

**Blairgowrie Trading Ltd & Others v Allco Finance Group Ltd (Receivers & Managers
Appointed) (In Liquidation) & Others**

Federal Court of Australia

NSD 1609 of 2013

SETTLEMENT DISTRIBUTION SCHEME

| | | |
|------------|--|-----------|
| 1. | Definitions and Interpretation | 3 |
| 2. | Scheme Administrator | 9 |
| 3. | Settlement Distribution Fund, First and Second Tier Settlement Sums | 10 |
| 4. | Confirmation of Trade Data | 10 |
| 5. | Assessment of Claims and Provision of Notices of Estimated Distribution | 12 |
| 6. | Review | 13 |
| 7. | Application of Interest | 14 |
| 8. | Distribution | 15 |
| 9. | Immunity from Claims | 17 |
| 10. | Supervision by the Court | 17 |
| 11. | Notice | 17 |
| 12. | Time | 18 |

Settlement Distribution Scheme

As approved by the Federal Court of Australia on 31 March 2017

BACKGROUND

- A. This Settlement Distribution Scheme establishes a procedure for distributing the Settlement Sum to be paid by Allco and KPMG pursuant to a settlement of the Proceeding approved by the Court.
- B. This Settlement Distribution Scheme does not become operative until the Court has made the Approval Orders.
- C. This Settlement Distribution Scheme provides for the following major steps:
 - (a) Maurice Blackburn will be appointed as Administrator of the Settlement Distribution Scheme.
 - (b) Unregistered Group Members must register by the Expiry Date.
 - (c) The Administrator must deliver to each Registrant a Participant Declaration which will set out the Trade Data pertaining to them and provide each Registrant with an opportunity to notify the Administrator of any amendments to their registered Trade Data.
 - (d) Registrants must return to the Administrator a properly executed Participant Declaration.
 - (e) The Administrator will notify each Registrant that returns a Participant Declaration (thereafter referred to as "Participants") of their estimated distribution and give them an opportunity to notify any objections to it, and for those objections to be referred to Independent Counsel.
 - (f) Interest earned on the amount in the Settlement Distribution Fund will be applied, to the extent necessary, for payment of Administration Costs.
 - (g) Prior to any distribution to Participants, the Administrator will deduct the Applicants' Legal Costs, the Applicants' Reimbursement Payments, any Administration Costs and the Funding Commission (as approved by the Court) from the Settlement Distribution Fund, leaving a Residual Settlement Sum.
 - (h) The Administrator will then distribute the Residual Settlement Sum to Participants.

OPERATIVE PROVISIONS:

1. Definitions and Interpretation

1.1. In this Settlement Distribution Scheme, the following terms have the meanings defined below (clause references are references to the clauses of this document unless otherwise specified):

Act means the *Federal Court of Australia Act 1976* (Cth).

Administration Costs mean the costs and disbursements incurred by the Administrator and approved by the Court calculated at the rates set out in Schedule A in connection with the administration of this Settlement Distribution Scheme, including (without limitation) the identification of and communications to Unregistered Group Members, assessing Registrants' claims, administering the Settlement Distribution Scheme and counsel's fees.

Administrator means Maurice Blackburn acting as the Court appointed administrator of the Settlement Distribution Scheme.

Allco means Allco Finance Group Ltd (Receivers and Managers Appointed) (In Liquidation).

Allco First Tier Settlement Sum has the meaning given in cl 1.2 of the Settlement Deed.

Allco Shares means an interest in ordinary shares of Allco.

Appeal Period means the later of:

- (a) the 42-day period following the Court's determination of the application for the Approval Orders within which:
 - (i) an appeal or application for leave to appeal to the Full Court of the Federal Court may be brought from a decision of first instance; and
 - (ii) in the event that such an appeal or application for leave to appeal is brought, any application for special leave to appeal to the High Court may be brought from any decision of the Full Court of the Federal Court, (unless the Court has fixed a later date by which an appeal or an application for leave to appeal may be brought, in which case, that later date); and

- (b) the ultimate determination of the matters the subject of any appeal commenced within the period in (a)(i) or (a)(ii) above.

Applicants means Blairgowrie Trading Ltd and Alan Flitcroft and Chrystine Flitcroft (as trustees of the Te Coco Trust).

Applicants' Legal Costs means the Applicants' reasonable legal costs and disbursements on a solicitor and own client basis (calculated in accordance with the Retainer between the Applicants and Maurice Blackburn) incurred on their own behalf and on behalf of all Group Members in the Proceeding.

Applicants' Reimbursement Payment means an amount by way of compensation for time and expenditure reasonably incurred by the Applicants in the interests of prosecuting the Proceeding on behalf of the Group Members as a whole, awarded to the Applicants by an order pursuant to s 33ZF of the Act made on 31 March 2017.

Approval Orders means the orders described in cl 3(d) of the Settlement Deed to the effect:

- (a) that all outstanding costs orders in the Proceeding be vacated;
- (b) that the amounts paid into Court as security for Allco's and KPMG's costs of the Proceeding be repaid to Maurice Blackburn;
- (c) that the persons affected and bound by these orders include Group Members;
- (d) pursuant to s 33ZF of the Act or otherwise, that the Court authorises the Applicants *nunc pro tunc* on behalf of Group Members, to enter into and give effect to the Settlement Deed; and
- (e) the Proceeding be dismissed with each party to bear its own costs.

Assessment means the value of a Participant's Claim calculated in accordance with cl 5.2.

Claims means any and all claims (present and future and including any claim for costs) of the Applicants and any Group Member arising out of, or in connection with, the Proceeding or the subject matter of the Proceeding.

Court means the Federal Court of Australia.

Expiry Date means noon on 31 March 2017.

Final Assessment means:

- (a) an Assessment contained in a Notice of Estimated Distribution or an Amended Notice of Estimated Distribution which is taken to have been accepted by a Participant under cl 5.5 or 6.2; and
- (b) an Assessment contained in a Review Determination under cl 6.3.

First Tier Participant means a Registered Group Member who has made and delivered to the Administrator a valid Participation Declaration within 21 days of a Participation Declaration being issued to that Registered Group Member.

First Tier Settlement Sum means the amount of AUD\$30,000,000.

Funding Agreement means the current funding agreement between ILFP and any individual Registered Group Member relating to the Proceeding.

Funding Commission means the amount, payable to ILFP, comprising 30 per cent of the remaining amount of the Settlement Sum after payment of the Applicants' Legal Costs.

Group Member means those persons: referred to in para [3] of the Second Further Amended Statement of Claim filed in the Proceeding, including for the avoidance of doubt those persons, funds or trusts on whose behalf the Group Members' acquisition of Allco Shares (or an interest therein) is the subject of a claim to which the Proceeding relates, but does not include:

- (a) those persons who have opted out of the Proceeding pursuant to s 33J of the Act; and
- (b) any related party of Allco within the meaning of section 228 of the *Corporations Act 2001* (Cth) (which for the avoidance of doubt is taken to include Allco Principals Investments Pty Ltd).

ILFP means International Litigation Funding Partners Pte Ltd.

Independent Counsel means Fiona Forsyth of the Victorian Bar or in the event that Fiona Forsyth is unavailable, a barrister of the New South Wales Bar or Victorian Bar having at least 5 years' post-admission experience nominated by the Administrator, who is empowered under this Settlement Distribution Scheme to conduct any Review.

KPMG First Tier Settlement Sum has the meaning given in cl 1.2 of the Settlement Deed.

Loss Assessment Formula means the formula by which losses are calculated as contained in Confidential Schedule B to this Settlement Distribution Scheme.

Maurice Blackburn means Maurice Blackburn Pty Ltd (ACN 105 657 949) and, where applicable, the Administrator appointed by operation of the Settlement Deed and this Settlement Distribution Scheme.

Notice of Claim Data means the notice required by cl 4.2 of this Settlement Distribution Scheme to be sent by the Administrator to each Registrant.

Notice of Estimated Distribution means the notice required by cl 5.3 of this Settlement Distribution Scheme to be sent by the Administrator to each Participant setting out the Assessment of the value of that Participant's Claim (and, where the context permits, includes any Amended Notice of Estimated Distribution under cl 5.4).

Notification Date means the date on which Maurice Blackburn provides to Allco and KPMG the registration details of the Participating Unregistered Group Members.

Participant means:

- (a) a First Tier Participant; or
- (b) a Second Tier Participant.

Participant Declaration means a statutory declaration in a form to be produced by the Administrator.

Participating Unregistered Group Member means an Unregistered Group Member who or which provides their contact details and Trade Data to Maurice Blackburn after 4 November 2016 and prior to the Expiry Date.

Preliminary Payment means a partial payment to a Participant in accordance with cl 8.

Proceeding means Federal Court of Australia proceeding NSD 1609 of 2013 titled *Blairgowrie Trading Ltd & Ors v Allco Finance Group Ltd (Receivers and Managers Appointed) (In Liquidation) & Ors*.

Registered Group Member means a Group Member who or which has, on or prior to 4 November 2016, provided their contact details and Trade Data to Maurice Blackburn (including by lodging a Registration Form as referred to in the orders made in the Proceeding on 6 September 2016).

Registrant means:

- (a) a Registered Group Member; or
- (b) a Participating Unregistered Group Member.

Registrant Database means a database constructed by or on behalf of Maurice Blackburn to contain the Trade Data for each Registrant and any information required to identify the Registrant, including names, addresses and telephone numbers.

Relevant Period means the period from 21 August 2007 to 10 February 2008 inclusive.

Residual First Tier Settlement Sum means the amount of the First Tier Settlement Sum after deduction of the sum of \$10.15 million, as a share of the Applicant's Legal Costs, \$5.995 million, for funding commission, and a pro rata share of the Applicants' Reimbursement Payment and the Administration Costs.

Residual Second Tier Settlement Sum means the amount of the Second Tier Settlement Sum after deduction of the sum of \$0.35 million, as a share of the Applicants' Legal Costs, \$2.895 million, for funding commission, and a pro rata share of the Applicants' Reimbursement Payment and the Administration Costs.

Residual Settlement Sum means the Residual First Tier Settlement Sum and the Residual Second Tier Settlement Sum together.

Retainer means the Costs Disclosure and Costs Agreement between Maurice Blackburn and the Applicants relating to the Proceeding.

Review means the procedure provided in cl 6 for the review of a Notice of Estimated Distribution at a Participant's request.

Review Determination means a written determination of Independent Counsel providing notice to the Participant and the Administrator of the calculation and the result of the Review under cl 6.3.

Second Tier Participant means a Participating Unregistered Group Member who has made and delivered to the Administrator a valid Participation Declaration within 21 days of a Participation Declaration being issued to that Participating Unregistered Group Member.

Second Tier Settlement Sum means the amount calculated in accordance with the formula in sub-cl 2(d) of the Settlement Deed, up to a maximum of AUD\$10,000,000.

Settlement Approval Date means the date on which the Approval Orders are made in the Proceeding.

Settlement Deed means the deed of settlement dated 28 November 2016 between the Applicants, Allco and KPMG.

Settlement Distribution Fund means an account with an Australian Bank to be opened by the Administrator for the purpose of holding the Settlement Sum.

Settlement Distribution Scheme means the terms of this settlement distribution scheme as approved by the Court, including any Schedules.

Settlement Sum means the sum comprising the First Tier Settlement Sum and any Second Tier Settlement Sum.

Trade Data means the following information for each Registrant:

- (a) name;
- (b) address;
- (c) email address (if applicable);
- (d) for each of the Registrant's holdings:
 - (i) the number of Allco Shares held as at the opening of trading on the Australian Securities Exchange on 21 August 2007; and
 - (ii) the transaction date and number of securities acquired or disposed of for all acquisitions and disposals of Allco Shares in the Relevant Period.

Unregistered Group Member means a Group Member who or which has not, on or prior to 4 November 2016, provided their contact details and Trade Data to Maurice Blackburn (including by lodging a Registration Form as referred to in the orders made in the Proceeding on 6 September 2016).

1.2. Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural, and the converse also applies;
- (b) a gender includes all genders;

- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (e) a reference to dollars and \$ is to Australian currency; and
- (f) a reference to any thing done by any person includes a reference to the thing as done by a director, officer, servant, agent, personal representative or legal representative if permitted to be so done by law or by any provision of the Settlement Deed or this Settlement Distribution Scheme.

2. Scheme Administrator

2.1. The Settlement Distribution Fund shall be administered and applied by Maurice Blackburn as Administrator.

2.2. The Administrator will:

- (g) hold the Settlement Sum on trust until the Settlement Sum is distributed; and
- (h) distribute the Settlement Sum (plus any interest accrued) as expeditiously as possible,

in accordance with this Settlement Distribution Scheme.

2.3. In acting as Administrator (including any incidental functions) Maurice Blackburn will be lawyers working as the Administrator with an obligation to do so properly on behalf of the Group Members as a whole, and shall not act as the lawyer for any individual Group Member (or sub-group of Group Members) in relation to his, her or its Claim.

2.4. Notwithstanding anything elsewhere contained in this Settlement Distribution Scheme, the Administrator may at any time and in its sole discretion correct any error, slip or omission occurring in the course of its administration of the Settlement Distribution Scheme.

2.5. Where a Participant is a Participant by virtue of a Retainer and/or Funding Agreement entered into on their behalf by a trustee, investment manager, responsible entity or agent, the Administrator may rely on any information, instruction or declarations provided by that trustee, investment manager, responsible entity or agent as if it has been provided by the Participant itself.

3. Settlement Distribution Fund, First and Second Tier Settlement Sums

- 3.1. The Administrator, within 21 business days of the Settlement Deed being executed, shall cause to be opened the Settlement Distribution Fund and will provide Allco and KPMG with account details and information sufficient to facilitate payment of the Settlement Sum.
- 3.2. If the Court makes the Approval Orders and those orders are not overturned on appeal, within five (5) business days after the expiry of the Appeal Period:
 - (a) Allco will pay the Allco First Tier Settlement Sum into the Settlement Distribution Fund; and
 - (b) KPMG will pay the KPMG First Tier Settlement Sum into the Settlement Distribution Fund.
- 3.3. On or before 60 days after the Notification Date, or upon resolution of any dispute referred to in cl 3.4 below, whichever is the later, Allco will pay the full amount of any Second Tier Settlement Sum into the Settlement Distribution Fund.
- 3.4. The Administrator will provide Allco and KPMG reasonable access to information (including Trade Data) in respect of additional registrations of Participating Unregistered Group Members to enable them to be satisfied, on reasonable grounds, that only damaged Allco Shares are used to trigger and calculate the payment of the Second Tier Settlement Sum. In the case of any *bona fide* dispute in this regard, such a dispute will be referred, by the Administrator, to the Hon Peter Jacobson QC (or such other person as agreed in writing by the Administrator, Allco and KPMG) who will determine the dispute, on a final basis, as an umpire and whose decision will be binding on all parties.

4. Confirmation of Trade Data

- 4.1. As soon as practicable after the Settlement Approval Date, the Administrator shall create and maintain a Registrant Database. At all times, the Administrator must use reasonable endeavours to ensure the accuracy of the Registrant Database, including, to the extent necessary, requesting further information or documents from a Registrant or requesting further information or documents from Allco or other third parties.

- 4.2. As soon as practicable after the Registrant Database has been created, the Administrator will deliver to each Registered Group Member a Notice of Claim Data and Participant Declaration.
- 4.3. As soon as practicable after the Expiry Date and the completion of the process outlined in cl 3.3, the Administrator will deliver to each Participating Unregistered Group Member a Notice of Claim Data and Participant Declaration.
- 4.4. The Notice of Claim Data and Participant Declaration will list the Trade Data pertaining to a Registrant as held by the Administrator in the Registrant Database.
- 4.5. Each Registrant wishing to receive a distribution from the Settlement Distribution Fund must provide to the Administrator, within 21 days of the date of the Notice of Claim Data, an executed Participant Declaration which either:
 - (a) declares that the Trade Data in the Notice of Claim Data is true and correct; or
 - (b) provides amended or corrected Trade Data and declares that such amended or corrected Trade Data is true and correct.
- 4.6. Subject to cl 12, any Registrant that does not make and deliver to the Administrator a valid Participant Declaration in accordance with cl 4.5 shall not be entitled to receive a distribution from the Settlement Distribution Fund, and the Administrator shall not be required to provide to any such Registrant any further notices under this Settlement Distribution Scheme.
- 4.7. Subject to cl 4.8, for the purpose of the administration of this Settlement Distribution Scheme, Trade Data confirmed by a Participant Declaration may be relied upon as accurate by the Administrator, in its absolute discretion, when administering this Settlement Distribution Scheme.
- 4.8. Notwithstanding cl 4.7, if in the Administrator's opinion, a Participant Declaration:
 - (a) contains insufficient information to substantiate the claim made by a Registrant or is not a valid Participant Declaration, the Administrator may in its absolute discretion by written notice require the Registrant to provide and verify by a Statutory Declaration such further information as the Administrator may require. If the Registrant does not provide the further information within 14 days of such a request being made, the Administrator may determine, in its absolute discretion, that the Registrant is not entitled to receive a distribution from the Settlement Distribution Fund and, save for notice of that determination, the

Administrator shall not be required to provide to any such Registrant any further notices under this Settlement Distribution Scheme; or

- (b) contains sufficient information notwithstanding that some information may not be included, the Administrator may in its absolute discretion accept the Trade Data as complete.

5. Assessment of Claims and Provision of Notices of Estimated Distribution

- 5.1. As soon as practicable after the confirmation of the Trade Data as provided for in cl 4, the Administrator shall calculate the Assessment of each Participant's Claim using the Trade Data on the Registrant Database.
- 5.2. The Assessment for each Participant shall be calculated by applying the Loss Assessment Formula to that Participant's Trade Data.
- 5.3. As soon as practicable after calculating the Assessment for each Participant, the Administrator shall send a Notice of Estimated Distribution to each Participant notifying them of:
 - (a) the Trade Data relating to that Participant;
 - (b) the Administrator's reasonable estimate of the Participant's expected distribution under this Settlement Distribution Scheme;
 - (c) the terms of cll 5.4 and 5.5 below;
 - (d) the availability and terms of the Review procedure in cl 6 below; and
 - (e) any other information that the Administrator considers would assist Participants in determining whether to seek a Review.
- 5.4. If, within 14 days of the date of the Notice of Estimated Distribution, a Participant notifies the Administrator of any error, slip or omission in the Notice of Estimated Distribution, the Administrator may, in its absolute discretion, correct the Registrant Database and issue to that Participant and any other Participant affected by the correction, if that other Participant's estimated distribution is reduced by more than 5 per cent, an Amended Notice of Estimated Distribution.
- 5.5. The accuracy of a Notice of Estimated Distribution shall be deemed to be accepted by a Participant unless the Participant, within 14 days of the date of a Notice of Estimated Distribution, delivers to the Administrator a written request for a Review

together with copies of all documents on which the Participant relies for the purposes of the Review, including any statement of reasons for seeking the Review.

6. Review

- 6.1. If a Participant requests a Review of a Notice of Estimated Distribution, the Administrator shall review the request and copies of documents on which the Participant relies for the purposes of the Review and:
- (a) if satisfied that the request discloses an error, slip or omission by the Administrator or any other administrative or clerical error, correct the notice to which the request relates; or
 - (b) in all other cases, refer the request to the Independent Counsel.
- 6.2. If a request for a Review is referred to the Independent Counsel, the Independent Counsel may by written notice direct the Participant to submit such further documentation in support of the Review as the Independent Counsel may consider appropriate. Such documentation must be submitted within 14 days of the date of any such written notice, failing which the request for Review shall be deemed never to have been made and the accuracy of the Notice of Estimated Distribution shall be deemed to be accepted by the Participant.
- 6.3. The Independent Counsel shall, within 14 days after either the receipt by the Administrator of the request for the Review or receipt by the Independent Counsel of documentation provided in response to a written direction under cl 6.2, whichever is the later:
- (a) calculate the Assessment for the Participant according to the methodology prescribed in cl 5.2; and
 - (b) give written notice of the result of the Review to the Participant and the Administrator.
- 6.4. A Review Determination is final and binding, save that, prior to the expiry of 7 days after notice is given of the Review Determination in accordance with cl 6.3(b), the Participant has liberty to apply to the Court only on a question of law arising from the Review Determination.
- 6.5. A Participant requesting a Review shall pay the costs of the Review calculated at \$800 exclusive of GST for the first two hours' attendance by the Independent Counsel

(or any part thereof) and \$450 per hour exclusive of GST for each subsequent hour (or any part thereof).

- 6.6. The Independent Counsel may, by written notice, require a Participant to pay to the Administrator an amount as the Independent Counsel reasonably estimates will represent the cost of the Review, which amount will be held by the Administrator on trust for the purposes of paying the costs of the Review upon presentation by the Independent Counsel of a tax invoice. If this amount is not provided as required within 10 days of the date that the written notice requiring payment into trust was sent to the Participant requesting the Review, the Independent Counsel shall issue a Review Determination confirming the Participant's Notice of Estimated Distribution, noting that no payment has been made into trust as required.
- 6.7. If any costs of a Review have not been paid by a Participant before any distribution to that Participant, the Administrator shall deduct those costs from any sum which otherwise would be distributed to the Participant who sought the Review in priority to all other entitlements. That Participant shall remain liable for any costs not recovered by a deduction pursuant to this clause and the Administrator, in administering the Settlement Distribution Scheme, may apply to the Court for an order requiring the Participant to pay those costs.

7. Application of Interest

- 7.1. Interest earned on the Settlement Distribution Fund will be applied, in the first instance, to payment of Administration Costs if and to the extent that the Administration Costs are approved by the Court.
- 7.2. Any additional Administration Costs incurred or estimated shall, subject to Court approval, be paid to the Administrator before any final distribution of the Settlement Distribution Fund.
- 7.3. If the total amount of interest earned on the Settlement Distribution Fund exceeds the Administration Costs, including any estimated Administration Costs referred to in cl 7.2, such residual interest will be allocated to Participants in the proportion that their Assessments bear to the Residual Settlement Sum distributed in accordance with cl 8.

8. Distribution

8.1. Subject to cl 8.2, prior to any distribution from the Settlement Distribution Fund to Participants, the First Tier Settlement Sum and the Second Tier Settlement Sum shall be treated as a common fund (**Settlement Sum**) and the following payments shall be made from the Settlement Distribution Fund:

- (a) an amount to the Applicants for the Applicants' Legal Costs;
- (b) an amount to each Applicant for each Applicant's Reimbursement Payment;
- (c) an amount to the Administrator for Administration Costs incurred by the Administrator; and
- (d) the Funding Commission,

(the amounts in (a), (b) and (d) being, collectively, the **Applicants' Total Costs and Commission**).

8.2. The Applicants' Total Costs and Commission shall not constitute more than 50% of the Settlement Sum. If, upon calculation, the Applicants' Total Costs and Commission do constitute more than 50% of the Settlement Sum, the amounts payable in respect of the Applicants' Legal Costs and the Funding Commission shall be reduced equally (i.e. dollar for dollar) until the Applicants' Total Costs and Commission constitutes not more than 50% of the Settlement Sum.

8.3. Once the payments referred to in cl 8.1 are made, the amount in the Settlement Distribution Fund, referred to as the Residual First Tier Settlement Sum and Residual Second Tier Settlement Sum, shall then be distributed in accordance with this cl 8.

8.4. The Residual Settlement Sum shall be distributed to Participants as follows:

- (a) the Residual First Tier Settlement Sum shall be allocated between:
 - (i) the First Tier Participants; and
 - (ii) those Second Tier Participants representing the first 500,000 damaged Allco Shares (as calculated under cl 2(d) of the Settlement Deed) registered after 4 November 2016 and before the Expiry Date (**Buffer Participants**),

in the proportion which the Final Assessment of each First Tier Participant and each Buffer Participant bears to the aggregate of the Final Assessments for all First Tier Participants and Buffer Participants; and

- (b) the Residual Second Tier Settlement Sum shall be allocated between Second Tier Participants (other than the Buffer Participants) in the proportion which the Final Assessment of each Second Tier Participant (other than the Buffer Participants) bears to the aggregate of the Final Assessments for all Second Tier Participants (other than the Buffer Participants).

8.5. Notwithstanding cl 8.1 above, if at any time in respect of the Participants:

- (a) no Review has been requested, or all Reviews have been made; or
- (b) the highest reasonable estimate of the value of the Assessments still awaiting the determination of Final Assessment is less than 20% of the amount available for distribution to Participants,

the Administrator in its absolute discretion may make a Preliminary Payment to Participants by distribution from the Settlement Distribution Fund in accordance with the procedure set out in cl 8.4, but shall withhold an amount not less than double the highest reasonable estimate of the Assessments still awaiting the determination of Final Assessment, plus its highest reasonable estimate of the Administration Costs likely to be incurred prior to the final distribution of the Settlement Distribution Fund. For the avoidance of doubt, any such Preliminary Payment:

- (i) may be made prior to the determination of the Final Assessments of all Participants; but
- (ii) may not be made to a Participant until the determination of the Final Assessment of that Participant's Claim.

8.6. Subject to cl 8.1, other than a Preliminary Payment made under the preceding clause, no distribution shall be made from the Settlement Distribution Fund until the Final Assessment of every Participant has been determined and the Applicants' Legal Costs, Applicants' Reimbursement Payments, Administration Costs and Funding Commission have been paid in full.

8.7. If a Preliminary Payment is made, any Administration Costs incurred after the date of the Preliminary Payment shall be paid to the Administrator prior to the final distribution of the remaining amount in the Settlement Distribution Fund.

8.8. If, after the final distribution of the Settlement Distribution Fund to Participants, any amount remains or is held in the Settlement Distribution Fund, such as further interest amounts accrued prior to the final distribution but received after the final distribution, the amount shall be distributed pro rata among the Participants, subject to cl 8.9.

8.9. At the Administrator's absolute discretion, the following amounts required to be distributed under cl 8.8 may instead be paid to the Australian Shareholders' Association:

- (a) if the total amount to be distributed is less than \$40,000, the total amount; or
- (b) if the amount to be distributed to any individual Participant is less than \$100, that amount.

9. Immunity from Claims

9.1. The completion of distributions made pursuant to cl 8 (including distributions made by cheques that remain unpresented for 120 days) shall satisfy any and all rights, claims or entitlements of all Group Members in or arising out of the Proceeding.

10. Supervision by the Court

10.1. The Administrator may refer any issues arising in relation to the Settlement Distribution Scheme or the administration of the Settlement Distribution Scheme to the Court for determination.

10.2. Any costs incurred in any such reference to the Court made by the Administrator shall be deemed to be Administration Costs.

11. Notice

11.1. Any notice to be given pursuant to the Settlement Distribution Scheme shall be deemed given and received for all purposes associated with this Settlement Distribution Scheme if it is:

- (a) addressed to the person to whom it is to be given; and
- (b) either:
 - (i) delivered, or sent by pre-paid mail, to that person's postal address (being, in respect of any Group Member, the current postal address recorded in the Administrator's Group Member records, as obtained from the Group Member's Retainer or Funding Agreement, Trade Data, Participant Declaration or directly from the Group Member);
 - (ii) sent by fax to that person's fax number (being, in respect of any Group Member, the fax number included with the Trade Data or Participant

Declaration submitted by that person) and the machine from which it is sent produces a report that states that it was sent in full; or

- (iii) sent by email to that person's email address (being, in respect of a Group Member, the email address included with the Trade Data or Participant Declaration submitted by that person) and a server through which it is transmitted produces a report that states that the email has been delivered to the inbox of that person.

11.2. A notice that complies with this cl 11 will be deemed to have been given and received:

- (a) if it was sent by mail to an addressee in Australia, two clear business days after being sent;
- (b) if it was sent by mail to an addressee overseas, five clear business days after being sent;
- (c) if it was delivered or sent by fax, at the time stated on the report that is produced by the machine from which it was sent; and
- (d) if it was sent by email, at the time it was sent.

11.3. Where a Group Member is not a natural person and where one person has been nominated as the contact in respect of several Group Members, it is sufficient for the purpose of giving notice that any of the provisions of cl 11.1 are complied with in relation to that nominated person.

11.4. The Administrator's address and email address shall be as set out below unless and until the Administrator notifies the sender otherwise:

Allco Class Action
Maurice Blackburn Pty Ltd
Level 10, 456 Lonsdale St
MELBOURNE VIC 3000
Email: allcoclassaction@mauriceblackburn.com.au

12. Time

12.1. The time for doing any act or thing under the Settlement Distribution Scheme may be extended by the Administrator in its absolute discretion.

12.2. The time for doing any act or thing under the Settlement Distribution Scheme may be extended by order of the Court.

Schedule A

| Person / Position | Hourly Rate (ex GST) |
|----------------------------------|-----------------------------|
| Principal | \$800.00 |
| Special Counsel | \$715.00 |
| Senior Associate | \$595.00 |
| Associate | \$535.00 |
| Lawyer | \$455.00 |
| Trainee Lawyer / Law Graduate | \$370.00 |
| Paralegal / Law Clerk | \$290.00 |
| Litigation Technology Consultant | \$250.00 |