



3 September 2013

Gippsland Secured Investments Limited
(receivers and managers appointed)
C/- Ernst & Young
Level 27, Ernst & Young Building
8 Exhibition Street
Melbourne Victoria 3000

Attention: Adam Nikitins

Dear Adam

GIPPSLAND SECURED INVESTMENTS LIMITED (RECEIVERS AND MANAGERS APPOINTED) (GSI)

Trust Deed for First Ranking Debenture Stock dated 22 December 1995 as amended (*Trust Deed*)

We refer to:

- the Trust Deed;
- your appointment by us on around 19 December 2012 as our delegate and agent in accordance with the Trust Deed to review the books, records and affairs generally of GSI (**IA Engagement**); and
- your appointment, together with Simon Cathro, as receivers and managers of GSI on 3 September 2013.

1) BACKGROUND

In respect of GSI, our role under the Trust Deed involves a significant degree of complexity, commercial sensitivity and risk for The Trust Company (Nominees) Limited in its capacity as Trustee.

We refer specifically to:

- a) the IA Engagement, in particular the matters addressed in your written report to us dated 6 March 2013;
- b) the ongoing reporting received from GSI under the reporting protocol dated 3 April 2013;
- c) the Federal Court Proceedings which were contested not only by GSI but also by representatives of a "Local Investor Group" which made a number of allegations regarding our conduct as Trustee and contested our rights and powers under the Trust Deed; and
- d) continuing instability and publicity regarding the insolvency of a number of debenture issuing entities regulated pursuant to Chapter 2L of the *Corporations Act 2001* (Cth).

2) ADDITIONAL DUTIES AND RESPONSIBILITIES

Following your appointment as receivers and managers of GSI, additional duties and responsibilities will be performed and undertaken by us as Trustee. In particular:

- a) on the terms of the deed of indemnity between ourselves dated 3 September 2013, we have agreed to indemnify you for your fees, expenses and liabilities incurred during your appointment to GSI;
- b) as appointor, we will supervise your conduct as receivers and managers and will review, consider, test and provide positive sanction to the matters that arise for consideration during the receivership;
- c) in making decisions, we will be called on to exercise our powers with the appropriate degree of care and skill in a receivership of a business such as GSI, with its diverse and problem-laden portfolio of loan and other assets;
- d) we will continue to hold duties to consider and act in the best interests of debenture holders in a fiduciary capacity, including to participate in liaison with debenture holders at debenture holder meetings; and
- e) our role will continue to be performed in a situation where The Trust Company (Nominees) Limited is at risk of having legal action commenced against it by aggrieved stakeholders including debenture holders, directors, members and other creditors of GSI.

3) KEY DELIVERABLES

As Trustee and appointing party, we will perform the following tasks during the receivership:

- a) Supervise and approve major asset sales, transaction proposals and any other corporate activities affecting the interests of debenture holders;
- b) Communicate and engage with debenture holders (and other stakeholders) to ensure appropriate information is available, including a debenture holder committee if agreed;
- c) Supervise the conduct of the receiver to ensure that the best interests of debenture holders are served, including in relation to:
 - i. fees and expenses;
 - ii. stakeholder engagement; and
 - iii. infrastructure in place to support debenture holders.
- d) Assess and approve all information to be published by the receiver in connection with:
 - i. forecasts of distributions to be made to debenture holders;
 - ii. implications of an proposed major transactions including counterfactual assessments; and
 - iii. debenture holder circulars and other communications.

4) FEE AFTER ENFORCEMENT

We refer to clause 18.02 of the Trust Deed. Pursuant to that provision, and given our additional duties and responsibilities outlined above in the receivership of GSI, GSI has obligations to pay on demand to us such additional remuneration as is either agreed, or is calculated in accordance with the applicable scale of commission.

In terms of the applicable scale of commission, our website at <http://thetrustcompany.com.au/wp-content/uploads/2013/07/401-2012-Published-Fee-Proposal-Oct-v2.pdf> provides that additional remuneration, post-enforcement, is:

the amount (if any) of commission calculated in accordance with the scale of the commission set out in any statute of any state or territory of Australia immediately prior to the repeal of the relevant provision or provisions in the relevant statute of any state or territory of Australia.

We note that a rate of 5.5% of the corpus sum actually received by us as Trustee would constitute the additional remuneration payable to us in the absence of a separate agreement between ourselves and GSI under clause 18.02 of the Trust Deed.¹ Whether that amount could be subject to adjustment would depend on the additional duties performed or undertaken by us in consequence of enforcing under the Trust Deed. We note that given the extensive additional duties and responsibilities involved in a receivership as complex as GSI, there remains doubt whether an adjustment would be appropriate.

In our view, following your appointment as receivers and managers, it is necessary that there is a measure of certainty regarding the additional remuneration payable to us under clause 18.02 of the Trust Deed. Accordingly, we propose that GSI agree, for the purposes of clause 18.02 of the Trust Deed, as follows:

- a) that the additional remuneration payable to us be agreed as between ourselves and GSI at 2% of the amounts made available for the purposes of distribution by us to debenture holders during the receivership of GSI (exclusive of GST); and
- b) that we agree, as between ourselves and you as receivers and managers, that the agreement in (a) above be subject to review from time-to-time, with reference to the following factors:
 - i. the additional duties and responsibilities performed or undertaken by us as Trustee in consequence of the receivership of GSI; and
 - ii. your obligations and duties as receivers and managers of GSI pursuant to the Corporations Act and at law.

To confirm GSI's agreement to the matters provided in paragraphs 3(a) and 3(b) above, we ask that you sign and return the enclosed copy of this letter to us at your earliest convenience.

This letter is governed by the laws in force in the State of Victoria, Australia.

This letter may be executed in counterparts.

Yours sincerely



Rupert Smoker
Head of Corporate & Debt Capital Markets Trustee Services
The Trust Company

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¹ We refer specifically to the applicable scale of commission provided in the *Trustee Companies Act 1984* (Vic) immediately prior to its repeal.



THE
TRUST
COMPANY

[Handwritten initials]

The matters provided in paragraphs 3(a) and 3(b) of the enclosed letter are agreed by Gippsland Secured Investments Limited (receivers and managers appointed).

[Handwritten signature]

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GIPPSLAND SECURED INVESTMENTS LIMITED
(RECEIVERS AND MANAGERS APPOINTED)

Executed by

Adams Pauls Nikitins

Joint and several receiver and manager

For and on behalf of the joint and several receivers and managers