

**Willmott Forests Ltd  
(Receivers and Managers Appointed) (In Liquidation) ('WFL' or the 'Company')**

**Questions and Responses**

A number of questions pertaining to the WFL administration have been asked by growers or their representatives in various forums. Detailed below are responses to those questions:

**Question 1**

At the second meeting of creditors held on 22 March 2011, votes in favour of the resolution to wind up WFL totalled \$250 million. Who voted "in favour"?

**Response**

The votes in favour of the resolution to place WFL into liquidation predominately comprised:

- the Banking Syndicate - c\$123m; and
- intercompany loans totalling c\$125m (as outlined to the meeting, these votes were exercised by the chairman).

**Question 2**

What is the legal basis for voting at creditor meetings? Is it based on dollars invested/lent or on some other criteria?

**Response**

Provided below is an extract of Corporations Regulation 5.6.23 which outlines when a creditor is entitled to vote at a meeting of creditors:

- (1) "A person is not entitled to vote as a creditor at a meeting of creditors unless:
- (a) his or her debt or claim has been admitted wholly or in part by the liquidator or administrator of a company under administration or of a deed of company arrangement; or
  - (b) he or she has lodged, with the chairperson of the meeting or with the person named in the notice convening the meeting as the person who may receive particulars of the debt or claim:
    - (i) those particulars; or
    - (ii) if required - a formal proof of the debt or claim.
- (2) A creditor **must not vote** in respect of:
- (a) an unliquidated debt; or
  - (b) a contingent debt; or
  - (c) an unliquidated or a **contingent claim**; or
  - (d) a debt the value of which is not established;
- unless a just estimate of its value has been made."

Grower Investors should note the following:

- Growers are not currently considered an ordinary unsecured creditor of the Company.
- Under the lease arrangements with WFL, title in the scheme trees generally vests with Grower Investors. Accordingly, Grower Investors would be entitled to the proceeds if those trees were sold.

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- Any shortfall to Growers from the realisation of the trees **will not** form a claim against WFL as an unsecured creditor.
- Grower Investors **may** have a claim as an ordinary unsecured creditor against WFL for improper conduct by WFL or its directors. (i.e. a contingent claim), however the following should be noted:
  - Claims of this nature are generally required to be heard by the Court and a determination would need to be made before a Liquidator could adjudicate on the claims.
  - Pursuant to Corporations Regulation 5.6.48, a liquidator may from time to time fix a date to give notice to creditors to submit their claim. Given the complexities of the WFL administration, it is unknown at this stage if a dividend would be available to ordinary unsecured creditors. As such it is not considered appropriate for the Liquidators to call for claims at this time.
  - It is common practise that a Liquidator would only call for formal proof of debts in the event that sufficient funds are available for distribution.
  - Finally, it is noted that the Liquidators are currently without funds in the liquidation to adjudicate on claims.

### **Question 3**

Are Growers now unsecured creditors as opposed to contingent creditors?

#### **Response**

Please refer to Question 2

### **Question 4**

What value are you ascribing to Grower claims?

#### **Response**

Please refer to Question 2

### **Question 5**

Why couldn't the Administrators/Liquidators find a replacement Responsible Entity when we understand there was a lot of interest in taking on the role? What steps were taken by the Administrators/Liquidators to get any potential Responsible Entities into the role?

#### **Response**

The Administrators undertook an extensive advertising campaign whereby expressions of interest were called for in taking over the role of Responsible Entity or restructuring/recapitalising WFL. As outlined in our Report to Creditors, the expressions of interest received:

- had further conditions to obtaining finance;
- requests for further due diligence periods (with no guarantee of a future offer);
- none of the bidders were prepared to fund the cost of managing the schemes during the period where they were to shore up their proposals; and
- the potential time delays were to be significant with no certainty of outcome.

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In addition to these conditions, most importantly, none of the interested parties were prepared to assume all the liabilities of the former Responsible Entity (a requirement pursuant to Section 601FS of the Act).

Should any potential Responsible Entity be willing to assume the role from WFL (and take on the existing liabilities) we would welcome discussions with them. Alternatively, Growers are able to call a meeting of the various schemes to replace the Responsible Entity.

### **Question 6**

The Administrators sought unconditional offers to take on the role of Responsible Entity. What exactly does 'unconditional' mean?

#### **Response**

Each of the interested parties who responded to the Administrators' advertisements included a number of pre-conditions with their proposal (see Question 5 above). Any replacement Responsible Entity must take on the role unconditionally, that is, be willing to assume the liabilities of WFL as the current Responsible Entity as required under Section 601FS of the Act.

### **Question 7**

Are you aware of the poll that WAG ran asking Growers if they were prepared to change to annual fees to save their trees? And the result?

#### **Response**

We are not aware of the poll results run by the WAG.

As you will appreciate, Growers are able to convene a meeting to replace the Responsible Entity.

It is noted that the new Responsible Entity is required to assume the liabilities of the former Responsible Entity pursuant to Section 601FS.

In addition, we understand that a vote of the Growers would be required to change the relevant constituent documents to allow annual fees to be charged.

### **Question 8**

Are the people who put forward a conditional offer in response to the Administrators' expression of interest campaign prepared to make their conditions public?

#### **Response**

We have sent this request to the interested parties concerned and enquired whether they wished to either make their offers public or alternatively discuss their offers directly with the grower groups.

We will advise you of their responses in due course.

**Question 9**

In the event that an offer to purchase both land and trees is received, what is the basis for allocating the purchase price between the Growers, the landowner and the banks?

**Response**

We acknowledge that the apportionment between trees and land is an important issue for a number of parties. As you would recognise this matter is extremely complex with strong arguments for both sides that the pre-paid lease could be considered a scheme asset or alternatively deemed an asset caught by the security of the Banking Syndicate's charge documents.

We are seeking our own independent advice in relating to this apportionment, although acknowledge that given the strong arguments by both sides that this issue may be required to be determined by the Court.

Whilst ideally, apportionment between trees and land is undertaken now, given we are without offers, any apportionment is hypothetical in nature and as such it is unlikely that a Court will adjudicate without actual offers.

We would welcome a position paper from the respective grower groups outlining the basis under which the apportionment should be made.

However we are of the view that any apportionment should be undertaken once we have received offers for the purchase of the trees and land.

**Question 10**

What exactly have you done as an RE to look after our trees for the \$500,000 in fees showing on the schedules to 21 March?

**Response**

On a high level basis, fees applied to scheme related costs include the following:

- assessing the viability of the schemes;
- preparing the expressions of interest campaign;
- negotiating with HVP regarding a conditional offer;
- managing and procuring insurance over the plantations for growers.

As you may be aware these remuneration schedules have been provided to the Court's register for their independent assessment of the costs charged to schemes. The Court is ultimately responsible for the approval of these costs.

### **Question 11**

Has PPB Advisory or its officers inspected plantations in person? If yes, have they spoken at any time to the former forestry managers about the health and ongoing care of the trees?

#### **Response**

PPB Advisory staff members have not inspected the plantations in person.

We have relied upon the experience and advice of employees which are based on the ground at the various plantations. In addition, we have had numerous ongoing discussions with forestry staff located at the Company's head office regarding the ongoing health of the trees.

We are currently without funds to undertake a further assessment of the trees.

### **Question 12**

Is the money for Bioforest that was due to be harvested late last year in a safe place and ready for distribution?

#### **Response**

We have been informed by an employee of the Company that these schemes have not been harvested for the following reasons:

- Currently only the Booyong and parts of the Jacky Bulbin plantations are considered suitable for harvesting of the Casuarina Biomass.
- These plantations relate to the Bioforest Wholesale Project No.2 (96.5 allocated ha's) and Bioforest Dual Income Project 2006 (306.5 allocated ha's).
- These types of trees have not been harvested previously; as such there are no harvesting techniques / machinery developed to harvest same.
- Trials had begun prior to the appointment of Receivers and Managers, however the development and implementation of this system required WFL to either commit to a long term harvesting contract (3-5 years) or pay higher harvesting costs which would initially result in a negative stumpage.
- WFL had entered a supply agreement with Sunshine Renewable Energy Pty Ltd which is now in Administration. New negotiations would need to take place in order to market the Casuarina Biomass.
- In light of the above factors, it is not considered commercial to harvest these trees with net stumpage per Casuarina tonne of \$1.05 after taking into consideration the anticipated harvesting and haulage cost assuming that relevant supply agreements can be sourced.

We have discussed the above with an industry expert who concurs with the comments.

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**Question 13**

Can you provide schedule of attendance on plantations by PPB staff or contractors and report on work required?

**Response**

We are without funds to undertake works on the plantations.

Prior to our appointment, the Company had prepared a cash flow forecast which indicated that the estimated cost to care and maintain all plantations for the period August 2010 to June 2011 was in the order of \$8 million.

The Company did not maintain a works report on a plantation by plantation basis and given the lack of funds available we are not in a position to commission the necessary works schedule.

**Question 14**

Can you confirm the existence and provide a copy of the report prepared by KordaMentha in 2010 before they were appointed Receivers and Managers, as requested at the second meeting of creditors?

**Response**

- We understand a report was prepared.
- We have requested a copy of the report from KordaMentha and the banking syndicate.

KordaMentha has advised they will respond to our request in due course. We will provide a further update when a response is received.

**Question 15**

Can you confirm what KordaMentha (as Receivers & Managers) did or didn't do while holding the RE role during September and October 2010? Particularly in regard to the 2010 Project.

**Response**

WFL acted as Responsible Entity under the control of the Receivers & Managers from 6 September 2010 to 24 September 2010. We have requested details of what activities were undertaken by the Receivers & Managers during this period.

We will provide a further update when a response is received.

**Question 16**

Have you investigated why the Commonwealth Bank lent money to growers in recent years over long periods, yet failed to support them by ensuring funding promises to Willmott were unfulfilled. Do you see this as a conflict of interest in terms of their duty of care to borrowers?

**Response**

We have reviewed our position and believe that this question is outside the scope of the liquidation.

Accordingly, we recommend that borrowers should consider their own legal advice.

**Question 17**

Can you provide a schedule of attendance on plantations by PPB staff or contractors and report on work required?

**Response**

Please refer to Question 11 and Question 13

**Question 18**

Can you provide details of the negotiations with Hancocks?

**Response**

We appreciate that details relating to the negotiations with Hancocks (HVP) are important to Grower Investors.

The HVP offer is conditional upon negotiation of an acceptable sale and purchase agreement and on HVP receiving a full release from WFL and its related bodies corporate, the Growers, the Administrators/Liquidators, the Receivers and Managers and banking syndicate.

The HVP offer must remain confidential for the time being as it contains a confidentiality clause and commercially sensitive information. Furthermore, the disclosure of the offer may prejudice any future sale campaign concerning the HVP leases, or the WFL assets generally.

This will ensure the interests of all parties including Growers and creditors are protected.

**Question 19**

What is happening with insurance proceeds paid for scheme damage and any monies held on trust?

**Response**

- We have made ongoing requests (weekly) to KordaMentha for details.
- KordaMentha has advised that it is a complicated process and reconciliations are continuing.
- We have been verbally advised that KordaMentha will provide a formal response shortly.