

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)

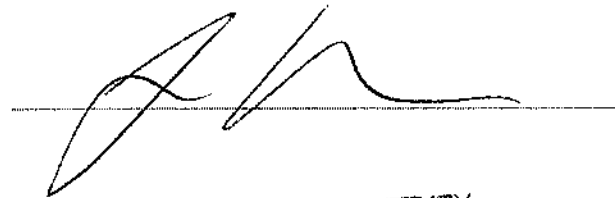
And

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

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "MAK-4" produced and shown to **MARK ANTHONY KORDA** at the
time of swearing his affidavit dated 21 June 2005.

Before me:



JULIAN MICHEL HETVEY
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.

Exhibit "MAK-4"
Copy SEESA Deed dated 14 December 2001

"MAK-4"

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Commonwealth of Austral

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Mark Mentha and Mark Kor

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THIS DEED is made the 14th day of DECEMBER 2001

BETWEEN:

COMMONWEALTH OF AUSTRALIA ("the Commonwealth")

ANSETT HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) (ACN 068 117 535) and each of the other Ansett Group companies listed in the determination made pursuant to s.22 of the *Air Passenger Ticket Levy (Collection) Act 2001* ("the Determination") other than Hazelton Airlines Limited, Hazelton Air Charter Pty Ltd and Hazelton Air Services Pty Ltd, C/- Andersen, Level 17, 360 Elizabeth Street, Melbourne, Victoria (collectively "the eligible companies")

MARK MENTHA and MARK KORDA as voluntary administrators of each company in the eligible companies C/- Andersen, Level 17, 360 Elizabeth Street, Melbourne, Victoria ("the Administrators")

WHEREAS:

- A On 17 September 2001 the Administrators were appointed the voluntary administrators of the eligible companies by order of Justice Goldberg in the Federal Court of Australia.
- B The Administrators are under a duty pursuant to Section 435A of the *Corporations Act 2001* ("the Act") to maximise the chances of the Ansett business remaining in existence or to maximise the return to creditors of the eligible companies, including its employees.
- C The Commonwealth has, under the *Air Passenger Ticket Levy (Collection) Act 2001*, established a Special Employee Entitlement Scheme for eligible companies employees ("the Scheme").
- D On or about 17 October 2001, the Administrators invited eligible companies employees to apply for redundancy, and the Administrators have and will continue to selectively accept applications from employees who wish to take a redundancy.
- E This Deed sets out an agreed basis on which the Commonwealth, or any party contracted by the Commonwealth for the purpose of making payments under the Scheme (hereafter, where the context permits, a reference to the Commonwealth will include a reference to such a party) will make payments under the Scheme to the Administrators.
- F It is intended that anything required to be done under this Deed will be done consistently with the Scheme.

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NOW THIS DEED PROVIDES AS FOLLOWS:

1 INTERPRETATION

1.1 Interpretation

In this Deed, except to the extent that the subject or the context otherwise requires:

- 1.1.1 when used in this Deed, any term defined or referred to in the *Air Passenger Ticket Levy (Collection) Act 2001*, or in the Determination, shall, unless the contrary intention appears, have the same meaning as provided under that Act or instrument as the case may be;
- 1.1.2 "Entitlement Payments" means those payments referred to in Part 4 of the Determination;
- 1.1.3 reference to any legislation or to any provision of any legislation shall include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments issued under, such legislation or such provision and shall include the corresponding legislation in such other State or Territory of the Commonwealth of Australia as may be relevant from time to time;
- 1.1.4 words (including words defined in this Deed) denoting the singular number shall include the plural and vice versa;
- 1.1.5 words importing natural persons will (where appropriate) include corporations, firms, unincorporated associations, partnerships, trusts and any other entities recognised by law and vice versa;
- 1.1.6 words denoting any gender shall include all genders;
- 1.1.7 words "written" and "in writing" include any means of visible reproduction of words in a tangible and permanently viable form;
- 1.1.8 references to Clauses, Schedules and Recitals are references to the clauses, schedules and recitals of this Deed;
- 1.1.9 references to parties are references to the parties to this Deed;
- 1.1.10 references to any document or agreement shall be deemed to include references to such document or agreement as novated, supplemented, varied or replaced from time to time.

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1.2 **Headings**

The headings in this Deed are for the purpose of more convenient reference only and shall not form part of this Deed or affect its construction or interpretation.

1.3 **Business Days**

Except where otherwise expressly provided, if the day on or by which any act, matter or thing is to be done as required by this Deed is a day other than a Business Day, such act, matter or thing shall be done on the immediately succeeding Business Day.

1.4 **Payments to or by Administrators**

A payment made to or by the Administrators pursuant to this Deed is a payment made to or by the Administrators acting on behalf of the eligible company.

2 **CONDITION PRECEDENT**

2.1 This Deed (other than the provisions of Clauses 2.1 and 2.2) is conditional upon the Federal Court of Australia making an order or direction to the effect that:

2.1.1 the Administrators may properly and justifiably execute this Deed or the terms of this Deed are approved; and

2.1.2 Part 6.3A of the Act is to operate as if it provided that the Entitlement Payments are debts incurred by the Administrators in the performance or exercise of their functions and powers as Administrators and for which the Administrators will not be personally liable to repay unless and to the extent that the Administrators have assets available to them to do so and on the basis that such repayments are to have the priority equal to the priority the Commonwealth would have received, under s.560 of the Act, in any winding up of a company, had it advanced a payment of the kind contemplated by s.560 of the Act.

on or before 10 December 2001 (or such other date as the Administrators and the Commonwealth may agree in writing).

2.2 The parties will use their best endeavours to satisfy the condition precedent in Clause 2.1 including:

2.2.1 the Administrators making prompt application to the Federal Court of Australia; and

2.2.2 making and filing in support of the application any affidavit material reasonably required by any party to this Deed.

2.3 For the avoidance of doubt the Administrators will not be personally liable to repay any amounts to the Commonwealth.

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2.4 If the Administrators make a payment to an eligible employee of his or her entitlements where the payment is sourced from a Scheme Payment, the Administrators, the eligible companies and the Commonwealth agree that:

2.4.1 in the administration or liquidation of the eligible company or, subject to Clause 2.8, under any Deed of Company Arrangement entered into by that eligible company, the Commonwealth will have a priority equal to the priority the Commonwealth would have received, under s.560 of the Act, in any winding up, had it advanced a payment of the kind contemplated by s.560 of the Act.

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2.5 If the Administrators decide to recommend that each eligible company enter into a Deed of Company Arrangement, the Deed of Company Arrangement which the Administrators recommend will:

2.5.1 seek to "pool" all of the assets and liabilities of the eligible companies, so that for the purposes of the Deed all eligible companies are treated as one company; and

2.5.2 otherwise be consistent with the provisions of this Deed (and in particular the incorporation of the priority regime contemplated under sections 566 and 560 of the Corporations Act in the manner provided for in this Deed).

2.6 If any eligible company enters into a Deed of Company Arrangement which incorporates a priority regime other than as contemplated by Clause 2.5.2, then the parties agree that Entitlement Payments received by the Administrators will constitute an expense properly incurred by the Administrators in the administration of the eligible company, and will be afforded a priority equal to the priority the Commonwealth would have received, under s.560 of the Act, in any winding up of a company, had it advanced a payment of the kind contemplated by s.560 of the Act.

2.7 The Administrators undertake that they will not recommend to eligible company creditors pursuant to Section 439A(4) of the Corporations Act that it would be in the creditors' interests for the company to execute a Deed of Company Arrangement other than one which contains a payment for the Commonwealth consistent with the terms of this Deed.

2.8 The Administrators acknowledge that if a Deed of Company Arrangement is approved that subordinates the Commonwealth's priority to repayment other than in accordance with the terms of this Deed that the Commonwealth will have suffered substantial injustice.

3 PAYMENT IN LIEU OF NOTICE

3.1 The Administrators have already paid, and will continue to pay, eligible employees certain payments in lieu of notice in accordance with arrangements agreed to by the Commonwealth on or around 14 October 2001.

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3.2 The parties acknowledge that the payments referred to in Clause 3.1 have been made, and will continue to be made in accordance with that agreement.

4 NOTICES

All notices, requests, demands, requisitions, approvals, elections, consents or other communications ("notices") authorised or required to be made to or by a party under or in connection with this Deed shall be in writing and may be given by facsimile or hand to or upon the recipient at the address of such party as follows:

If to the Commonwealth -

Address: Department of Employment, Workplace Relations and Small Business, Canberra

Facsimile: (02) 6276 8889

Attention: Leslie M Riggs

If to the Administrators or the eligible companies -

Address: Cf- Andersen, 360 Elizabeth Street, Melbourne

Facsimile: (03) 9288 8400

Attention: Mark Mentha and Mark Korda

cc: Leon Zwiier, Arnold Bloch Leibler

Address: Level 21, 333 Collins Street, Melbourne

Facsimile: (03) 9229 8600

or to or at any other address or facsimile number as the recipient may have notified the sender and may be signed by an Authorised Officer of the sender. Any notice is deemed to have been given and received:

4.1 if delivered by hand at or before 4.30 p.m. to a party's address on a Business Day on that day, otherwise at 9.30 a.m. on the next Business Day following the day of delivery;

4.2 if given by facsimile at or before 4.30 p.m. on a Business Day on the day of transmission, otherwise at 9.30 a.m. on the next Business Day following the day of transmission, in both circumstances only if a complete transmission report is received by the sender.

8 WAIVER

The waiver by any party of a breach or default by any other party of any of the provisions of this Deed shall not be construed as a waiver of any succeeding breach or default of the same or any other provisions of this Deed and shall not impair the exercise of any rights accruing to it under this Deed after that waiver; nor shall any delay or omission on the part of any of the parties to exercise or avail itself of any rights accruing to it under this Deed operate as a waiver of any breach or default by any of the other parties of any of the provisions of this Deed.

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6 **GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws for the time being in force in the State of Victoria and the parties irrevocably submit to the jurisdiction of the Courts of that State including any Courts having appellate jurisdiction from those Courts.

7 **SUCCESSORS**

The Parties agree that:

- 7.1 any person contracted by the Commonwealth for the purpose of making payments under the Scheme;
- 7.2 any other administrator appointed to any eligible companies company;
- 7.3 any liquidator appointed to any eligible companies company;
- 7.4 any administrator of a Deed of Company Arrangement entered into by any eligible companies company.

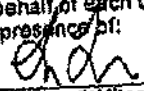
will enjoy the rights and be subject to the obligations under this Deed.

8 **FURTHER ASSURANCES**

- 8.1 Each party must exercise all such powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of this Deed.


EXECUTED as a Deed.

SIGNED SEALED AND DELIVERED by
MARK MENTHA and MARK KORBA for and
on behalf of each of the eligible companies in
the presence of:


Signature of Witness

LEON ZWIER
Name of Witness (BLOCK LETTERS)

SIGNED SEALED AND DELIVERED by
MARK MENTHA in the presence of:


Signature of Witness

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DAMIAN JAN PODD.
Name of Witness (BLOCK LETTERS)

SIGNED SEALED AND DELIVERED ^{by his attorney Mark Naughton under power.} AND DELIVERED by
MARK KORDA in the presence of:

[Signature]
Signature of Witness

[Signature]

LEON ZWIET
Name of Witness (BLOCK LETTERS)

SIGNED SEALED AND DELIVERED on
behalf of the Commonwealth by
DR PETER SHERGOLD AM, SECRETARY
OF THE DEPARTMENT OF EMPLOYMENT
AND WORKPLACE RELATIONS in the
presence of:

[Signature]
Signature of Witness

[Signature]

MICHAEL WYNARD
Name of Witness (BLOCK LETTERS)