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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.

Clients who are investors in Great Southern projects are encouraged to read our report concerning Timbercorp as well because many of the issues are expected to play out in a similar way for them.

Parliamentary Joint Committee on corporations and financial services

- The Committee's report signed off by its Chairman, Bernie Ripoll MP, was published at the end of November. Page 140 contains a line which neatly captures what we regard as a fundamental failing in the management of both Timbercorp's and Great Southern's projects for its investors. We quote:

"...the committee is of the view that the unique nature of agribusiness MIS warrant some regulatory intervention to ensure that these schemes do not, over time, develop a ponzi-like character by relying on new product sales to prop up existing schemes".

- As part of the case M+K will be running on behalf of its clients in the class actions is the argument that neither Timbercorp nor Great Southern had sufficient working capital to ensure the needs of each of their managed investment schemes were met year after year. Given the investors had all invested for the long-term in each of the projects they were bound to suffer significant investment losses if the Responsible Entity for the schemes suffered a chronic shortage of working capital in any given year.
- The Parliamentary Committee has recognised this significant problem. In its recommendation no. 7 at page 140 of its report it recommended:

"that, as part of their licence conditions, ASIC require agribusiness MIS licensees to demonstrate they have sufficient working capital to meet current obligations".

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A. Update for Investors in Timbercorp

Class Action Status

- On 15 December 2009 there was a hearing concerning our entitlement to proceed against the two companies named as Defendants, Timbercorp Securities Limited and Timbercorp Finance Pty Ltd. Permission to proceed is needed from the Court because those companies are in liquidation.
- The hearing was adjourned to 18 February 2010. On that date the Court wants to hear further submissions as to how Timbercorp Finance Pty Ltd was intertwined with Timbercorp Securities Limited in relation to culpability for the Responsible Entity's failings. Further detail will be added to the Statement of Claim to identify key facts we have uncovered since the claim was first prepared.
- Also, on that date the Court wants to hear submissions as to whether the existing claim will be expanded to include any new claims based on misleading or deceptive conduct in connection with the promotion and sale of interests in particular projects that were fundamentally flawed from the beginning.
- We had already flagged the Table Grape Projects of 2004 and 2005 as a distinct possibility in that category. We continue examining other projects and will draw those to the attention of the Court on 18 February 2010 in connection with possibly linking new claims in with the existing Court proceeding. For projects which come under challenge this way there will be some prospect of having relevant loans from earlier years challenged as unenforceable or invalid.

Citrus Project 2004 and Mango Projects 2005 and 2006

- Many investors in these projects were provided with cashflow projections in which Timbercorp indicated the yearly income the investor might receive from the project's sales revenue. The projection also showed the investor's share of costs each year and the expected net cash position. The spreadsheet then went on to show that at the end of the project the investor may expect to receive an internal rate of return after tax of a specified attractive percentage figure. If you were given a similar cash flow projection before you invested please email a copy to robert.downing@mk.com.au or post a copy to the attention of Rob Downing, Macpherson + Kelley, 40-42 Scott Street, Dandenong, Victoria, 3175.

1998 and 1999 Double Rotation Timber Projects

- These projects are also currently under the spotlight. M+K understands there were 439 investors who contributed to the 1998 Eucalypts Double Rotation Project and 10 who contributed to the 1999 Project, which was a private offer. The contributions were made by investors, mainly funded by loans from Timbercorp Finance Pty Ltd, and now the investors will not be receiving the benefit of the second rotation planting and harvest.
- Quite a number of investors in these projects have recently approached M+K seeking advice about their particular situation. We are currently exploring investors' rights and remedies and working through the relevant documentation peculiar to those projects.

- If you are invested in those projects and want to retain our services to provide advice to you, please contact one of our senior lawyers who is across the issues, Markus Salins. You can email him on markus.salins@mk.com.au or telephone (03) 9794 2680. We would be especially interested to hear from you if you were told the loans you were obtaining would be non-recourse or limited-recourse loans (i.e. you wouldn't become liable for repayment of any amount beyond the value of the timber lots you acquired).

Information about what M+K needs from its clients

- For our clients who have not yet received an information pack about the class action or for people who have questions about it, please contact our Timbercorp coordinators or our 15 lawyers who have been working on the case. Our coordinators will direct enquiries to the applicable team member. The coordinators are:

Katrina Slifka: Ph (03) 9794 2620 or e-mail katrina.slifka@mk.com.au

Stacey Hudson: Ph (03) 9794 2539 or e-mail stacey.hudson@mk.com.au

B. Update for Investors in Great Southern

Class Action Status

- M+K is now receiving a higher level of enquiries and seeing many more investors becoming our clients. These people mainly are those who were watching from the side lines, wanting to first see what would become of their projects before committing to pursuing claims for losses.
- With the Olives Projects now going to be wound up the only way Great Southern investors can salvage a worthwhile outcome is to pursue their legal claims against the relevant Great Southern companies, Great Southern directors and financiers whose loans originated from or were handled through Great Southern Finance Pty Ltd.
- Also, investors in the Forestry Projects are now staring at returns considerably below expectations. To achieve harvest and cover the costs of doing so, the investors face having to pay again before they see any return on their investments. Payment deducted from harvest proceeds is still a payment by the investor. Investors who invested in calendar year 2005 onwards are still able to retain the services of M+K to pursue legal claims if they have not yet done so.
- The class action has not yet commenced. There are a few reasons for the delay. None of them will disadvantage our clients. First, we have continued our work in building up the case while hundreds of investors were still deciding whether or not to retain our services. If a white knight came along to take over the projects and deliver returns people were hoping for then they figured they might not need to take any legal action. Many of those people have now decided they do want to take legal action because their losses will be significant.

- Secondly, a contributing factor to the delay is that Bendigo and Adelaide Bank has not moved as quickly as anticipated in taking “defaulting customers” to Court. This has allowed us to devote more time to preparatory work for the case. To our knowledge Bendigo and Adelaide Bank has not yet sued any Great Southern investor who holds a loan with that bank. We expect the bank is acutely aware that when they sue for loan arrears the customer is likely to defend the case and bring a counterclaim which asks the Court to declare the bank’s loan agreement is invalid or unenforceable.
- Thirdly, the delay has resulted from a very recent decision in the Federal Court which has thrown confusion around whether a class action itself might amount to a managed investment scheme requiring registration with ASIC. The case concerned *Multiplex* and the involvement of a third party commercial litigation funder. There are significant differences between the class action funding arrangements in *Multiplex* and those we have with our clients in Great Southern, not the least of which is that M+K and its clients have no involvement with a third party commercial litigation funder. We are considering the *Multiplex* case carefully and taking a number of measures to deal with its possible implications.
- Meanwhile, it is not too late for those who have yet to engage the services of M+K to now do so. Details about how to obtain further information are set out below.

Commonwealth Bank of Australia

- M+K is currently acting on behalf of a Great Southern investor who “ended up” with a substantial loan with the Commonwealth Bank after having entered into financing arrangements with Great Southern Finance Pty Ltd. There is a degree of mystery surrounding the transaction which took place at a time when the Great Southern Group of Companies was nearing collapse. We are seeking further information about arrangements that were in place between the Commonwealth Bank and Great Southern Finance Pty Ltd.
- In annexure 17 to the Report to Creditors issued by Ferrier Hodgson on 9 November 2009 there is a section dealing with unsecured creditors of Great Southern Finance Pty Ltd (“GSF”). In that section the Liquidators of GSF stated:

“The CBA purchased several loans from GSF. The CBA has the right to require GSF to purchase back these loans if they become ‘ineligible’, under the terms of the sale documentation. This occurred with three such loans shortly prior to our appointment, and there is potential for this claim to increase”.
- We would certainly be interested to hear from any other Great Southern investor who “ended up” with a loan with the Commonwealth Bank after dealing with Great Southern personnel. If you fall into that category would you kindly contact one of our lawyers, either Stuart Walter or Libby Goad on (03) 9794 2539. Alternatively, email to libby.goad@mk.com.au

Information about what M+K needs from its clients

- For our clients who have not yet received an information pack about the proposed class action or for people who have questions about it, please contact our Great Southern coordinators or our 15 lawyers who have been working on the case. Our coordinator will direct inquiries to the applicable team member. The coordinator is:

Tonya McDougal: Ph (03) 9794 2690 or e-mail tonya.mcdougal@mk.com.au


Yours faithfully



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