

## Sirtex Medical Limited - Shareholder Class Action Updated Answers to Questions

Defined terms have the same meaning as in the Sirtex Medical Limited Shareholder Class Action Funding Agreement (**Funding Agreement**) which accompanies this document. **Please read this document in conjunction with IMF's covering email sent with this document and the Funding Agreement.**

### 1. Who is IMF Bentham Limited?

IMF Bentham Limited, previously known as IMF (Australia) Limited (**IMF**), is one of the world's leading litigation funders, and a pioneer of the litigation funding industry worldwide.

IMF is headquartered in Australia and has offices in the United States, Canada, Hong Kong, London and Singapore. IMF is a public company listed on the Australian Securities Exchange (ASX code: IMF).

IMF has a highly experienced litigation funding team overseeing its investments, delivering as at 30 June 2018 a 90% success rate across 175 completed investments funded by IMF.

Information about IMF can be found on the IMF website at [www.imf.com.au](http://www.imf.com.au).

### 2. Who are Maurice Blackburn Lawyers?

The class action against Sirtex Medical Limited (**Sirtex**) is being conducted by Maurice Blackburn Lawyers.

### 3. What claims are being pursued in the class action?

On 15 December 2017, Pawel Kuterba commenced an open class representative proceeding against Sirtex in the Victoria District Registry of the Federal Court of Australia, file number: VID1375/2017 (**the Kuterba Proceeding**). The Kuterba Proceeding was funded by IMF.

Prior to that, on 9 February 2017, Todd Hayward commenced an open class representative proceeding against Sirtex in the Victoria District Registry of the Federal Court of Australia, file number: VID91/2017 (**the Hayward Proceeding**). The Hayward Proceeding was funded by Australian Funding Partners Limited (**AFP**).

The Court has made an order that the Hayward Proceeding and the Kuterba Proceeding be consolidated as a single open class representative proceeding against Sirtex (**the Consolidated Proceeding**). The Consolidated Proceeding is funded by IMF.

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In the Consolidated Proceeding (identified as VID 1375 of 2017):

- Mr Hayward and Mr Kuterba are the joint representative applicants; and
- Maurice Blackburn Lawyers are the solicitors on the record for Mr Hayward and Mr Kuterba, and shall have responsibility for the conduct of the Consolidated Proceeding.

The Consolidated Proceeding against Sirtex is being conducted in the name of Mr Hayward and Mr Kuterba, on their own behalf, and on behalf of the class members.

The class members are those investors who acquired an interest in Sirtex ordinary shares listed on the ASX during the period from 24 August 2016 to 6.09pm on 16 December 2016, inclusive (**Relevant Period**). Current and former Sirtex shareholders who acquired shares in Sirtex in the Relevant Period may be entitled to compensation for damage or loss caused to them by Sirtex's alleged breaches of the *Corporations Act 2001* (Cth) and/or other Federal and State legislation. The class action will determine the claims of the representatives and the issues in dispute which are common to the representatives' and the class members' claims. If the class action (including all class member claims) is not settled but proceeds to judgment and is successful, then the class members' individual claims will be resolved at a second stage of the proceedings. To date all shareholder class actions in Australia have been resolved, usually by settlement, at the first stage.

For information about the alleged breaches by Sirtex during the Relevant Period, see the Maurice Blackburn Overview of Claim. If you have not received a copy, you can request a copy from the IMF Client Liaison Team on the contact details set out at question 23 below.

#### **4. How do class actions work?**

Where seven or more people have claims that arise out of the same or similar circumstances (such as in this case, acquiring Sirtex shares during the Relevant Period), a class action can be brought by one claimant on their own behalf and as a representative of others. The class action process saves time and expense, avoids the need for the courts to determine common issues of fact or law more than once and enables disputes and claims involving large numbers of people to be resolved via a single case.

Shareholder class actions are an important part of the legal system and alongside regulatory action ensure corporate accountability.

#### **5. What is the Relevant Period in which I must have acquired Sirtex shares to participate in the action?**

To be eligible to participate in the claim, you must have acquired an interest in Sirtex shares traded on the ASX anytime between 24 August 2016 to 6.09pm on 16 December 2016, inclusive.

There is a possibility that the above claim period may be amended. If this occurs IMF or Maurice Blackburn will be in touch with you to inform you of this fact and, if necessary, request additional trading data.

If you are unsure whether you have suffered loss or damage or have questions about what share trading data to provide, please contact IMF or Maurice Blackburn directly.

## 6. How much is my claim worth?

Assuming that Sirtex is found to have breached the *Corporations Act 2001* (Cth) and/or other laws and that such breaches caused you loss, the size of your claim will depend on how the Court assesses your loss.

The methodology that a Court may ultimately adopt when assessing your loss is not fully settled in Australian law and may depend on the evidence you are prepared, or able, to give. It may, for example, be the difference between the amount you paid for the Sirtex shares and the amount you received when you sold them (or the value of the Sirtex shares you still hold).

Alternatively, loss might be assessed on the basis of the difference between the price you paid for the shares and their true or real value at the time of purchase (that is, the price you paid for the shares was inflated).

There are also other methodologies that a Court might adopt.

In due course, you will receive a "Trade History" from IMF based on the trading data you provide to IMF. IMF will ask you to verify the Trade History which will be used by IMF to estimate your loss on one of the methods referred to above. You will be informed of the method used.

All claims will be the subject of further investigation and legal advice and your loss figure may change. In providing the Trade History or otherwise, IMF does not guarantee or represent that you will ultimately be held to have suffered a recoverable loss or any particular level of recoverable loss.

## 7. What will it cost me if the class action is successful?

The Court has made a 'common fund' order and approved funding terms which, subject to further order, are binding upon Mr Hayward, Mr Kuterba, and all class members who have not validly opted out of the proceedings.

The terms of the common fund order require all class members, including those who have not signed a Funding Agreement, to pay from any amounts for which the claims are settled or judgment is given in favour of Mr Hayward, Mr Kuterba and class members:

- the costs and expenses of the proceedings, to be approved by the Court; and
- a percentage proportion, to be determined by the Court at a future date, of the amount for which the claims are settled or judgment is given, but such percentage will be no more than 28%, in accordance with the funding terms approved by the Court.

If the proceedings are successfully resolved, IMF will be entitled to be paid its costs, expenses and remuneration incurred or arising pursuant to the common fund order, the funding terms approved by the Court and the terms of the Funding Agreement, as referred to above.

The terms of the common fund order, including the funding terms approved by the Court, will prevail over any inconsistent provision in the Funding Agreement.

A copy of the common fund order and the funding terms approved by the Court is available on the Federal Court of Australia website, at <https://www.comcourts.gov.au/file/Federal/P/VID1375/2017actions>.

AFP has entered into a co-operation and participation agreement with IMF, with respect to the funding of the Consolidated Proceeding. The terms of this agreement are confidential. The

agreement will be disclosed to class members upon provision of a confidentiality undertaking in a form reasonably satisfactory to Maurice Blackburn Lawyers.

**8. What will it cost me if the class action is not successful?**

The proceedings are funded by IMF on a “no win, no pay” basis. This means that you do not have to pay anything in the event that your claim is unsuccessful.

Subject to the terms of the common fund order and the Funding Agreement IMF will pay any costs order which may be made in favour of Sirtex (in Australia, the losing side in litigation is typically ordered to pay a proportion of the winning side’s costs) and will provide any security for Sirtex’s costs which may be ordered by the Court. If you are a class member only and not a representative (the person in whose name the proceedings has been brought), the Court has no power to make a costs order (in respect of the class action) directly against you in any event.

**9. How long will the class action take to resolve?**

The Consolidated Proceeding is listed for an initial trial on 1 April 2019 in Sydney, with a time estimate of 4 weeks. Unless all claims encompassed by the class action are settled, the initial trial will only resolve the representatives’ claims and the common issues, with class member claims to be resolved individually at a second stage of the proceedings.

**10. Where is the class action brought?**

The class action has been filed in the Federal Court of Australia.

**11. Do I have to sign a Funding Agreement to “join” the class action?**

No. The class action has been commenced on an “open” basis, which means that all persons who acquired an interest in Sirtex shares during the Relevant Period are included, irrespective of whether they have signed a Funding Agreement or not.

For the reasons described below, IMF is nonetheless asking all current and former Sirtex shareholders who acquired an interest in shares in Sirtex during the Relevant Period to sign a Funding Agreement.

**12. As the claim has been filed as an ‘open class’ proceeding, why should I sign a Funding Agreement?**

There are a number of reasons why potential class members may wish to consider signing a Funding Agreement, even though the claim has been filed on an ‘open’ basis.

*Securing the benefits of IMF’s funding*

First, the initial trial in the class action will only determine the representatives’ claims and the common issues. Issues specific to your individual claim, such as whether you suffered loss and the value of the loss, will not be determined in the initial trial. It may be that further steps will then need to be taken in order to pursue your individual damages at a second stage of the proceedings. This could include a court hearing at which your individual damages are determined.

By signing a Funding Agreement, you will secure IMF's funding to cover not only the initial trial in the class action, but also any additional steps that may be needed to resolve your individual claim. You will also be protected from any adverse costs orders that may be made against you in taking these additional steps.

*Receiving updates on the progress of the class action*

Secondly, by signing a Funding Agreement and retaining Maurice Blackburn you will be kept informed of developments in the class action, be able to ask questions of IMF and Maurice Blackburn as a client, and will receive additional information such as an up-front and updated loss estimate.

*No financial disadvantage*

Thirdly, IMF intends to submit, at a future date, that the funding rate the Court should apply to the unfunded class members be the same as the 28% rate in the Funding Agreement. The Court will set a rate (which may be different to the rate in the Funding Agreement) that will apply consistently to all class members. In these circumstances, you will not be financially worse off for having signed a Funding Agreement with IMF.

*Reducing the burden of a registration process*

Fourthly, by signing a Funding Agreement, you will likely reduce the steps required to be taken as a class member if the Court orders a further registration process for the purposes of a settlement in the future, because IMF and Maurice Blackburn will already have your share trading data.

We believe that our proven track record in successfully funding claims of this type, our demonstrable financial strength (we are an ASX-listed public company audited by a "Big 4" accounting firm), and the experience and track record of Maurice Blackburn means that the Kuterba and Hayward class action is an effective and powerful vehicle for Sirtex shareholders to pursue their claims.

**13. How does signing the Funding Agreement affect my participation in any other class actions against Sirtex?**

We are not aware of any other class action against Sirtex. However, by signing the Funding Agreement, you are agreeing that you will opt-out of any other proceedings which are similar to the Consolidated Proceeding (as per clause 7.1.6 of the Funding Agreement).

**14. Who should sign the Funding Agreement?**

Generally, the Funding Agreement should be signed by the registered holder of the Sirtex shares which are the subject of the claim. IMF will, however, accept a Funding Agreement signed by the beneficial owner of the shares if the custodian or nominee company that is the registered owner of those shares is unwilling or unable to sign the Funding Agreement.

If you are signing the Funding Agreement on behalf of more than one entity, you need to include each of their names in a schedule attached to the Funding Agreement

**15. Is there any precondition to IMF's funding of the proceedings?**

There was, but there is not now. The condition that there must be sufficient (estimated) losses by persons who sign Funding Agreements to make the funding of any proceedings commercially viable was satisfied in December 2017 on the basis that IMF is funding the proceedings on an open class basis.

## 16. What is IMF's Conflicts Management Policy?

IMF is required to have in place adequate practices and written policies for managing any conflict of interest that may arise between IMF, the lawyers who conduct litigation funded by IMF, and the funded claimants and others in relation to any litigation funded by IMF.

This is a requirement of the Corporations Amendment Regulation 2012 (No. 6) (**the Regulations**), which came into force on 12 July 2013.

IMF's Conflicts Management Policy sets out how IMF identifies and manages any such conflicts so as to ensure that IMF complies with the Regulations. You can access IMF's Conflict Management Policy by going to IMF's website and using the password which IMF will provide to you. You can also learn more about IMF's Conflicts Management Policy by reading IMF's Disclosure Statement which has been provided to you with this document.

## 17. What is the SRN/HIN number that IMF requests at page 2 of the Funding Agreement?

Your Holder Identification Number (**HIN**) identifies your registration on the CHESS Sub-register of the ASX. One HIN can register an investor's shareholdings in multiple companies. For example, if you hold shares in companies X, Y and Z, these shareholdings can be consolidated in one registration under a single HIN.

Your Shareholder Registration Number (**SRN**) identifies your registration on an Issuer Sponsored Sub-register. An SRN registers an investor's shareholding in a single listed company. If you hold shares in more than one company and choose to be Issuer Sponsored, you will have a different SRN for each shareholding.

If a custodian or nominee company has acquired Sirtex shares on your behalf, these numbers may not be accessible to you. You will need to contact your custodian or nominee to obtain the relevant HIN or SRN as this information is required as part of the registration process.

## 18. What is Sirtex's ASX Code / ISIN / CUSIP / SEDOL identifier?

Sirtex's ASX code is **SRX**.

The International Standards Organisation ("**ISO**") has provided a standard (ISO 6166) for the numbering of securities. This standard is intended for use in any application in the trading and administration of securities. The ISIN is a code which uniquely identifies a specific securities' issue. Sirtex's ORD ISIN code is AU000000SRX1.

## 19. Do I have to sell (or have sold) my shares to be eligible?

No. Eligibility is not determined by whether or not you still hold shares in Sirtex. So long as you acquired an interest in Sirtex shares during the Relevant Period you are, at this stage, eligible to participate in the Sirtex Class Action.

## 20. What if I decide to withdraw from the class action?

The Opt Out period expired at 4pm AEDT on 1 November 2018, therefore you will not be able to withdraw from the class action if did not Opt Out.

You do however, have a cooling off period of 21 days after signing the Funding Agreement (see clause 3 of the Funding Agreement).

**21. Will my contact and investment details be kept private?**

IMF will only use and/or disclose your personal information strictly for the purpose of the legal proceedings, or as required by the Court or by law or as requested by Maurice Blackburn. In all other cases, we will seek your consent before disclosing any of your personal information.

IMF's privacy policy can be found on the IMF website at [www.imf.com.au](http://www.imf.com.au).

**22. How much time will I have to devote to the legal proceedings?**

Initially, if you decide to sign a Funding Agreement, we will only require you to provide the information referred to in the first three pages of the Funding Agreement. Ultimately you may need to provide further information about your claim, including providing a written witness statement and possibly you may need to give evidence in Court. Provided you are not a representative, the need to give evidence is extremely unlikely to occur until after the representative's case has been determined by the Court.

**23. By when do I need to return the Funding Agreement?**

If you are happy with the terms of the Funding Agreement and the Maurice Blackburn Retainer and Costs Agreement please sign and return those documents (in their entirety) to IMF as soon as possible.

When completing the Funding Agreement, we ask that you provide trading data for your investment in Sirtex shares for the Relevant Period (see question 5 above).

Please:

- complete pages 1, 2 and 3 of the Sirtex Medical Limited Funding Agreement;
- complete page 1 of Maurice Blackburn's Retainer and Costs Agreement;
- sign both documents; and
- return both documents (keeping a copy for yourself), in their entirety, by post, fax or email to:

IMF Bentham Limited  
PO Box 5106  
St Georges Terrace  
Perth WA 6831  
Australia

Fax: +61 (0)8 9225 2399  
Email: [403354@imf.com.au](mailto:403354@imf.com.au)

**24. Where do I obtain more information?**

Please contact our Client Liaison Team on 1800 016 464 (if calling within Australia) or [403354@imf.com.au](mailto:403354@imf.com.au). You may also wish to obtain independent legal advice before signing the agreements, and we encourage you to do so.