

IN THE MATTER OF:

**ANSETT AUSTRALIA LIMITED**  
(ACN 004 209 410) & ORS (in accordance with  
the Schedule attached) (All Subject to a Deed of  
Company Arrangement)

and

**MARK ANTHONY KORDA and MARK FRANCIS  
XAVIER MENTHA** (as Deed Administrators of  
the Companies)

**AFFIDAVIT**

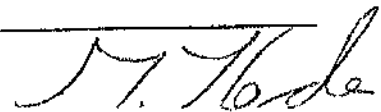
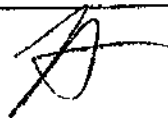
(Order 14, rule 2)

On 21 June 2005 I, **MARK ANTHONY KORDA**, Chartered Accountant, of Level 24,  
333 Collins Street, Melbourne in the State of Victoria, **MAKE OATH AND SAY:**

- 1 I make this affidavit in support of an application by the plaintiffs issued  
21 June 2005 ("**Application**") seeking orders or directions pursuant to  
sections 447A and 447D of the *Corporations Act 2001 (Cth)* ("**Act**") and the  
inherent jurisdiction of the Court as to the course the plaintiff Deed  
Administrators ought to follow in connection with the Ansett Group  
administrations and, in particular, the proposed pooling of the Ansett Group  
assets and liabilities into a single entity.
- 2 Save where I say to the contrary, the matters deposed to in this affidavit are  
deposed to from my own knowledge of the facts. Where I swear to matters  
from information or belief I believe those matters to be true. I am authorised  
by Mark Mentha to make this affidavit on his behalf. References in this  
affidavit to "we" or "us" are references to Mark Mentha and me.

Filed on behalf of the Plaintiffs

**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21, 333 Collins Street  
MELBOURNE VIC 3000



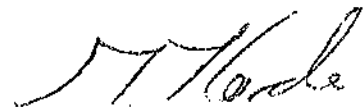
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Reference: LZ: 01-1349951  
(Leon Zwier)

## APPOINTMENT OF ADMINISTRATORS TO ANSETT GROUP

- 3 On 17 September 2001 we were appointed by order of this Court as voluntary administrators of the companies identified in the schedule attached to the Application, other than Air New Zealand Engineering Services Limited (ACN 089 520 696) ("**ANZES**") (together "**Ansett Group**" or "**Ansett Group Companies**" and each an "**Ansett Group Company**"). On 4 October 2001 we were appointed as voluntary administrators of ANZES. Those appointments followed the resignations on 17 September 2001 of Peter Hedge, Greg Hall and Allan Watson ("**Initial Administrators**") as voluntary administrators of the Ansett Group. The Initial Administrators had been appointed voluntary administrators of the Ansett Group variously on 12 and 14 September 2001.
- 4 Now produced and shown to me and marked "**MAK-1**" are copies of Australian Securities and Investments Commission historical company extract searches for each Ansett Group Company.

## EXECUTION OF DEEDS OF COMPANY ARRANGEMENT

- 5 A meeting of creditors of each Ansett Group Company was convened pursuant to Section 439A of the Act and held on 29 January 2002 (each a "**Meeting**"). At each Meeting, the creditors of each Ansett Group Company resolved, among other things, to adjourn the Meeting to a later date on which they would consider whether it would be in their interests as creditors to execute a deed of company arrangement ("**DOCA**"), for the administration to end, or for the company to be wound up.
- 6 Each adjourned Meeting was held on 27 March 2002 ("**Second Meeting**"). At each Second Meeting it was resolved by a majority of creditors of each Ansett Group Company, both in number and in value, that each Ansett Group Company execute a DOCA.
- 7 On or about 2 May 2002 each Ansett Group Company executed a DOCA pursuant to which we were appointed as joint Deed Administrators ("**Deed Administrators**") of each Ansett Group Company ("**Ansett DOCAs**"). The

Ansett DOCAs are materially in the same form and contain the same material terms.

Now produced and shown to me and marked "MAK-2" is a copy of the DOCA executed by Ansett Australia Holdings Limited (ACN 004 216 291) (Administrators Appointed).

8 In accordance with certain contractual obligations imposed on us in the course of the administration of the Ansett Group (briefly described in paragraphs 13 and 14 below), the Ansett DOCAs make provision for possible pooling of the Ansett Group assets and liabilities. I refer, in particular, to clauses 13.1, 13.2 and 18.4 of the Ansett DOCAs.

9 Clause 13.1 of the Ansett DOCAs states:

*"The Voluntary Administrators are required, pursuant to the terms of the Air New Zealand MOU and the SEESA Deed, to take all reasonable steps to propose and recommend that each Ansett Group Company shall seek to pool all of the assets and liabilities of the Ansett Group, so that all Ansett Group Companies are treated as one company".*

10 Clause 13.2 of the Ansett DOCAs states:

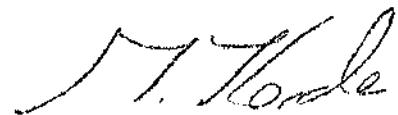
*"The Deed Administrators shall convene a further meeting of Deed Creditors to consider a variation to the Deed which shall include a regime for the pooling of all assets and liabilities".*

11 Clause 18.4 of the Ansett DOCAs states:

*"When the Deed Administrators have sold or otherwise realised sufficient assets so that they are able to make an accurate estimation of the amounts to be paid to Participating Creditors in accordance with the priority regime set out in Clause 18 and prior to the distribution of any money to Participating Creditors (other than Priority Creditors) in accordance with Clause 18.2.5, the Deed Administrators shall convene a meeting of creditors under Section 445F of the Act to consider:*

*18.4.1 any proposed variation to the Deed, including the incorporation in the Deed of provisions for releasing Claims of Deed Creditors less their Entitlements and the pooling of assets and liabilities; or*

*18.4.2 in the alternative, a resolution to terminate this Deed and wind up the company.*

*For the purposes of such a meeting, the Deed Administrators shall advertise nationally and make available to the Deed Creditors on the Administrators' Website:*

18.4.3 *particulars of the proposed variation; and*

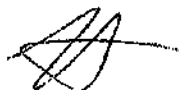
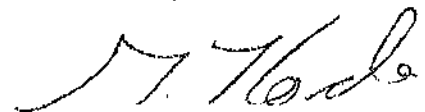
18.4.4 *such information which would be sent to Deed Creditors as if the meeting were a Second Meeting of Creditors under Section 439A of the Act.*

- 12 Our powers, as Deed Administrators, to facilitate and give effect to a resolution by Ansett Group creditors to pool Ansett Group assets and liabilities is contained in clauses 20.2.14 and 20.2.15 of the Ansett DOCAs. Those clauses provide that we, as Deed Administrators, have the following powers:

*"20.2.14 the power to assign and transfer property, assets and rights, and novate liabilities, of the Company to another Ansett Group Company for the purpose of maximising the sale of assets or for maximising the return to Deed Creditors;*

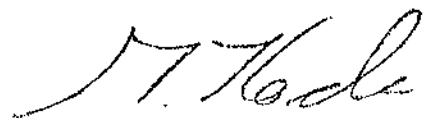
*20.2.15 the power to accept and take an assignment or transfer of property, assets and rights and to accept novation of liabilities from another Ansett Group Company".*

- 13 I refer to paragraph 9 above, and the reference in clause 13.1 of the Ansett DOCAs to *"the Air New Zealand MOU and the SEESA Deed"*. The *"Air New Zealand MOU"* is a Memorandum of Understanding that we and others entered into with Air New Zealand dated 3 October 2001 (*"MOU"*). In essence, and insofar as it is material to this application, under the MOU, Air New Zealand agreed to procure the Air New Zealand government to immediately pay on behalf of Air New Zealand to the Ansett Group AUD150 million (net of all New Zealand taxes) and that Air New Zealand and its directors would not seek repayment from Ansett of trade debts or funds advanced, provided (among other things) that we, as (then) Voluntary Administrators, did or do the following. First, we were to take all reasonable steps to propose and recommend that each Ansett Group Company enter into a DOCA which acknowledges and incorporates the terms of the MOU and which seeks to pool all of the assets and liabilities of the Ansett Group so that, for the purposes of the Ansett DOCAs, all Ansett Group Companies are treated as one company. Second, we are required to use our best endeavours to ensure that the priority creditors of the Ansett Group are paid

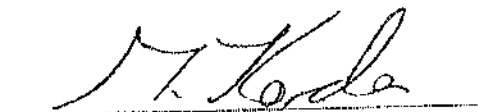
all of their entitlements in full. Now produced to me and marked "MAK-3" is a copy of the MOU.

- 14 I refer to the reference to "SEESA Deed" in clause 13.1 of the Ansett DOCAs. The SEESA Deed is a deed that was entered into on 14 December 2001 by the Commonwealth, certain Ansett Group Companies and us, in our capacity as (then) Voluntary Administrators. The SEESA Deed was one of a number of documents created in relation to the provision of funds by the Commonwealth under a scheme known as the Special Employee Entitlements Scheme for Ansett Group employees ("**SEESA Scheme**"), which scheme was designed to effect early payment of certain unpaid Ansett Group employee entitlements provided the Commonwealth could be subrogated to the rights of those employees to recover their entitlements from the administration or liquidation of the Ansett Group. One of the conditions on which the Commonwealth was prepared to advance funds under the SEESA Scheme is reflected in clause 2.5 of the SEESA Deed, which provides that if we, as (then) Voluntary Administrators, decide to recommend that the relevant Ansett Group Companies enter into DOCAs, then each DOCA will "seek to 'pool' all the assets and liabilities of the eligible companies, so that for the purposes of the [SEESA] Deed all eligible companies are treated as one company". Now produced and shown to me and marked "MAK-4" is a copy of the SEESA Deed. In the event, following entry into the SEESA Deed we, as (then) Voluntary Administrators, and SEES Pty Ltd (as service provider and agent of the Commonwealth) entered into a further agreement ("**Loan Deed**") which set out the agreed basis upon which SEES Pty Ltd would provide funds to us, as (then) Voluntary Administrators, for the purposes of the SEESA Scheme. Clause 6.4 of the Loan Deed largely mirrors the requirements of clause 2.5 of the SEESA Deed. Ultimately, the Commonwealth made payments in accordance with the SEESA Scheme and on the terms and conditions agreed to in the SEESA Deed and the Loan Deed, including the requirement that the Ansett DOCAs seek to pool the assets and liabilities of the relevant Ansett Group Companies.

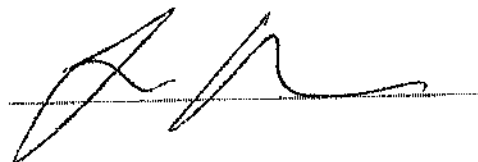


- 15 I intend to separately set out, in a detailed and substantive affidavit, Mark Mentha's and my views about a number of factual and legal matters relevant to the pooling of the assets and liabilities of the Ansett Group.
- 16 We humbly request this Honourable Court to grant the relief sought in this application.

**SWORN** by **MARK ANTHONY KORDA** )  
at Melbourne in the State of Victoria on )  
21 June 2005 )



Before me:



**JULIAN MICHEL HETZEY**  
**ARNOLD BLOCH LEIBLER**  
**LEVEL 21, 333 COLLINS STREET**  
**MELBOURNE 3000**  
**A NATURAL PERSON WHO IS A CURRENT**  
**PRACTITIONER WITHIN THE MEANING OF**  
**THE LEGAL PRACTICE ACT 1996.**

IN THE FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY

No. V of 2005

IN THE MATTER OF:

**ANSETT AUSTRALIA LIMITED**  
(ACN 004 209 410) & ORS (in accordance with  
the Schedule attached) (All Subject to a Deed of  
Company Arrangement)

and

**MARK ANTHONY KORDA** and **MARK FRANCIS  
XAVIER MENTHA** (as Deed Administrators of  
the Companies)

**AFFIDAVIT - CERTIFICATE OF COMPLIANCE**

(Order 14, rule 5A)

I, **JULIAN MICHEL HETYEY**, certify to the Court that the affidavit of **MARK ANTHONY KORDA** sworn on 21 June 2005 filed on behalf of the plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: *21 June 2005*

  
.....  
**JULIAN MICHEL HETYEY**  
Legal representative for  
the plaintiffs

**JULIAN MICHEL HETYEY**  
**ARNOLD BLOCH LEIBLER**  
LEVEL 21, 333 COLLINS STREET  
MELBOURNE 3000  
A NATURAL PERSON WHO IS A CURRENT  
PRACTITIONER WITHIN THE MEANING OF  
THE LEGAL PRACTICE ACT 1996.

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Filed on behalf of the Plaintiffs

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