
ADDRESS	Level 5, 441 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 8681 2215
ATTENTION	Tiffany Shepherd
E-MAIL	tshepherd@mabcorp.com.au
	REDVILE PTY LTD
ACN	115 017 162
ADDRESS	Level 18, 499 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 9866 6200
ATTENTION	Eli Goldfinger
E-MAIL	eli@ega.com.au
	FERRARI INVESTMENTS HOLDINGS PTY LTD as trustee for FERRAR INVESTMENTS HOLDINGS TRUST
ACN	133 024 549
ADDRESS	Level 18, 499 St Kilda Road, Melbourne VIC 3004
TELEPHONE	03 9866 6200
ATTENTION	Eli Goldfinger
E-MAIL	eli@ega.com.au

(together, Managers)

DEFINITIONS

ADVERSE COST ORDER	Means any costs order made in favour of the Respondents against the Applicants in the Proceedings in respect of costs incurred during the term of the LFA.
APPLICANTS	Graham Goldenberg, Christopher Littley, Constantine Moshopoulos and David Butterfield
COURT	The Supreme Court of Victoria Court of Appeal
LFA	The litigation funding agreement which commenced on 6 October 2011 between the Managers and the Applicants.
PROCEEDINGS	S APCI 2011 0103
RESPONDENTS	BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia & New Zealand Banking Group Limited (ACN 005 357 522), BOS International (Australia) Limited (ACN 066 601 250), and Westpac Banking Corporation (ACN 007 457 141) and Australia & New Zealand Banking Group Limited (ACN 005 357 522)
GOVERNING LAW	The law of Victoria.

13.4.0

BY THIS DEED, the Managers, for the benefit of the Court and the Respondents:

- (a) submit to the jurisdiction of the Court in relation to any order the Court may wish to make directly against the Managers in the Proceedings that the Managers pay any Adverse Costs Order;
- (b) agree not to oppose any joinder application made by the Respondents in the Proceedings for the purpose of seeking an order that the Managers pay any Adverse Cost Order, and agree, in circumstances where the rules of the Court prevent that joinder, at the Respondents' request, to itself apply to be joined to the Proceedings, to enable such an order to be made against it;
- (c) agree to pay to the Respondents the final, quantified amount of any Adverse Cost Order such that the Respondents may enforce the payment of that amount as a debt due and owing by the Managers to the Respondents;
- (d) agree to notify the Respondents in writing of any termination of the LFA within 7 days of it so terminating; and
- (e) acknowledge having received valuable consideration for this Deed.

DATED this 22nd day of October 2011.

Executed as a Deed


EXECUTED by MRB EQUITIES PTY LTD as trustee for MRB EQUITIES TRUST in accordance with the *Corporations Act 2001* by being signed by Michael Raymond Buxton, who states that he is the sole director:


Signature of Michael Raymond Buxton

EXECUTED by REDVIL PTY LTD in accordance with the *Corporations Act 2001* by being signed by Eli Goldfinger, who states that he is the sole director:


Signature of Eli Goldfinger

EXECUTED by FERRARI INVESTMENT HOLDINGS PTY LTD as trustee for FERRARI INVESTMENTS HOLDINGS TRUST in accordance with the *Corporations Act 2001* by being signed by Peter Ferrari who states that he is the sole director:


Signature of Peter Ferrari