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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.

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.

### **A. Update for Investors in Timbercorp**

#### **Class Action Status**

- The Court heard further submissions from all parties on 2 March 2010 in the ongoing application for orders granting permission to proceed against the relevant Timbercorp companies which are in Liquidation. Some argument centred around whether sub-groups ought be identified at an early stage in the case. The Liquidators were suggesting through Counsel that there may be some merit in having a representative party before the Court to advance claims in respect of all investors in those projects which are not already "covered" by the lead Plaintiff's own claim. Justice Judd heard submissions from each party and then indicated he would deliver his ruling about the outcome of the application fairly soon. We will be notified by a Court official as to when that ruling is handed down.
- Meanwhile, as always, we are continuing with overall case preparation and gathering of further evidence and instructions to advance all of our clients' interests in the case.

#### **Information about the services offered by Macpherson + Kelley**

- 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:

Victoria  
Dandenong  
Melbourne

New South Wales  
Sydney

Business contracts + advice  
Corporate insolvency  
Corporate, mergers + acquisitions  
Employment + industrial relations  
(D1200224:1)

Intellectual property + trade  
Litigation/dispute resolution  
Property + construction

Tax + superannuation  
Family law  
Wills + estate planning



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

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

## **B. Update for Investors in Great Southern**

### **Class Action progress**

- We have continued narrowing down our search for a suitable lead Plaintiff who could represent all eligible investors in the class action. That person would conduct the claim under their name on behalf of himself or herself and on behalf of all eligible members of the class of investors. Our most recent meeting with a candidate for that role took place on Friday 5 March 2010.
- Meanwhile, as always, we are continuing with overall case preparation and gathering of further evidence and instructions to advance all of our clients' interests in the case.
- Meanwhile, Bendigo and Adelaide Bank have delivered Writs to six clients of M+K, claiming repayment of outstanding loans. The Writs were filed in the Victorian Supreme Court. Shortly there will be a straight forward procedural hearing for the timetabling of relevant steps to be taken, such as delivering a Defence and Counterclaim. As happened in the Timbercorp case before this case, the anticipated Counterclaim which each of our affected clients would file would essentially reflect a Statement of Claim that launches the much anticipated class action. Through that avenue then we would be making claims on behalf of all our investor clients in the relevant projects, seeking orders from the Court for damages and a declaration that the challenged loan agreements are void.
- Had Bendigo and Adelaide Bank commenced Court proceedings in October 2009 as had been publicised we would have countered those proceedings on behalf of our clients at a much earlier time than now. As it has happened, the timeline has extended out with the Bank having only recently sent Writs to some "defaulting" borrowers.
- We would, of course, also be looking to now bring to the Court's attention the issues arising from the Bank's "default listing" borrowers with Veda Advantage. We are looking at having that issue brought in an appropriate manner before the Court, not in a vacuum, but against the backdrop of a proceeding which claims extensive remedies arising from a close interconnection between Bendigo and Adelaide Bank and the relevant Great Southern companies. It is our belief that the Bank's dealings with the relevant class of investors may be put under the microscope. There is a legitimate basis, we believe, for the Bank's dealings with Great Southern to be scrutinised, leaving the Bank exposed to the risk of its loans being successfully challenged as unenforceable on account of being sufficiently closely connected with conduct engaged in by Great Southern personnel which the Court finds to have been unlawful.

**Information about the services offered by Macpherson + Kelley**

- 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](mailto:tonya.mcdougal@mk.com.au)

Yours faithfully

*per MKK*  
**Macpherson + Kelley**  
RON WILLEMSSEN  
Principal  
Accredited Commercial Litigation Specialist   
TEL: +61 3 9794 2620 | FAX: +61 3 9794 2560  
EMAIL: [ron.willemsen@mk.com.au](mailto:ron.willemsen@mk.com.au)

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