



26 June 2009

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## Update for Investors in Timbercorp and Great Southern MIS Projects

We provide this update as a service to our clients. It will cover frequently asked questions and give further insights and reassurance to each of our clients.

Part A covers Timbercorp and Part B covers Great Southern.

### **A. Timbercorp**

#### Loans from Timbercorp Finance Pty Ltd

- Our interpretation of a discussion we recently had with one of KordaMentha's representatives is that they want to be sure that if people are going to be sued for loan arrears it will be people who are not clients of M+K
- M+K continues delivering large batches of letters twice a week to KordaMentha and their lawyers Mills Oakley so they can quickly know the identity of who falls within the group of investor/borrowers represented by M+K
- In a roundabout fashion, somewhat apologetically, Mills Oakley have said to us it was not meant to happen that some of the clients represented by M+K had received demand notices recently. They will do their best to ensure it does not happen again.

#### Possibility of resolving loan cases out-of-court

- The more investors we have being represented by M+K the more likely it will be that ultimate resolution of the cases can happen in an out-of-court setting
- The announcement 2 days ago in connection with Storm Financial and the position now taken by the Commonwealth Bank gives us some encouragement. Each Storm client will have an individual review of their case, as between their legal representative and the Bank's representative. The Bank has admitted errors in its lending practices, according to articles in the press
- M+K is yet to receive from KordaMentha a response to the claims made on behalf of investors/borrowers against Timbercorp Finance Pty Ltd. We do not yet know whether Timbercorp Finance Pty Ltd will admit any liability in respect of the way it went about dealing with investors

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- Also, the question of how far back in time we can go to challenge the validity of loans obtained before October 2008 will depend on evidence we need to procure via KordaMentha
  - KordaMentha is yet to provide to us the specific information we have asked them to provide. Undoubtedly they have had more pressing matters to deal with and we expect to receive some information from them in due course.

#### 1,000 M+K clients are at first base

- So far we have taken approximately 1,000 clients to the point we have called first base, where letters have been sent to KordaMentha as administrators of Timbercorp Securities Limited and Timbercorp Finance Pty Ltd, setting out legal grounds supporting the case of investors
- There is still time available for other investors to retain M+K so they can benefit from the stronger bargaining power everyone will have through being on first base together
- If you need information on how to join up with M+K you should call Katrina Slifka on (03) 9794 2620 or email: [katrina.slifka@mk.com.au](mailto:katrina.slifka@mk.com.au)

#### Investors who are not borrowers from Timbercorp Finance Pty Ltd

- Already, some of these people are among the M+K clients at first base
- For them we have written to KordaMentha asking for the money lost over the past year or more to be refunded
- KordaMentha has been requested to notify insurers for Timbercorp Securities Limited of our clients' claims and let M+K know when they have done that
- We are yet to hear from KordaMentha in that regard
- It may be that Court action is needed to press these claims. If so, we will be in touch with our clients to present various options on how such action could be funded.

#### Investors in Timbercorp's 2008 Timber Project

- Many investors in that project, where trees have not even been planted, have instructed M+K to now submit a separate, additional claim on their behalf. The new claim is against the directors of Timbercorp Securities Limited personally
- These investors want the extra comfort of knowing if there is any problem with the insurance cover held by Timbercorp Securities Limited they would at least have the opportunity to have claims met by insurers who have provided separate Directors and Officers liability cover to Messrs Sol Rabinowicz, Robert Hance, Gary Liddell and John Vaughan
- There is still time available for other investors to have M+K write such separate, additional letters to those directors so that a claim might be pursued at that next level for people invested in the 2008 Timber Project

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- If you would like further information on how to be counted in with the group which will be pursuing that next level claim please call Katrina Slifka on (03) 9794 2620 or email: [katrina.slifka@mk.com.au](mailto:katrina.slifka@mk.com.au)

#### Efforts to replace the Responsible Entity on viable projects

- We continue to support the initiative taken by Melbourne-based grower representatives on the committee of creditors
- A superlative outcome has just been achieved for investors in several mango and avocado projects, with a replacement Responsible Entity to take over the conduct of the projects from Timbercorp Securities Limited. That outcome could not have been achieved without the enormous effort of a team led by Chris Garnaut and the legal team at Clarendons Lawyers
- There will be ongoing efforts made on behalf of investors to salvage other projects as well. M+K encourages investors to get behind those efforts and make their vote count
- The objective is to allow individual viable projects to survive even though Timbercorp itself does not.

#### **B. Great Southern**

##### Investors with loans from Bendigo and Adelaide Bank Limited

- M+K has now reached the point where the Bank wants to know exactly who all our clients are so that they will no longer be contacted by the Bank directly
- We responded by sending a letter to the Bank on Wednesday this week. A copy is attached for your reference. We provide for you just the cover letter as we are obliged to observe confidentiality in relation to specific client details
- We have listened to many accounts of how investors were dealt with by Great Southern representatives, particularly concerning the entry into loan agreements. We have taken all information on board and have extensively read documentation concerning various aspects of claims to be pursued against Great Southern companies. We have also explored linkages between Great Southern companies and Bendigo and Adelaide Bank Limited, although we must say there is still significant further information to be uncovered
- Nevertheless, we believe we now have sufficient basis for making an extensive set of claims against various companies and we also believe we have sufficient basis for challenging the validity of loans made to investors over recent years
- The first batch of our letters setting out quite comprehensively the various grounds on which our clients' case is based will be delivered next week to Ferrier Hodgson as administrators for Great Southern and other letters will be sent to Bendigo and Adelaide Bank Limited
- Once those letters are sent on behalf of our clients each client will receive a copy for their own reference

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- As was the case with the Timbercorp matters, we expect to deliver batches of letters on an ongoing basis twice each week until such time as the administrators and the financiers receive a letter on behalf of each and every one of the clients for whom we act in Great Southern matters
- There is still time available for other investors to retain M+K so they can benefit from the stronger bargaining power everyone will have through being on first base together. By first base we mean the point where letters have been sent to Ferrier Hodgson as administrators of the Great Southern companies and, where applicable, Bendigo and Adelaide Bank Limited - being the letters setting out the legal grounds supporting the case of Great Southern investors.
- If you would like more information on how to join the group of Great Southern clients being represented by M+K you should call Tonya McDougal on (03) 9794 2690 or email: [tonya.mcdougal@mk.com.au](mailto:tonya.mcdougal@mk.com.au)

Yours faithfully



**Macpherson + Kelley**

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