

9 June 2009

Re: Update for all MIS investors represented by Macpherson + Kelley

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In the financial collapse of “Responsible Entities” which controlled large agricultural and forestry projects there has been enormous collateral damage. The usual urgency to “stop the bleeding” associated with any large-scale insolvency administration has seen very rapid movement by all key players on several fronts.

The quick stream of news of some of those moves and the constant release of further key information into the public arena or semi-private Grower Committees has meant we haven’t (as yet) been able to keep every single investor and every single planner or accountant as fully informed of developments as we would have liked. Fresh developments have meant that the intended update would already have been out of date by the time it was distributed.

This brief update will give you a summary of what Macpherson + Kelley is doing to help all of its MIS investor clients who have retained the firm or are in the process of retaining the firm in either the Timbercorp collapse or the Great Southern collapse.

### Timbercorp

1. Macpherson + Kelley is sending batches of letters of demand every Wednesday and Friday by courier to KordaMentha on behalf of investors. Each investor will receive a copy of those letters.
2. Those letters will continue being sent in batches until KordaMentha receives individual letters on behalf of each and every one of our clients (expected soon to pass the 1000 mark).
3. The letters explain that KordaMentha has no legitimate basis for reporting any “default” to credit reference agencies and they’ll be held personally accountable if loss is suffered as a result of any report being made.
4. Those letters will allow investors to ignore any formal demand notices received from KordaMentha.

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5. If people receive telephone calls from Timbercorp staff demanding payment, threatening to sue or threatening to report a default to credit reference agencies we suggest you simply tell the caller you are being represented by a lawyer who is writing to KordaMentha on your behalf about the matter. Then end the conversation and finalise your engaging Macpherson + Kelley to act for you if you have not already done so.
6. We maintain that legal grounds exist which justify investors:
  - (a) not making further loan repayments to Timbercorp Finance Pty Ltd, especially for loans obtained in 2008 (and perhaps earlier);
  - (b) claiming a refund of money from Timbercorp (or its insurers) for payments made in 2008 and 2009 (and perhaps earlier), irrespective of whether it was the investors' own money or borrowed money or both which was used to make those payments to Timbercorp.
7. Macpherson + Kelley believes it would be wrong for the Administrators to separately sue investors in different Courts throughout Australia for payment of arrears for any of the MIS projects.
8. The sensible course would be to conduct a large-scale mediation to resolve all claims of MIS investors without the need for any Court proceedings.
9. If all claims were not resolved through mediation it would then be appropriate for remaining issues to be dealt with together in a superior Court (such as the Federal Court) so that a single ruling can be made which authoritatively determines the outcome for all affected MIS investors across the country.
10. Macpherson + Kelley has been kept in the loop with other lawyers and Grower representatives who are looking for ways to keep various MIS projects going, probably through the replacement of Timbercorp as the "Responsible Entity" if that can be achieved. This issue is now before the Supreme Court of Victoria in a proceeding filed last Thursday 4 June 2009 by KordaMentha. The matter was adjourned for a further procedural hearing on Wednesday 10 June 2009 and is likely to be again adjourned for a short time to allow growers' representatives to advance argument in opposition to the Administrators' move to have fourteen different Olives and Almonds projects wound up because they are said to be "hopelessly insolvent". The future of other projects will undoubtedly also be considered by the Court and we expect in each case that grower-investors will have an opportunity to be heard.
11. Macpherson + Kelley supports the push which many other people have also been making to press ASIC to step in and lend its weight to the cause of MIS investors as they stand up to the Administrators and the banks who hold security over the Timbercorp assets. To that end, we have prepared a lengthy written submission which is almost ready to send to the head of

ASIC, Tony D'Aloisio. As this also affects Great Southern investors we provide a copy of some extracts from that submission at the end of this update.

**Macpherson + Kelley key contact people for the various Timbercorp matters**

12. Several individual aspects of the Timbercorp case are so affected by special unique issues, both legal and practical, that we have set up special task force teams led by our senior lawyers to consider and advise on those issues. The contact details for those unique issue team leaders are as follows:

▪ Mature tree plantations nearing harvest

Team leader: **Claudia Baskett**, Insolvency Principal  
claudia.baskett@mk.com.au  
(03) 9794 2657  
0418 179 535

**Libby Goad**, primary supporting lawyer  
libby.goad@mk.com.au  
(03) 9794 2629

▪ 2008 (unplanted) tree project and tax deductibility where PDS conditions not satisfied

Team leaders: **Anna McRae-Anderson**, Litigation Principal  
anna.mcrae-anderson@mk.com.au  
(03) 9794 2649  
0419 754 874

**Rob Warnock**, Taxation Principal  
rob.warnock@mk.com.au  
(03) 9794 2558  
0419 892 115

▪ Property rights or interests held in projects by MIS investors

Team leader: **Anna McRae-Anderson**, Litigation Principal  
anna.mcrae-anderson@mk.com.au  
(03) 9794 2649  
0419 754 874

**Stuart Walter**, primary supporting lawyer  
stuart.walter@mk.com.au  
(03) 9794 2513

13. All horticultural projects are being covered across Macpherson + Kelley's team of fourteen litigation lawyers, supervised by the Principal in charge of the litigation team **Ron Willemsen**, Accredited Commercial Litigation Specialist.
14. It continues to be the case that all enquiries and new file openings should be directed through our **chief coordinator of Timbercorp matters**, being Ron's personal assistant **Katrina Slifka**. Katrina's contact details are as follows:

katrina.slifka@mk.com.au  
(03) 9794 2620

### Great Southern

1. Macpherson + Kelley is well advanced in having read a large portion of the core group of key documents that:
  - (a) determine the fundamental rights and obligations of investors in various MIS projects sold by Great Southern;
  - (b) affect whether or not loan contracts held by either Great Southern Finance Pty Ltd or Bendigo and Adelaide Bank are enforceable against the borrowers or not.
2. Macpherson + Kelley is also well advanced in assessing other evidence (besides the core group of key documents) which we believe is likely to enable our Great Southern investor clients to press arguments similar to those pressed by our Timbercorp investor clients. The basic structure of our proposed letters of demand to Ferrier Hodgson as Administrators and to Bendigo and Adelaide Bank is in place but we need a little more time to put our finishing touches to those letters.
3. When we are happy that the letters set out as comprehensively and definitively as possible what we say are the essential legal grounds which permit investors to cease making any further payments to Great Southern in respect of contracts or commitments entered into in 2008 (and perhaps earlier) we will send the letters out to the Administrators and the bank in batches twice a week until Ferrier Hodgson and the bank has received individual letters on behalf of each and every one of our clients. Like the case in Timbercorp, we expect soon to have in excess of 1000 investor clients who joined projects operated by Great Southern.
4. We expect that our letters will suffice to "answer" any formal demand notices that might be sent by Ferrier Hodgson to investors in Great Southern projects.

5. If investors receive telephone calls from Great Southern demanding payment, threatening to sue or threatening to report a default to credit reference agencies, we suggest you simply tell the caller you are being represented by a lawyer who will be writing to Ferrier Hodgson on your behalf about the matter. Then end the conversation and finalise your engaging Macpherson + Kelley to act for you if you have not already done so.
6. Macpherson + Kelley supports the push which other people will also be making to press ASIC to step in and lend its weight to the cause of MIS investors as they stand up to the Administrators and the banks who hold security over the Great Southern assets.
7. We will shortly be setting up special task force teams led by our senior lawyers to consider and advise on various aspects of the Great Southern case which present special or unique issues of a legal or practical nature. We will notify you of the names and contact details of the team leaders addressing those unique issues.
8. Meanwhile, all enquiries and new file openings should be directed through our **chief coordinator of Great Southern matters, Tonya McDougal**. Tonya's contact details are as follows:

tonya.mcdougal@mk.com.au  
(03) 9794 2690

**Extracts from written submission being made by Macpherson + Kelley to ASIC on behalf of investors in Timbercorp and/or Great Southern MIS projects**

We have been working on a written submission that will very soon be sent to ASIC to encourage the regulator to step in and use its powers under legislation to prevent the rights of grower-investors being squashed. Extracts from our submission are set out below for your information and encouragement:

***"Call for action on behalf of growers***

*On behalf of all of our clients who are Timbercorp and Great Southern growers we strongly urge you to further investigate instances of wrongdoing or non-compliance with the law and take regulatory action as appropriate.*

*We would appreciate your keeping us informed of key developments on that front.*

***Wider scale ramifications***

*You will appreciate that with some 18,000 Timbercorp growers invested in MIS's the impact of ASIC's action (and the need for such action) extends even well beyond our own client base of growers. The growers who do not have legal representation are*

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*also entitled to see the laws of this country upheld and enforced. Inaction by ASIC would in our view be completely unacceptable.*

*This is all the more so when, as has happened, right on top of the collapse of Timbercorp has come the collapse of Great Southern. That has left a further 43,000 MIS growers harmed by the failure of that group's responsible entity Great Southern Managers Australia Limited. We anticipate you will in due course receive a further letter from our firm similar to this letter which conveys a similar call on ASIC for action on behalf of all of our 1,000 or more soon-to-be clients who are Great Southern growers.*

***Re-visiting the case of Palandri so history does not repeat***

*Finally, perhaps it is not too late for ASIC to take another careful look at the Palandri collapse and determine whether it might yet take action against the responsible entity Palandri Investment Management Limited (now called PIML - ACN 091 709 769 Ltd). We cannot fathom how it can have been in the growers' best interests there for the administrators to have quickly sold the valuable assets of the failed business to a newly formed company apparently controlled by two directors of the failed responsible entity and a Chinese investor, leaving nothing of value whatsoever for the growers in the various MIS's established and operated by Palandri.*

*All of the upside in the projects effectively set up by the growers and their money was skimmed by the buyers of the business who stitched up a sickeningly quick and smelly deal with the administrators.*

*Surely, it beggars belief that the marketing and operation of Palandri's MIS's was carried out in compliance with the law. To pick but one example, in one of the reports we have seen, prepared by the administrators of the various companies in the Palandri Group, it is noted that the same allotments in vineyards were sold twice, first to growers in one year's MIS and then a second time to different growers in the next year's MIS project.*

*Surely this example must excite ASIC into taking action?*

*A copy of the relevant administrators' report dated 26 September 2008 is enclosed for your reference. See especially the passage as follows:*

*"A significant portion of lots that were allocated to investors in the WGP Scheme [Palandri Wine Group project] were existing lots that had been allocated to investors in the PAWB [Palandri America Wine Business]".*

*Also, in the same report reference was made to the Palandri Group "generating cash flow operating losses before interest service of approximately \$500,000 per month". Further, the Group "had not prepared management accounts for each entity since 30 June 2007".*

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***Active intervention from ASIC is urgently sought by growers in MIS projects***

*Quite apart from the justice the Palandri growers yearn for in that situation, as a separate matter the Timbercorp growers and now the Great Southern growers too would also like to see justice done in their current situation.*

*ASIC has the power and the resources to dedicate to this very important and broad-ranging cause and we would like to see ASIC's full weight behind the growers' cause. Meanwhile, the growers are taking whatever small steps they themselves can take to pursue all rights and remedies as are available to them.*

*Without active intervention from ASIC we and all our client growers fear, as happened in the Palandri case, that all of the upside in the Timbercorp (and Great Southern) projects which were set up by the growers and their money will be skimmed by the banks who hold security over the assets of the failed companies and/or by anyone who might buy the relevant assets.*

*We do not want to see the growers' valuable interests inherent in the subject assets being confiscated by the companies' secured creditors and any buyer of such assets."*


Yours faithfully



**Macpherson + Kelley**

RON WILLEMSSEN

Principal

Accredited Commercial Litigation Specialist 

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