

**FORM 20**

IN THE FEDERAL COURT OF AUSTRALIA                      No (P) VID                      of 2010  
VICTORIAN DISTRICT REGISTRY

IN THE MATTER OF **FEA CARBON PTY LTD** (ACN 009 505 195  
(ADMINISTRATORS APPOINTED) (RECEIVERS & MANAGERS APPOINTED),  
**FOREST ENTERPRISES AUSTRALIA LTD** (ACN 009 553 548)  
(ADMINISTRATORS APPOINTED) (RECEIVERS & MANAGERS APPOINTED),  
**TASMANIAN PLANTATION PTY LTD** (ACN 009 560 463) (CONTROLLERS  
APPOINTED) AND **FEA PLANTATIONS LTD** (ACN 055 969 429)  
(ADMINISTRATORS APPOINTED)

**BETWEEN:**

**BRIAN SILVA, PETER KREJCI** and **MATHEW MULDOON** in their capacity as administrators of FEA CARBON PTY LTD (ACN 009 505 195) (administrators appointed) (receivers and managers appointed), FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (administrators appointed) (receivers and managers appointed), TASMANIAN PLANTATION PTY LTD (ACN 009 560 463) (administrators appointed) (controller appointed) and FEA PLANTATIONS LTD (ACN 055 969 429) (administrators appointed) and another according to the Schedule attached

Plaintiffs

-and-

**FEA CARBON PTY LTD** (ACN 009 505 195) (administrators appointed) (receivers and managers appointed) and others according to the Schedule attached

Defendants

**AFFIDAVIT**

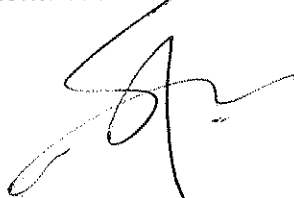
On 20 April 2010, I **MATHEW MULDOON** of 90 William Street, Melbourne in the State of Victoria, Chartered Accountant, make oath and say as follows:

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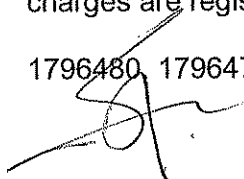
Filed on behalf of the plaintiffs by:

**DLA Phillips Fox**  
Lawyers  
140 William Street  
Victoria VIC 3000

**DX: 147**  
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**stephen.sawer@dlaphillipsfox.com**

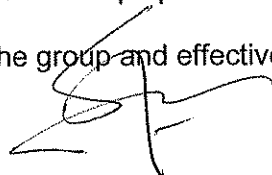


- 1 I am one of the joint and several administrators of Forest Enterprises Australia Limited (Receivers and Managers Appointed) (Administrators Appointed) ('**FEA**'), FEA Plantations Limited (Administrators Appointed) ('**FEA Plantations**'), FEA Carbon Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) ('**FEA Carbon**') and Tasmanian Plantations Pty Ltd (Controllers Appointed) (Administrators Appointed) ('**Tasmanian Plantations**') (collectively '**FEA Group**').
- 2 I am authorised to make this affidavit on behalf of my co- administrators, Brian Silvia and Peter Krejci (collectively '**Administrators**'). I do so of my own knowledge and belief, save where otherwise indicated.
- 3 FEA is a ASX listed public company currently suspended. Each of FEA Plantations, FEA Carbon and Tasmanian Plantations are wholly owned subsidiaries of FEA.
- 4 The administrators were appointed as joint and several administrators of each of the members of FEA Group by resolution of the directors of each of those companies on 14 April 2010. Annexed hereto and marked with the letters '**MM1**' to '**MM4**' respectively are true copies of ASX extract searches for each of the members of FEA Group.
- 5 On 25 May 2009 each of the members of FEA Group granted three charges to ANZ Fiduciary Services Pty Ltd ('**ANZ Fiduciary**') as security trustee for each of Australia and New Zealand Banking Group Limited ('**ANZ**') and Commonwealth Bank of Australia ('**CBA**'). Now produced and shown to me and marked with the letters '**MM5**', '**MM6**' and '**MM7**' respectively are true copies of charges given by FEA Plantations which charges are registered at ASIC as charges numbered respectively 1796480, 1796476 and 1796483. Each of the other members of FEA



Group gave charges to ANZ Fiduciary in similar terms. FEA Plantations gave those charges both in its own right and in its capacity as trustee of the FEA Timberlands Fund Unit Trust.

- 6 On 14 April 2010 ANZ Fiduciary appointed Tim Norman and Sal Algeri of Deloitte ('**Receivers**') as joint and several receivers of each of FEA and FEA Carbon and controllers of Tasmanian Plantations but not FEA Plantations.
- 7 Previously on 2 April 2010 Maddocks as lawyers for and on behalf of ANZ Fiduciary had given notice to FEA Group that the floating component of each of the charges granted by members of FEA Group had become fixed. Annexed hereto and marked with the letters '**MM8**' is a true copy of a letter from Maddocks to FEA Group dated 12 April 2010.
- 8 FEA Group is a vertically integrated forestry and forest products group operating as a forest plantation grower, saw miller, [through a saw mill at Bell Bay in Tasmania] and as manager and responsible entity for a number of managed investment schemes ('**Schemes**') in the forestry area. There are 17 separate schemes with approximately 13,000 investors. The first scheme was in 1993. FEA Plantations is the responsible entity for each of those schemes.
- 9 The rights of investors in the various schemes are governed by the terms of (for the initial schemes) various prospecti and for, later schemes Product Disclosure Statements (collectively '**PDS**'). Annexed hereto and marked with the letters '**MM9**' and '**MM10**' are copies of the prospectus for Trust No 2 for the 1993 year and the Product Disclosure Statements for the 2009 year. As is apparent from the annexure '**MM2**' FEA Plantations was formerly known as Tasforestry Ltd.
- 10 FEA Group operated on the basis that FEA employed all the employees of the group and effectively operated the business of the group. FEA



Plantations has no employees or equipment but contracted through a Head Management Agreement with FEA for FEA to manage the projects for which FEA Plantations was responsible entity. Annexed hereto and marked with the letters '**MM11**' is a copy of that Head Management Agreement made 25 March 2009.

- 11 Under the terms of that Head Management Agreement FEA agreed to provide the following services; 'Selection of Suitable Land, Plantation Establishment Services, Management Services, Harvesting Services and Marketing Services. In effect the management of the various schemes was sub-contracted by FEA Plantations to FEA entirely.
- 12 Properties on which the various managed investment schemes conducted by FEA Plantations as responsible entity were conducted on property owned by FEA Group, chiefly Tasmanian Plantations as well as some 300 properties owned by third parties and leased by FEA Group.
- 13 My inquiries suggest that properties owned by FEA Group were leased by the entity owning the property to FEA (unless FEA was the owner) and then sub-leased or in a few cases leased to FEA Plantations in its capacity as responsible entity. Annexed hereto and marked with the letters '**MM12**' is a true copy of a lease between Tasmanian Plantations as lessor, FEA as lessee and FEA Plantations as sub-lessee in respect of certain properties dated 26 June 2003 together with a Deed of Variation between those entitled made 22 December 2009.
- 14 My investigations to date suggest that where properties are owned by third parties the arrangement is similar namely a lease to FEA Plantations. Annexed hereto and marked with the letters '**MM12A**' is a copy of one lease granted by Australind Investments Pty Ltd. I understand other third party leases were in similar terms.

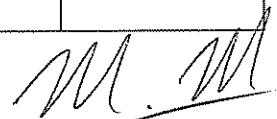


15 Following the appointment of Administrators to the various members of the FEA Group and the appointment of the Receivers to FEA the Receivers have given notice of termination of the Head Management Agreement between FEA and FEA Plantations. Annexed hereto and marked with the letters 'MM13' is a copy of that notice dated 16 April 2010. Under the terms of the Head Management Agreement FEA, on termination is required to yield the land to FEA Plantations [see clause 2.2(c)]. Furthermore, notwithstanding termination, I am presently not certain whether FEA has delivered all records of FEA Plantations as responsible entity on behalf of the schemes to FEA Plantations.

16 Because of the way the operations of the FEA Group were structured all management roles were conducted by FEA and as a result the Administrators in their capacity as administrators of all companies but particularly in relation to FEA Plantations do not presently have access to all records and information concerning the operations of the FEA Group and, in particular, the various management investment schemes of which FEA Plantations is responsible entity. The Administrators have not had time to consider all leases and Schemes. There are plantations in the Northern Territory, Queensland, New South Wales and Tasmania. They cover approximately 71,166 hectares of which 22,734 hectares are the subject of leases from third parties with the remainder being owned by members of FEA Group other than FEA Plantations.

17 There are 17 separate MIS schemes which have raised between them approximately \$417 million. Those Schemes may be summarised as follows:

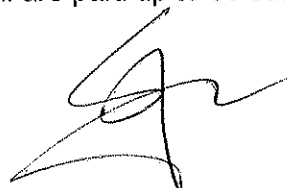
<b>Fund Name</b>	<b>Funds Raised (\$ M)</b>	<b>Hectares</b>	<b>No of Lease Holders</b>
Tasmanian Forests Trust No 1	0.1	44	Completed

Tasmanian Forests Trust No 1	0.5	166	2
Tasmanian Forests Trust No 3	0.7	188	4
Tasmanian Forests Trust No 4	0.8	201	5
Tasmanian Forests Trust No 5	1.3	369	10
Tasmanian Forests Trust No 6	4.1	948	20
Tasmanian Forests Trust No 7	50.8	10,831	224
Tasmanian Forests Project 2000	9.2	1,993	33
Australian Forests Projects 2001	7.0	1,308	32
Australian Forests Projects 2002	1.8	406	23
Forest Enterprises Project 2003	11.1	2,053	70
FEA Plantations 2004	26.2	4,374	57
FEA Plantations 2005	54.2	9,026	96
FEA Plantations 2006	67.3	10,686	104
FEA Plantations 2007	57.9	9,196	76
FEA Plantations 2008	108.2	18,011	174
FEA Plantations 2009	15.8	2,250	Unknown
<b>TOTAL</b>	<b>417.0</b>	<b>72,050</b>	<b>930</b>

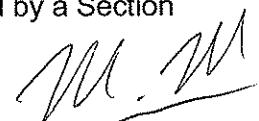
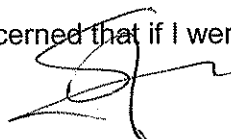
I am aware that many investors in the schemes, especially the later schemes, borrowed from the CBA to invest.

18 My inquiries suggest that of the third party leases held by FEA Plantations all are paid up to 30 June 2010. However leases or sub-leases with



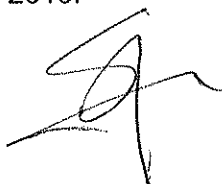

members of FEA Group contemplate lease payments being made monthly on the first day of each month.

- 19 I have been informed by Tim Norman of Deloitte that the rental amount due to members of FEA Group from FEA Plantations as at 1 May is in the order of \$1.3 million to \$1.5 million and that payment is expected when due. The Receivers are well aware of the Administrators' position. Annexed hereto and marked with the letters '**MM14**' is a letter from Maddocks to the administrators dated 16 April 2010.
- 20 Presently FEA Plantations has no funds available to it given that ANZ Fiduciaries has asserted a fixed charge over all assets held by members of FEA Group including FEA Plantations. Further because management of the various MIS schemes was contracted to FEA the Administrators do not presently have complete and unfettered access to all records in relation to those Schemes. Moreover the number of Schemes and the financial position of each Scheme has meant that the Administrators have not had sufficient time to consider the position of each Scheme.
- 21 In those circumstances I do not presently have a complete understanding of what payments are due in respect of which leases and the ramifications which might arise for FEA Plantations as responsible entity of the various Schemes. FEA Plantations is in possession of the various properties which form part of each of the 17 Schemes.
- 22 Because I am not able to presently form a view as to what would be in the interests of members and creditors of FEA Group including the various growers (numbering approximately 13,000) who are participants in the various schemes of which FEA Plantations is the responsible entity I seek orders to be excused from liability pursuant to Section 443B and to extend the period contemplated by Section 443B(3) until 30 June 2010. I am concerned that if I were to give a notice contemplated by a Section



443B(3) then the interests of participants in those Schemes may well be irretrievably damaged as it would be open to FEA as sub-lessor under the sub-lease to take possession of the properties, the subject of the sub-leases utilised in the various Schemes to the irretrievable detriment of participants in the Schemes. I understand from my enquiries that most Schemes are conducted on a mixture of FEA owned and third party properties.

- 23 My understanding is that rent in relation to third party owned properties is paid up until 30 June 2010 and, in those circumstances, I seek an order pursuant to Section 447A(1) of the Corporations Act that the time contemplated by Section 443B(2) be generally extended from 5 business days after the Administrators' appointment namely 21 April 2010 to 30 June 2010 and the Administrator be excused for payment for the period until 30 June 2010 pursuant to Section 443B(8).
- 24 I refer generally to clause 4 of exhibit '**MM12**'. Maddocks, lawyers for the Receivers have written to DLA Phillips Fox suggesting that the granting of orders would prejudice the position of the Receivers. Annexed hereto and marked with the letters '**MM15**' is a copy of the Maddocks letter dated 19 April 2010.
- 25 Further there may well be other leases or agreements entered into by members of the FEA Group pursuant to which they lease equipment or other assets. Because, for the reasons outlined above, the Administrators have not had sufficient time to identify any such agreements or determine the approach which ought be taken to those agreements, I seek an order that the time for giving notice in relation to any such other agreement (that is an agreement other than a real property lease) be also extended to 30 June 2010.

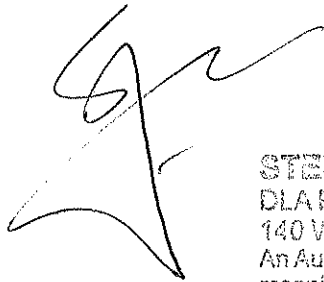




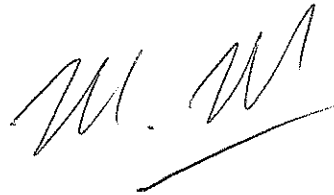
- 26 The first meeting of creditors is scheduled for 27 April 2010 in Launceston. Annexed hereto and marked with the letter '**MM16**' is a copy of the Administrators' First Report.
- 27 Whilst Monday 26 April 2010 is gazetted as a public holiday in mainland Australia, it is, I have just ascertained, not so gazetted in Tasmania. Therefore the meetings of creditors of the FEA Group are within the time for first meetings of creditors pursuant to S 436E(2) of the *Corporations Act* in mainland Australia but they are one day outside that time for the first meetings of creditors in Tasmania. Creditors are located throughout Australia. I request in those circumstances that pursuant to S 447A of the *Corporations Act* the date for convening the first meetings of creditors for each of the FEA Group be extended to 27 April 2010.

SWORN at Melbourne

Before me:



**STEPHEN SAWER**  
DLA Phillips Fox  
140 William Street, Melbourne  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004



## SCHEDULE

**BRIAN SILVA, PETER KREJCI and MAT MULDOON** in their capacity as administrators of FEA CARBON PTY LTD (ACN 009 505 195) (administrators appointed) (receivers and managers appointed), FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (administrators appointed) (receivers and managers appointed), TASMANIAN PLANTATION PTY LTD (ACN 009 560 463) (administrators appointed) and FEA PLANTATIONS LTD (ACN 055 969 429) (administrators appointed)

First Plaintiffs

**FEA PLANTATIONS LTD** (ACN 055 969 429) (administrators appointed)

Second Plaintiff

**FEA CARBON PTY LTD** (ACN 009 505 195) (administrators appointed) (receivers and managers appointed)

First Defendant

**FOREST ENTERPRISES AUSTRALIA LTD** (ACN 009 553 548) (administrators appointed) (receivers and managers appointed)

Second Defendant

**TASMANIAN PLANTATION PTY LTD** (ACN 009 560 463) (controllers appointed)

Third Defendant

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIAN DISTRICT REGISTRY

No (P) VID of 2010

IN THE MATTER OF **FEA CARBON PTY LTD** (ACN 009 505 195  
(ADMINISTRATORS APPOINTED) (RECEIVERS & MANAGERS APPOINTED),  
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APPOINTED) AND **FEA PLANTATIONS LTD** (ACN 055 969 429)  
(ADMINISTRATORS APPOINTED)

**BETWEEN:**

**BRIAN SILVA, PETER KREJCI and MATHEW MULDOON** in their capacity as administrators of FEA CARBON PTY LTD (ACN 009 505 195) (administrators appointed) (receivers and managers appointed), FOREST ENTERPRISES AUSTRALIA LTD (ACN 009 553 548) (administrators appointed) (receivers and managers appointed), TASMANIAN PLANTATION PTY LTD (ACN 009 560 463) (administrators appointed) (controller appointed) and FEA PLANTATIONS LTD (ACN 055 969 429) (administrators appointed) and another according to the Schedule attached

Plaintiffs

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**FEA CARBON PTY LTD** (ACN 009 505 195) (administrators appointed) (receivers and managers appointed) and others according to the Schedule attached

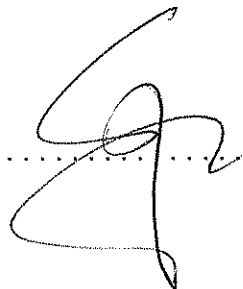
Defendants

**FORM 20A**

**AFFIDAVIT – CERTIFICATE OF COMPLIANCE**  
(Order 14, rule 5A)

I, **STEPHEN PETER SAWER**, certify to the Court that the affidavit of **MATHEW MULDOON** sworn on 20 April 2010 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 20 April 2010



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