

**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)**

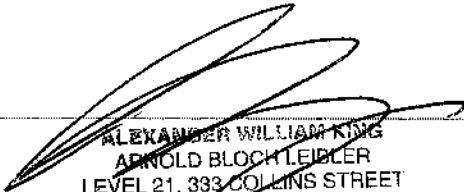
and

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

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "**MAK-40**" produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit dated 12 September 2005.

Before me:


ALEXANDER WILLIAM KING
ARNOLD BLOCH LEIDLER
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-40"
AAL DOCA Variation Application
terms of settlement**

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN REGISTRY

V3107 of 2002

BETWEEN:

**ANSETT AUSTRALIA GROUND STAFF SUPERANNUATION
PLAN PTY LTD (ACN 004 209 410)**
(As Trustee of the Ansett Australia Ground Staff Superannuation Plan)
Applicant

and

ANSETT AUSTRALIA LIMITED First Respondent
(Subject to Deed of Company Arrangement)

MARK FRANCIS XAVIER MENTHA Second Respondent

MARK ANTHONY KORDA Third Respondent

TERMS OF SETTLEMENT

RECITALS

1.1 The applicant ("the trustee") is the trustee of the Ansett Australia Ground Staff Superannuation Plan ("the Plan").

1.2 The first respondent ("Ansett") as an employer is a party to the superannuation trust deed which regulates the Plan ("the Trust Deed").

1.3 The second and third respondents ("the administrators") were the administrators of Ansett until 2 May 2002 and thereafter were, and continue to be, deed administrators of Ansett pursuant to a Deed of Company Arrangement ("the DOCA").



1.4 In a proceeding in the Supreme Court of Victoria, being proceeding No. 2115 of 2001 ("the Supreme Court proceeding"), Justice Warren ordered, amongst other things, as follows:

1.4.1 in answer to paragraph 12(a) of the Originating Motion (as amended), that Ansett was obliged to make further contributions for certain groups, referred to as Membership Groups 1 and 3, in accordance with the requirements of a Funding and Solvency Certificate dated 24 April 2002 issued by the actuary of the Plan ("FSC5");

1.4.2 in answer to paragraph 14 of the Originating Motion (as amended):

(a) the further contributions required for Membership Group 3 under FSC5 are not expenses within the meaning of section 556(1)(a) of the *Corporations Act* 2001 ("the Act"). The further contributions required for Membership Group 1 under FSC5 from Ansett are expenses within the meaning of section 556(1)(a) of the Act;

(b) the further contributions required for Membership



Groups 1 and 3 under FSC5 are not debts within the meaning of section 556(1)(c), are not expenses within the meaning of section 556(1)(dd), and are not superannuation contributions within the meaning of section 556(1)(e) of the Act.

- 1.5 By an Amended Notice of Appeal dated 24 June 2003 the trustee appealed against certain of the orders made by Justice Warren and by a Notice of Cross-Appeal Ansett and the administrators appealed against the order made by Justice Warren in response to paragraph 12(a) of the Originating Motion (as amended).
- 1.7 The DOCA contains provisions concerning any claim by the trustee defined as a "Top Up Retrenchment Benefit Claim". The trustee instituted this proceeding seeking, amongst other things, to terminate or vary the DOCA ("the Federal Court proceeding"). Ansett and the administrators have issued a cross-claim in the Federal Court proceeding.
- 1.8 FSC5 lapsed on 25 March 2003.
- 1.9 On 29 April 2003 a document described as a Special Funding and Solvency Certificate ("SFSC1") was issued by the actuary of the Plaintiff.



1.10 On 21 August 2003 the Court of Appeal made certain orders on the appeal and cross-appeal including setting aside the orders referred to in recital 1.4.2 above and orders as to costs.

1.11 On 2 September 2003 Justice Warren made orders in relation to the costs of the trial of the Supreme Court proceeding.

1.12 On 10 October 2003 a document described as a Special Funding and Solvency Certificate ("SFSC2") was issued by the actuary of the Plan.

1.13 On 5 November 2003 a document described as a Special Funding and Solvency Certificate ("SFSC3") was issued by the actuary of the Plan.

1.14 By terms of settlement dated 9 October 2003 outstanding issues before the Court of Appeal were settled and thereafter the cross-appeal was discontinued.

NOW IT IS AGREED:

2.1 The parties agree to jointly seek orders varying the DOCA in the terms of, or to substantially the same effect as the terms of, the annexed document marked "A" entitled "Proposed DOCA Amendments".



2.2 The trustee will also seek the orders set out in the annexed document marked "B" entitled "Proposed Trustee Orders".

2.3 The administrators will also seek the orders set out in the annexed document marked "C" entitled "Proposed Administrators' Orders".

3.1 Upon:

3.1.1 the making of the orders referred to in paragraph 2.1 in terms satisfactory to each of the parties;

3.1.2 the making of the orders referred to in paragraph 2.2 in terms satisfactory to the trustee; and

3.1.3 the making of the orders referred to in paragraph 2.3 in terms satisfactory to the administrators,

the following provisions of this clause shall come immediately into effect.

3.2 The parties shall consent to orders otherwise dismissing the Federal Court proceeding (including the cross-claim) with no order as to



3.3 The trustee, its directors and former directors on the one hand and Ansett and the administrators on the other shall thereupon release each other from all claims (including those existing and any which might otherwise arise in future) relating to or arising out of:

3.3.1 the claims made in, and the facts and circumstances deposed to in, the Federal Court proceeding and in the Supreme Court proceeding;

3.3.2 the Trust Deed;

3.3.3 the DOCA, save insofar as it operates in future as varied pursuant to the orders referred to in paragraph 2.1;

3.3.4 FSC5, SFSC1, SFSC2, or SFSC3;

3.3.5 the *Superannuation Industry (Supervision) Act 1993* and the regulations made thereunder;

3.3.6 any outstanding costs orders between the parties in any proceeding;

3.3.7 otherwise in relation to the Plan.



3.4 The parties shall be taken to have been satisfied respectively with the orders referred to in paragraph 3.1 upon indicating to the Federal Court through their counsel that they are so satisfied, or upon seeking or consenting to the order referred to in paragraph 3.2 hereof.

DATED the 25th day of November 2003.

96 Sandhanna
[Signature]
[Signature]
Counsel for the trustee

[Signature]
[Signature]
[Signature]
Counsel for the administrators and Ansett



ANNEXURE "A"

PROPOSED DOCA AMENDMENTS

Pursuant to Section 447A the Corporations Act 2001 (Cth) ("the Act") the Ansett Australia Limited Deed of Company Arrangement ("the DOCA") be varied:

1 by inserting (in alphabetical order) in clause 1.1 of the DOCA the following new definition:

" "Court's Amending Order" means the order of the Court amending the Deed, made pursuant to Section 447A of the Act, dated 25 November 2003."

2 by inserting the following new clauses immediately after existing clause 18.2.3 of the DOCA:

"18.2.4 fourthly, \$39,000,000 to be paid as severance pay rateably in accordance with the amounts shown and to the employees of the Ansett Group Companies identified as members of the Ansett Australia Ground Staff Superannuation Plan ("the Ground Staff Plan") in the schedule comprised in exhibit "PDF-" to the affidavit of Paul Daniel Francis sworn 25 November 2003 filed in proceeding V3107 of 2002 in the Federal Court of Australia and on the basis that such payments are to be deducted from each such employee's unpaid "Employee Amounts" (if any) (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them);

18.2.5 fifthly, \$28,000,000 rateably as severance pay to each employee of the Ansett Group Companies that is not a member of the Ground Staff Plan in proportion to their unpaid "Employee Amounts" (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them) and on the basis that such payments are to be deducted from each such employee's unpaid Employee Amounts (as defined);



18.2.6 sixthly, to the SEESA Payer an amount equal to:

18.2.6.1 100 cents in the dollar for amounts advanced by the SEESA Payer to either the Voluntary Administrators or the Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed that would have priority in a liquidation of the Company under Sections 556(1)(e) or 556(1)(g) of the Act; PLUS

18.2.6.2 up to 27.5 cents in the dollar for amounts advanced by the SEESA Payer to either the Voluntary Administrators or the Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed that would have priority in a liquidation of the Company under Section 556(1)(h) of the Act,

LESS \$67,000,000, on the basis that such payment is to be deducted from amounts owed by the Voluntary Administrators or the Deed Administrators to the SEESA Payer;

18.2.7 seventhly, up to 27.5 cents in the dollar as severance pay to each employee of the Ansett Group Companies in proportion to their respective unpaid "Employee Amounts" (as defined in the deed of company arrangement concerning the relevant Ansett Group Company that employed them) and on the basis that such payments are to be deducted from each such employee's unpaid Employee Amounts (as so defined);

18.2.8 eighthly, \$67,000,000 to the SEESA Payer on the basis that such payment is to be deducted from amounts advanced by the SEESA Payer to either the Voluntary Administrators or the Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed that would have priority in a liquidation of the Company under Sections 556(1)(e) or 556(1)(g) of the Act;



Deed Administrators pursuant to the SEESA Deed and the SEESA Payments Deed;”.

3 by:

3.1 renumbering existing clause 18.2.4 of the DOCA to be clause 18.2.9, and in that clause replace the word “fourthly” with “ninthly”; and

3.2 renumbering existing clause 18.2.5 of the DOCA to be clause 18.2.10, and in that clause replace the word “fifthly” with “tenthly”.

4 by deleting the word “For” at the start of clause 18.3 of the DOCA and inserting the following words instead:

“Subject to the provisions of the Court’s Amending Order, for”.

5 by inserting new clauses 19 and 20 between existing clauses 18 and 19 of the DOCA, as follows:

“19 SEESA PAYMENT ACKNOWLEDGEMENT

For the avoidance of any doubt, the parties acknowledge that:

- (i) other than distributions in accordance with clauses 18.2.1 – 18.2.7, no further distributions can be made by the Deed Administrators until the SEESA Payer is paid \$67,000,000 in accordance with clause 18.2.8;
- (ii) the variations to the Deed made pursuant to the Court’s Amending Order are to be given effect to without regard to the dispute between the Commonwealth of Australia, the SEESA Payer and the Voluntary Administrators or Deed Administrators concerning the Payment in Lieu of Notice made by the Voluntary Administrators or Deed Administrators to Employees (“the PILN dispute”);
- (iii) the variations to the Deed made pursuant to the Court’s Amending Order do not otherwise affect the operation of the SEESA Deed; and



- (iv) without limiting clause 19(iii), the variations to the Deed made pursuant to the Court's Amending Order do not otherwise affect the SEESA Payer's rights under Section 560 of the Act as if the Company is in liquidation created pursuant to the order of the Court in proceeding no. V3083 of 2001 (a copy of which is Exhibit 7 to the DOCA).

"20 TREATMENT OF NET PROCEEDS OF SALE OF CERTAIN ASSETS

To the extent that the following assets are owned by the Company, the parties agree that the Deed Administrators must pay the net proceeds of sale of the following assets:

- (i) aircraft;
- (ii) the Engine Shop site located at Garden Drive, Tullamarine;
- (iii) the Data Centre site located at Garden Drive, Tullamarine,
- (iv) the Flight Simulator site center at Garden Drive, Tullamarine;
- (v) the balance of the Garden Drive, Tullamarine land following subdivision of the total site to create separate titles for the Engine Shop site, Data Centre site and the Flight Simulator Centre;
- (vi) the balance \$4,200,000 of the purchase price to be paid to the Deed Administrators pursuant to the sale of the Company's interest in its lease of part of the domestic terminal at Perth airport, secured by a bank guarantee; and
- (vii) any Boeing 737 engines; and
- (viii) any other aircraft engines,



directly to the SEESA Payer, until the SEESA Payer has received \$67,000,000 in accordance with clause 18.2.8. Until that time, the Deed Administrators:

- (ix) will meet with the SEESA Payer and such other persons as the SEESA Payer may nominate ("the SEESA Group") to report to the SEESA Group regarding the progress of the Ansett administration, such meetings to occur monthly at a time and place mutually convenient to the SEESA Group and the Deed Administrators; and
- (x) will provide the SEESA Group with access to the Deed Administrators' books and records regarding the Ansett administration, and will provide to the SEESA Group copies of relevant parts of those books and records upon receipt on reasonable notice of a request from the SEESA Group for those copies, provided that the SEESA Group must keep such information confidential at all times."

6 by renumbering existing clauses 19 – 41 of the DOCA to be clauses 21 - 43, respectively.



"ANNEXURE B"

PROPOSED TRUSTEE'S ORDERS

The Court:

1. Approves the agreement providing for the compromise by the Applicant of its claims in this proceeding which agreement is exhibit "MDT-1" to the affidavit of Michael Douglas Tilley sworn 25 November 2008 and filed in this proceeding.
2. Approves the distribution by the Applicant of the assets of the Ansett Australia Ground Staff Superannuation Plan in accordance with the advice of the actuary in his letter dated 25 November 2008 comprised in exhibit "PDF-B" to the affidavit of Paul Daniel Francis sworn 25 November 2008.



ANNEXURE "C"

PROPOSED ADMINISTRATORS' ORDERS

1. Pursuant to s. 447A of the *Corporations Act 2001* (Cth) ("the Act"), s. 447D(1) of the Act is to operate in relation to Ansett Australia Limited so that in an application for directions pursuant to s. 447D(1) in relation to the terms of settlement of this proceeding dated # November 2003, the court may give a direction that it approves the terms and that the second and third respondents may properly perform and give effect to those terms.

2. Pursuant to s. 447D(1) of the Act, as it operates in accordance with para. (1) of this order, the court directs that:
 - (a) the court approves the terms of settlement between the parties dated # November 2003;

 - (b) the second and third respondents may properly perform and give effect to those terms.

