



6 July 2009

Macpherson+Kelley Lawyers Pty Ltd  
ACN 129 746 470  
Website [www.mk.com.au](http://www.mk.com.au)

**Dandenong**  
40-42 Scott St  
Dandenong Victoria 3175  
DX 17501 Dandenong  
Telephone +61 3 9794 2600

**Melbourne**  
Level 22, 114 William St  
Melbourne Victoria 3000  
DX 174 Melbourne  
Telephone + 61 3 8615 9900

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.

**But first, another collapsed managed investment scheme - abalone projects**

- If you or anyone you know invested in projects sold by Australian Bight Abalone Limited you may wish to call us for advice. That company was placed into voluntary administration last Wednesday, 1 July 2009. A media release reported that the company had raised \$43.8 million from 1,200 investors over the past few years in 4 different projects
- The projects were operated off Waldegrave Island, Anxious Bay, near Elliston on the Eyre Peninsula of South Australia
- It is expected a meeting of growers will be convened by the administrators McGrath Nicol within the next couple of weeks.

**A. Timbercorp**

Loans from Timbercorp Finance Pty Ltd

- KordaMentha elected not to respond to the hundreds upon hundreds of letters we wrote on behalf of our clients concerning invalidity of particular loans
- Instead, a handful of clients have been sued in a State Supreme Court, the Liquidator's claim being that unpaid loan amounts are to now be paid. That claim will be vigorously defended
- Today M+K will be writing to KordaMentha's lawyers asking that those cases in the Supreme Court be stayed (suspended) until a representative proceeding (or test case) is decided by a Federal Court. In that way we can have a single Court make a definitive ruling applicable to borrowers across the whole country which covers the issue of validity or invalidity of the loans

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- The Federal Court of Australia would be the most appropriate Court to determine the issue, especially in light of the fact that the 1,400 or so investors represented by M+K are all relying on Commonwealth legislation in support of their cases, especially the *Corporations Act* and the *Trade Practices Act*
  - If KordaMentha does not agree to our suggested course it will be desirable for a representative action to be commenced as soon as possible on behalf of all affected investors, being people who borrowed money through Timbercorp Finance Pty Ltd (especially since 2007).

#### New website for investors and planners to visit

- The future of most projects is still to be determined. For the almonds and olives projects the matter will be considered again by the Victorian Supreme Court on 15 July 2008. Meanwhile, today in the Federal Court there will be a hearing concerning the status of projects so far as unmet rental obligations is concerned
- If you have not already seen it you are encouraged to immediately visit a new website [www.timbercorpgrowergroup.com.au](http://www.timbercorpgrowergroup.com.au)
- That site outlines what steps you can take to help ensure particular projects are given the best chance of continuing in operation
- It is important that action be taken quickly - within the next week
- M+K encourages investors to get behind the efforts made by Melbourne-based grower representatives on the committee of creditors. The common objective is to allow individual viable projects to survive even though Timbercorp itself does not.

#### Draft ruling expected soon from the Australian Taxation Office

- We believe a draft tax ruling is still being worked on by the Australian Taxation Office regarding how the collapse of Timbercorp and Great Southern might impact the tax deductions already claimed by investors in managed investment schemes. This is of particular concern to investors in the 2008 Timbercorp Timber Project where the seedlings have not been planted
- M+K has a tax lawyer available if anyone requires individual tax advice concerning their individual position. The tax lawyer is one of our principals Rob Warnock. His contact details are [rob.warnock@mk.com.au](mailto:rob.warnock@mk.com.au) or telephone (03) 9794 2558

#### Investors in Timbercorp's 2008 Timber Project/2008 Almonds Project/2008 Olives Project

- Many investors in these 2008 projects 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

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- 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, 2008 Almonds Project or the 2008 Olives Project

## **B. Great Southern**

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

- The first batch of our letters setting out quite comprehensively the various grounds on which our clients' case is based was delivered last Friday to Ferrier Hodgson as administrators for Great Southern and to lawyers acting for Bendigo and Adelaide Bank Limited
- 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
- Updated lists of M+K clients will be sent to the lawyers acting for Bendigo and Adelaide Bank Limited once a week so that all clients are individually covered by the letters we have sent
- Each client will receive a copy of our letter to the Bendigo and Adelaide Bank as well as copies of our letter to Ferrier Hodgson for their own reference
- The letters set out the grounds on which you rely to support the argument that loans granted in 2007 and 2008 ( and maybe even earlier) are invalid or unenforceable, justifying the ceasing of making any loan repayments
- For Great Southern investors who have been approached by Javelin or by the receivers McGrath Nicol for payment of outstanding money we will be also writing to them to outline the reasons why payment need not be made by the investor/borrower.

### The Responsible Entity: Great Southern Managers Australia Limited ("GSMAL")

- To the extent GSMAL received money in respect of MIS projects after the time the company was on the verge of collapse (which we believe was from at least from June 2007) your argument is that the money should be refunded due to non-disclosure of key financial information to you as a MIS investor
- Our letters ask GSMAL, through its administrators, to submit claims to the company's insurers to process your claim for any refund.

### Many more investors are expected to retain M+K over coming weeks

- 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

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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

A handwritten signature in black ink, appearing to read 'RW', followed by a long horizontal line extending to the right.

**Macpherson + Kelley**

RON WILLEMSEN

Principal

TEL: +61 3 9794 2620 | FAX: +61 3 9794 2560

EMAIL: [ron.willemsen@mk.com.au](mailto:ron.willemsen@mk.com.au)