

**IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY**

No. V621 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)**

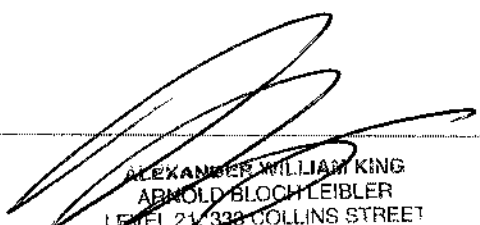
and

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

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MAK-39**" produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 12 September 2005.

Before me:



ALEXANDER WILLIAM KING
ARNOLD BLOCHLEIBLER
LEVEL 21, 338 COLLINS STREET
MELBOURNE 3000
A NATURAL PERSON WHO IS A CURRENT
PRACTITIONER WITHIN THE MEANING OF
THE LEGAL PRACTICE ACT 1996

**Exhibit "MAK-39"
Loan Deed**

SEES PTY LIMITED

AND

MARK KORDA AND MARK MENTHA
ADMINISTRATORS OF ANSETT GROUP

SEES ADMINISTRATION AND LOAN AGREEMENT

GDR1218101



solicitors

Level 34
St. Martins Tower
31 Market Street
Sydney NSW 2000
DX 1069 Sydney
Telephone (02) 9265 3000
Facsimile (02) 9261 5916

ADMINISTRATION AND LOAN DEED OF AGREEMENT

THIS Administration and Loan Deed is made the 18th day of December 2001

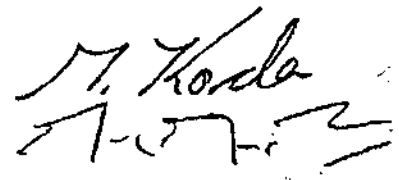
BETWEEN: SEES PTY LTD of Level 3, 31 Market Street, Sydney NSW (ABN 35 098 586 308) ("SEES")

ANSETT HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) (ACN 065 117 535) and each of the other Ansett Group companies listed in the determination made 4 December 2001 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" and separately, "the eligible company")

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")

BACKGROUND

- 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. Pursuant to Section 435A of the *Corporations Act 2001*, the Administrators are required to maximise the chances of the Ansett Group businesses remaining in existence or to maximise the return to creditors of the eligible companies, including its employees.
- C. The Commonwealth has, under the Act, established a Special Employee Scheme for eligible companies employees ("the Scheme") and engaged SEES under the DEWR Agreement, as service provider to the Commonwealth, to arrange and manage the provision of funds to the Administrators and eligible companies pursuant to and for the purposes of the Scheme consistently with the Determination and ss 556 and 560 of the *Corporations Act 2001*.
- D. On or about 17 October 2001, the Administrators invited eligible companies' employees to apply for redundancy, and the Administrators have accepted and will continue selectively to accept applications from employees who wish to take a redundancy and may need to terminate employment of others from time to time.
- E. By Application made 3 December 2001 to the Federal Court of Australia in proceeding no 3083 of 2001, the Administrators sought orders and directions from the Court as to the nature of and priority to be accorded to the entitlement payments to be made to eligible employees pursuant to the Scheme. On 14 December 2001,



the Honourable Justice Goldberg made orders in proceeding no V3083 of 2001, a copy of which is attached to this Deed as Annexure "A" ("the Court Orders").

- F. This Deed sets out an agreed basis on which the SEES, as service provider to the Commonwealth, will lend money to the Administrators under and for the purposes of the Scheme and pursuant to the Court Orders.
- G. It is intended that anything required to be done under this Deed will be done consistently with the Scheme and the Court Orders.

1 Definitions and Interpretation

- 1.1 In this Deed, unless the subject or context requires otherwise, any term used but not defined in this Deed which is defined or referred to in the Act or in the Determination shall have the same meaning as provided under the Act or the Determination. Otherwise,:

"Act" means the Air Passenger Ticket Levy (Collection) Act 2001;

"Advance" means the advance or advances by way of loan made or to be made under this Deed for the purposes of the Scheme consistently with the Court Orders ;

"Ansett Group" means the group of companies referred to in the Determination as "eligible companies" and **Ansett Company** refers to a company within the Ansett Group;

"Commonwealth" means the Commonwealth of Australia;

"DEWR" the Commonwealth Department of Employment and Workplace Relations or such other government agency or department as may, from time to time, administer this Deed on behalf of the Commonwealth

"DEWR Agreement" means the agreement dated about 17 December 2001 between the SEES and the Commonwealth under which DEWR on behalf of the Commonwealth engaged SEES to lend monies to the Administrators for the purpose of the Scheme as part of SEES providing services to the Commonwealth;

"Eligible Employee Payment" means those payments referred to in Part 4 of the Determination

"Minister" means the Minister of the Commonwealth from time to time administering the Scheme;

"Determination" means the determination relating to the Scheme, made by the Minister for Employment, Workplace Relations on 4 December 2001 in accordance with section 22 of the Act or as later altered from time to time;

"Scheme" means the special Employee Entitlements Scheme for Ansett Group's Eligible Employees as is the subject of the Determination;

M. Korda
5-17-02

1.2 In this Deed, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) words importing a gender include any other gender; and
- (c) words importing persons include a partnership and a body whether corporate or otherwise; and
- (d) clause headings, words capitalised or in bold format and notes in square brackets (" [] ") are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (e) all references to clauses are clauses in this Deed; and
- (f) all references to dollars are to Australian dollars and this Deed uses Australian currency; and
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.3 In the event of any conflict or inconsistency between the terms of this Deed and the Court Orders, the Court Orders take precedence.

2 MAKING OF ADVANCE

2.1 Subject to this Deed upon request in a form and substance acceptable to the Commonwealth SEES will immediately upon the Commonwealth approving the advance of monies lend money to the Administrators to allow payment of Eligible Employee Payments in respect of the Eligible Employees the subject of the request.

4 PROVISION OF INFORMATION

4.1 The Administrators acknowledge that they must provide SEES with access and information reasonably required by SEES, as service provider to the Commonwealth, to satisfy its obligations to the Commonwealth and will use their best endeavours to provide the Commonwealth, as a creditor of the Ansett Group, such information as it may from time to time require for the Commonwealth to approve payment / advance of funds under this Deed.

5 INTEREST AND RECOURSE

5.1 Interest shall not be payable by the Administrators in respect of the Advance pursuant to this Deed in implementation of the Scheme.

M. Korda
M. Korda

6 REPAYMENT AND PRIORITY

- 6.1 Subject to clause 3 (b) (1) of the Court Orders the Administrators will not be personally liable to repay any amounts to SEES.
- 6.2 The Administrators may from time to time repay to SEES into the account for payment nominated by SEES and approved by its banker all or part of the Advance in accordance with the priority afforded pursuant to the Court Orders .
- 6.3 To the extent the Administrators make a payment to an Eligible Employee of his or her entitlements pursuant to this Deed and the Court Orders, the Administrators and the eligible companies acknowledge that those funds are lent for the purposes of the Scheme and agree with SEES that in the administration or liquidation of any member of the Ansett Group or, subject to Clause 6.5, under any deed of company arrangement entered into by that member of the Ansett Group, SEES will have a priority equal to the priority available under ss.556 and 560 of the *Corporations Act 2001*; in any winding up;
- 6.4 If the Administrators decide to recommend that each member of the Ansett Group enter into a deed of company arrangement, the deed of company arrangement which the Administrators recommend;
- (a) May 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
 - (b) Will otherwise be consistent with the provisions of this Deed (and in particular the incorporation of the priority regime contemplated under sections 556 and 560 of the *Corporations Act* in the manner provided for in arrangements between the Commonwealth and the Administrators and consistently with the Court Orders).
- 6.5 If any eligible companies enters into a Deed of Company Arrangement which incorporates a priority regime other than as contemplated by Clause 6.3 and the Court Orders, then the parties agree that advances for Eligible Entitlement Employee Payments received by the Administrators will constitute an expense properly incurred by the Administrators in the administration of any member of the Ansett Group, and will be afforded a priority equal to the priority SEES would have received, under ss. 566 and 560 of the *Corporations Act 2001*, in any winding up of a company.
- 6.6 The Administrators will not recommend to any Ansett Group company creditors pursuant to Section 439A(4) of the *Corporations Act 2001* that it would be in the creditors' interests for the company to execute a deed of company arrangement other than one which contains provision for payment consistent with the terms of this Deed and the Court Orders.
- 6.7 The Administrators acknowledge that, if a deed of company arrangement is approved that subordinates the SEES' priority to repayment other than in accordance with the terms of this Deed and the Court Orders, SEES will have suffered substantial injustice.

M. Loda
[Signature]

7. NOTICES

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Deed shall be in writing addressed to the address of the recipient shown in this Deed or to any other address it may have notified the sender and be deemed to be duly given or made when delivered (by mail, facsimile transmission or hand delivery) at that address.

8. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of Victoria and the parties irrevocably submit to the non-exclusive jurisdiction of its courts.

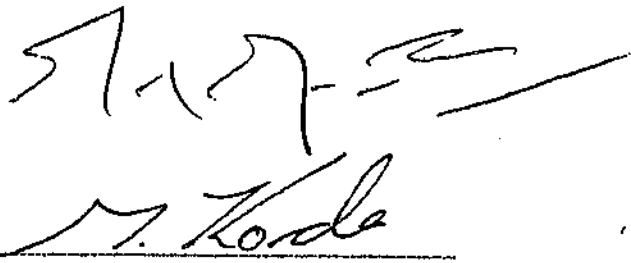
9. FURTHER ASSURANCES

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.

IN WITNESS the parties have executed this Deed of Agreement

EXECUTED as a Deed.

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



Signature of Witness

LEON ZWIEK

Name of Witness (BLOCK LETTERS)

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



Signature of Witness

LEON ZWIEK

Name of Witness (BLOCK LETTERS)

SIGNED SEALED AND DELIVERED by)
MARK KORDA in the presence of:)

[Handwritten signature]

[Handwritten signature: M. Korda]

Signature of Witness

LEON ZWIER.

Name of Witness (BLOCK LETTERS)

EXECUTED for and on behalf of)
SEES PTY LIMITED)
in accordance with its Constitution)
and section 127 of the Corporations)
Act 2001)

Annexure A
Court Orders