

Form 59
Rule 29.02

Affidavit

No. VID 95 of 2010

Federal Court of Australia
District Registry: Victoria
Division: General

In the matter of the *Corporations Act 2001*

and

In the matter of Mark Ronald Letten (and others described in the Schedule)

Australian Securities and Investments Commission

Plaintiff

Mark Ronald Letten and others

Defendants

Affidavit of: **Glenn John Childs**
Address: Level 24, 120 Collins Street, Melbourne, in the State of Victoria
Occupation: Public Servant
Date: 14 October 2011

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Filed on behalf of the Plaintiff
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[Form approved 01/08/2011]




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I, Glenn John Childs, of Australian Securities and Investments Commission, Level 24, 120 Collins Street, Melbourne, in the State of Victoria, Public Servant, say on oath:

1. I am employed by the Australian Securities and Investments Commission ("ASIC") as a Senior Investigator in ASIC's Deterrence Directorate.
2. I am duly authorised to swear this affidavit on behalf of ASIC.
3. I am an authorised delegate of ASIC pursuant to s102 of the *Australian Securities and Investments Commission Act 2001* (Cth) ("ASIC Act") and have been delegated certain functions and powers, including the functions and powers under Part 3 of the ASIC Act which relate to ASIC's investigation and information gathering powers.
4. In the course of my employment with ASIC, I conduct investigations into suspected contraventions of the laws regulated by ASIC, including the *Corporations Act 2001* (Cth) ("the Act").




5. Unless otherwise stated, I make this affidavit from information within my own knowledge and from an examination of the records of, or otherwise in the possession of ASIC. Where I depose to matters from information and belief, I do so after having made all relevant enquiries and I believe those matters to be true and correct. In this context, I seek leave to refer to the fifth, sixth, tenth, sixteenth and eighteenth affidavits of Damian John Templeton sworn in this proceeding on 12 April 2010, 27 April 2010, 9 June 2010, 27 August 2010 and 4 October 2010 respectively.
6. I have made six previous affidavits in this proceeding sworn on 17 February 2010, 3 March 2010, 4 May 2010, 21 July 2010, 29 July 2010 and 13 April 2011 and seek leave to refer to these affidavits if necessary.

Purpose of affidavit

7. This affidavit is made in support of ASIC's application for orders under s461(1)(k) of the Act that the following defendants be wound up and that Mr Damian Templeton and Mr Philip Hennessy of KPMG be appointed as joint and several liquidators of each of the defendants:
- (a) the seventh defendant, Firbank Arch Pty Ltd;
 - (b) the eighth defendant, Glenline Pty Ltd;
 - (c) the eleventh defendant, LGH Finance Pty Ltd;
 - (d) the twelfth defendant, Low Head Village Pty Ltd;
 - (e) the thirteenth Defendant, Nicholson Street Pty Ltd;
 - (f) the fourteenth Defendant, Holloway Crest Pty Ltd;
 - (g) the fifteenth Defendant, Rosebery Enterprises Pty Ltd;
 - (h) the twenty-first defendant, Yarra Valley Golf Pty Ltd;
 - (i) the twenty-second defendant, Adina Rise Pty Ltd;
 - (j) the twenty-third defendant, Albright Investments Pty Ltd;
 - (k) the twenty-fourth defendant, Ashfield Rise Pty Ltd;
 - (l) the twenty-fifth defendant, Bradfield Corporation Pty Ltd;
 - (m) the twenty-sixth defendant, Copeland Enterprises Pty Ltd;
 - (n) the twenty-seventh defendant, Devlin Way Pty Ltd;
 - (o) the twenty-eighth defendant, First Hazelwood Pty Ltd;
 - (p) the twenty-ninth defendant, Glenbelle Pty Ltd;




- (q) the thirtieth defendant, Glenvale Way Pty Ltd;
- (r) the thirty-first defendant, Greenview Lane Pty Ltd;
- (s) the thirty-second defendant, Hallmark Corporation Pty Ltd;
- (t) the thirty-third defendant, Moorleigh Holdings Pty Ltd;
- (u) the thirty-fourth defendant, Norton Ridge Pty Ltd;
- (v) the thirty-fifth defendant, Raleigh Glen Pty Ltd;
- (w) the thirty-sixth defendant, Redcrest Holdings Pty Ltd;
- (x) the thirty-seventh defendant, Suri Corporation Pty Ltd;
- (y) the thirty-eighth defendant, Sutton Rise Pty Ltd;
- (z) the thirty-ninth defendant, The Virtual Mlmer Pty Ltd;
- (aa) the fortieth defendant, Tivendale Pty Ltd;
- (bb) the forty-first defendant, Tulloch Downes Pty Ltd;
- (cc) the forty-second defendant, Maining Pty Ltd;
- (dd) the forty-third defendant, Topglen Pty Ltd;
- (ee) the forty-fourth defendant, Allblue Pty Ltd;
- (ff) the forty-fifth defendant, Aranbay Pty Ltd.

Company extracts

8. On 13 October 2011, I caused a search of the national database maintained by ASIC to be conducted in respect of each of the defendants referred to in paragraph 7 above. Now produced and shown to me and marked:
- (a) Exhibit "GC-114" is a true copy of an historical company extract for Firbank Arch Pty Ltd dated 13 October 2011.
 - (b) Exhibit "GC-115" is a true copy of an historical company extract for Glenline Pty Ltd dated 13 October 2011.
 - (c) Exhibit "GC-116" is a true copy of an historical company extract for LGH Finance Pty Ltd dated 13 October 2011.
 - (d) Exhibit "GC-117" is a true copy of an historical company extract for Low Head Village Pty Ltd dated 13 October 2011.
 - (e) Exhibit "GC-118" is a true copy of an historical company extract for Nicholson Street Pty Ltd dated 13 October 2011.



- (f) Exhibit "GC-119" is a true copy of an historical company extract for Holloway Crest Pty Ltd dated 13 October 2011.
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- (z) Exhibit “GC-139” is a true copy of an historical company extract for The Virtual Mlmer Pty Ltd dated 13 October 2011.
- (aa) Exhibit “GC-140” is a true copy of an historical company extract for Tivendale Pty Ltd dated 13 October 2011.
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- (cc) Exhibit “GC-142” is a true copy of an historical company extract for Maining Pty Ltd dated 13 October 2011.
- (dd) Exhibit “GC-143” is a true copy of an historical company extract for Topglen Pty Ltd dated 13 October 2011.
- (ee) Exhibit “GC-144” is a true copy of an historical company extract for Allblue Pty Ltd dated 13 October 2011.
- (ff) Exhibit “GC-145” is a true copy of an historical company extract for Aranbay Pty Ltd dated 13 October 2011.

Consent to act as joint and several liquidators

9. Mr Templeton and Mr Hennessy have consented to act as joint and several liquidators of each of the defendants referred to in paragraph 7 above. It is intended that Form 8 Consents of Liquidator will be filed prior to the hearing of this application.

Winding up orders — unregistered managed investment schemes

10. I refer to paragraphs 10, 11, 13, 14 and 17 to 19 of my affidavit sworn in this proceeding on 13 April 2011 (“my 13 April 2011 affidavit”) in so far as the paragraphs relate to:
- (a) the winding up orders made on 25 February 2010;
 - (b) the appointment of Mr Templeton and Mr Hennessy (“the Receivers”) as joint and several receivers and managers; and/or

- (c) the Disclosure Reports filed by the Receivers,
in relation to each of:
- (d) the schemes which were known as the Reef House Resort, Low Head Joint Venture, Nicholson Street Joint Venture, National Boulevard Joint Venture, Yarra Valley Golf Joint Venture and Glenbelle Project (being the schemes numbered 6, 8 to 10, 15 and 16 respectively in Annexure A to the Order made on 25 February 2010); and/or
- (e) the seventh, eighth, eleventh to fifteenth and twenty-first to forty-fifth defendants in this proceeding.

Overview — Letten entities

11. I refer to paragraphs 20, 21 and 24 of my 13 April 2011 affidavit in so far as the paragraphs relate to the eleventh defendant, LGH Finance Pty Ltd (“**LGHF**”) and its apparent role and association with the schemes numbered 6, 8 to 10, 15 and 16 respectively in Annexure A to the Order made on 25 February 2010.

Overview — unregistered managed investment schemes

12. I refer to paragraphs 32 to 36 of my 13 April 2011 affidavit in so far as the paragraphs provide an overview of the schemes numbered 6, 8 to 10, 15 and 16 in Annexure A to the Order made on 25 February 2010.
13. Set out below is a summary of the information contained in the Disclosure Reports filed by the Receivers in this proceeding in relation to each of these schemes.

Reef House Resort

(the seventh defendant, Firbank Arch Pty Ltd)

(the eighth defendant, Glenline Pty Ltd)

(the eleventh defendant, LGH Finance Pty Ltd)

14. The information contained within the Reef House Resort Disclosure Report (exhibit DJT-32 to the sixth affidavit of Damian John Templeton sworn on 27 April 2010) is summarised in the table below:

Property	The Sebel Reef House Resort, The Esplanade, Palm Cove QLD
Property purchase	January 1994
Purchase value (approximately)	\$6.25 million
Land title holder	Firbank Arch Pty Ltd

Secured Debt Raised (during the life of the scheme)	\$9.8 million
Commencement of stage 1 investor fundraising	September 2004
Initial investor funds raised (approximately)	\$6.5 million
Additional investor fundraising (year)	Commenced 2005
Additional funds raised and contributed (approximately)	\$2.1 million
Total number of investors identified over scheme life	127
Total number of investors as at 25 February 2010	93
Property sold	Still held at 25 February 2010
Property sale value	N/A
Total payments to investors (approximately):	
-Periodic distributions	\$2 million
-Return of capital/capital gain	\$1.4 million

15. The property known as the Sebel Reef House Resort, the Esplanade, Palm Cove, Queensland is registered in the name of the seventh defendant, Firbank Arch Pty Ltd ("**Firbank**"), as trustee of the Reef House Resort Unit Trust. It was acquired by Firbank in January 1994 for \$6.25 million.
16. LGHF holds 66% of the units of the Trust on behalf of the eighth defendant, Glenline Pty Ltd ("**Glenline**"), which in turn holds the units as joint venture manager for the scheme. The balance of the units in the Trust (34%) are held by an unrelated entity, Tercar Pty Ltd ("**Tercar**").
17. Investments in the scheme came about by the following means:
- (a) Execution of a joint venture agreement (77 investors);
 - (b) Roll over from another scheme (53 investors);
 - (c) Payment of funds without execution of a joint venture agreement or any other document (1 investor).

18. In total, 127 investors contributed approximately \$8.6 million as consideration to acquire LGHF's units in the Trust (\$6.5 million in September 2004 to purchase 30% of LGHF's units in the Trust and \$2.1 million in FY05 to FY09 to buy LGHF's remaining 36% of units in the Trust). LGHF made a profit of \$6.6 million on the sale of its units to investors. It does not appear from the documentation that investors were aware that LGHF was proposing to make a profit or the level of profit on the notional sale of the units to Glenline.
19. \$1.4 million of the \$8.6 million raised has since been returned to investors. Also, between FY05 to FY09, a total of \$2 million was made in monthly distributions to investors (including Tercar).
20. The tenth defendant, LGH Administration Pty Ltd ("LGHA") performed the treasury function of the scheme on behalf of Firbank and Glenline, collecting all receipts from any debt or investment raising and funding distributions to investors.
21. As at 28 February 2010, the scheme had a loan payable to LGHA of \$5 million, representing the overall cash deficit from operations and distributions to investors. Other liabilities include bank debt of \$9.8 million and trade and other creditors of \$2.2 million (mainly relating to a \$1.4 million loan from Tercar).
22. At least two undated information memoranda appear to have been issued by the second defendant, LGH Holdings Limited ("LGHH") in 2004 and 2005 for investors to contribute to the scheme.
23. The joint venture agreements sighted by the receivers and managers identified Glenline as the manager of the joint venture.
24. A total of 93 investors are still to receive repayment of their initial investment totalling approximately \$7.1 million.
25. The Receivers also received investor claims from seven investors not recorded in the books and records (including Tercar) but who claimed to hold an interest in the scheme. Their funds have not been incorporated in the above table.

Low Head Joint Venture

(the twelfth defendant, Low Head Village Pty Ltd)

26. The information contained within the Low Head Joint Venture Disclosure Report (exhibit DJT-28 to the fifth affidavit of Damian John Templeton sworn on 12 April 2010) is summarised in the table below:




Property	128-136 Low Head Road George Town TAS ("136 Low Head Road") 142 Low Head Road George Town TAS ("142 Low Head Road") 40 Gunns Parade Low Head TAS ("40 Gunns Parade")
Property purchase	April 2004 (40 Gunns Parade) August 2004 (136 Low Head Road) August 2005 (142 Low Head Road)
Purchase value (approximately)	\$850,000 (40 Gunns Parade) \$600,000 (136 Low Head Road) \$400,000 (142 Low Head Road)
Land title holder	Low Head Village Pty Ltd
Secured Debt Raised (during the life of the scheme)	\$1.6 million
Initial investor fundraising	March 2004 (Phase 1)
Initial investor funds raised (approximately)	\$2.5 million
Additional investor fundraising commencing (year)	February 2006 (Phase I) July 2007 (Phase II)
Additional funds raised and contributed (approximately)	\$2.5 million
Total number of investors identified over scheme life	69
Total number of investors as at 25 February 2010	55
Property sold	April 2009 Lot 1, 142 Low Head Road Balance of property still held as at 25 February 2010
Property sale value	\$115,000
Total payments to investors (approximately):	
-Periodic distributions	\$1.1 million
-Return of capital/capital gain	\$900,000

27. The properties at 40 Gunn Parade, Low Head, Tasmania, 128-136 Low Head Road, George Town, Tasmania and 142 Low Head Road, George Town, Tasmania were acquired in April 2004, August 2004 and August 2005 respectively by the twelfth defendant, Low Head Village Pty Ltd (“Low Head”).
28. Investments in the scheme came about by the following means:
 - (a) Execution of a joint venture agreement (16 investors);
 - (b) Roll over from another scheme (11 investors);
 - (c) Payment of funds without execution of a joint venture agreement or any other document (53 investors).
29. Investors invested in stages. First, in March 2004 (Phase I), prior to settlement of the purchase of 40 Gunns Parade (for \$0.85 million).
30. An undated information memorandum for Phase I investments appears to have been issued by LGHH in 2004 for investors to contribute to the scheme.
31. Approximately \$2.5 million was raised from the Phase I investors and \$0.3 million of bank debt.
32. In August 2004, 136 Low Head Road was acquired by Low Head for \$0.6 million.
33. In August 2005, 142 Low Head Road was acquired by Low Head for \$0.4 million.
34. An information memorandum dated 24 November 2005 was issued by LGHH for investors to invest in Phase II of the project. The information memorandum stated that Phase I of the development was to mature and LGHH was progressing to Phase II of the project.
35. In February 2006, approximately \$0.5 million was raised from Phase II investors and \$0.4 million of bank debt.
36. A further information memorandum dated 17 July 2007 was sent to investors by LGHH seeking investors to continue in Phase III of the Project.
37. In July 2007, approximately \$2 million was raised from investors and \$1 million of bank debt as part of Phase III.
38. In April 2009, Lot 1 of 142 Low Head Road was sold for \$115,000 at a gain of \$0.85 million.
39. LGHA performed the treasury function of the scheme, collecting all receipts from any debt or investment raising, funding distributions to investors and receiving receipts from trading. As at 25 February 2010, the scheme had a loan payable to LGHA of \$468,000,



representing the overall cash deficit from capital expenditure and distributions to investors funded by LGHA.

40. Cash investments were made by investors to LGHA, generally by way of cheques payable to LGHA.
41. 69 investors contributed approximately \$5 million over the three stages as consideration to acquire rights to benefits intended to be produced by the project. 14 investors left the scheme. \$0.9 million of contributions was returned to these investors. \$1.1 million in monthly distributions was also paid to investors.
42. The joint venture agreements sighted by the Receivers identified Low Head as the manager of the joint venture.

Nicholson Street Joint Venture

(the thirteenth Defendant, Nicholson Street Pty Ltd)

(the fourteenth Defendant, Holloway Crest Pty Ltd)

(the fifteenth Defendant, Rosebery Enterprises Pty Ltd)

43. The information contained within the Nicholson Street Joint Venture Disclosure Report (exhibit DJT-18 to the fifth affidavit of Damian John Templeton sworn on 12 April 2010) is summarised in the table below:

Property	127-137 Nicholson Street Brunswick VIC
Property purchase	April 1995
Purchase value (approximately)	\$3.1 million
Land title holder	Nicholson Street Pty Ltd
Secured Debt Raised (during the life of the scheme)	\$6.8 million
Initial investor fundraising	April 2006
Initial investor funds raised (approximately)	\$3.4 million
Additional investor fundraising commenced	Late 2007
Additional funds raised and contributed (approximately)	\$6.5 million
Total number of investors identified over scheme life	145

Total number of investors as at 25 February 2010	140
Property sold	Still held as at 25 February 2010
Property sale value	N/A
Total payments to investors (approximately):	
-Periodic distributions	\$1.2 million
-Return of capital/capital gain	\$0.2 million

44. The property at 127-134 Nicholson Street, Brunswick, Victoria is an industrial complex purchased by LGHA via the thirteenth defendant, Nicholson Street Pty Ltd ("**Nicholson Street**") in April 1995 for \$3.1 million.
45. The property was notionally 'sold' by LGHA for \$10.25 million to third party investors in April 2006 and is when it appears that the scheme commenced as it reflects the initial investment of \$3.4 million by investors (Phase I) and bank debt of \$6 million.
46. Investments in the scheme were in stages (April 2006 (Phase I), October 2007 (Phase II) and late 2007 (Phase II(b)) and came about by the following means:
- (a) Execution of a joint venture agreement (17 investors);
 - (b) Roll over from another scheme (116 investors);
 - (c) Payment of funds without execution of a joint venture agreement or any other document (12 investors).
47. 145 investors contributed approximately \$9.9 million over the three stages (\$3.4 million in Phase I, \$5.2 million in Phase II and \$1.3 million in Phase II(b)).
48. The Phase II investments were raised primarily to fund a rezoning application and the redevelopment of the property. Phase II(b) investments were raised for the purposes of commencing development works once approval for the rezoning permit was obtained.
49. \$0.2 million of contributions was returned to 5 investors who left the scheme. \$1.2 million in monthly distributions was also paid to investors, with the exception of Phase II(b) investors. Phase II(b) funds were to have been retained by LGHA and released to the scheme on approval of the rezoning permit, therefore no distributions have been paid to these investors.
50. LGHA performed the treasury function of the scheme, collecting all receipts from any debt or investment raising, funding distributions to investors and receiving rental income receipts from tenants. As at 25 February 2010, the scheme had a loan receivable of




\$3.5 million from LGHA, representing the scheme's surplus cash that has been paid to LGHA as treasurer of the scheme.

51. Cash investments were made by investors to LGHA, generally by way of cheques payable to LGHA.
52. At least two information memorandums appear to have been issued by LGHH in 2006 and 2007 for investors to contribute to the scheme.
53. The joint venture agreements sighted by the receivers and managers variously identified the fourteenth defendant, Holloway Crest Pty Ltd ("**Holloway Crest**"), the fifteenth defendant, Rosebery Enterprises Pty Ltd ("**Rosebery**") and/or Nicholson Street as the managers of the joint venture. The Receivers have not sighted any documentation which governs the relationship between Nicholson Street, Holloway Crest and Rosebery. Further, it is not clear what joint venture assets, if any, are held by Holloway Crest and Rosebery.
54. The Receivers also received investor claims from ten investors not recorded in the books and records but whom claimed to hold an interest in the scheme. Their funds have not been incorporated in the table above.

National Boulevard Joint Venture

(the fifteenth Defendant, Rosebery Enterprises Pty Ltd)

55. The information contained within the National Boulevard Joint Venture Disclosure Report (exhibit DJT-22 to the fifth affidavit of Damian John Templeton sworn on 12 April 2010) is summarised in the table below:

Property	144 National Boulevard Campbellfield VIC (now sold)
Property purchase	August 2007
Purchase value (approximately)	\$16.2 million
Land title holder	Rosebery Enterprises Pty Ltd
Secured Debt Raised (during the life of the scheme)	\$15.3 million
Initial investor fundraising	November-December 2005
Initial investor funds raised (approximately)	\$3.9 million
Additional investor fundraising (year)	N/A

Additional funds raised and contributed (approximately)	Nil
Total number of investors identified over scheme life	86
Total number of investors as at 25 February 2010	25
Property sold	November 2007
Property sale value	\$20 million
Total payments to investors (approximately):	
-Periodic distributions	\$757,000
-Return of capital/capital gain	\$3.1 million
Funds not yet returned following sale (as at 25 February 2010)	\$1.5 million (including profit from sale)

56. The property at 114 National Boulevard, Campbellfield, Victoria was acquired by Rosebery in April 2006 for \$16.2 million to construct offices and warehouse facilities for long term lease to Pacific Brands Clothing Pty Ltd ("**Pacific Brands**"). The purchase price was payable by Rosebery on completion of construction.
57. Pacific Brands signed a long term lease in July 2007. Settlement of the purchase of the property was completed in August 2007. In November 2007, Rosebery sold the property to Perpetual Trustee Company Limited for \$20 million (i.e. at a gain of \$3.5 million).
58. Fund raising was undertaken prior to the acquisition of the property. Between November and December 2005, approximately \$3.9 million was raised from 86 investors. In August 2007, bank debt of \$15.3 million was also obtained to fund the acquisition.
59. Investments in the scheme came about by the following means:
- Execution of a joint venture agreement (61 investors);
 - Roll over from another scheme (6 investors);
 - Payment of funds without execution of a joint venture agreement or any other document (19 investors).
60. LGHA performed the treasury function of the scheme, collecting all receipts from any debt or investment raising and funding distributions to investors. As at 25 February 2010, the scheme had a loan receivable from LGHA of \$1.5 million (i.e. comprised of net funds provided by the scheme to LGHA).




61. The Receivers have been informed by Mr Letten that as part of an engagement between Bridgehead Properties Pty Ltd (“**Bridgehead**”) and LGHA, Bridgehead was offered and paid 50% of the profits earned by the scheme as the development manager of the property. Mr Letten has confirmed a payment of \$1.7 million was made to Bridgehead in FY08. Further, the Receivers have been informed by Mr Letten that LGHA is entitled to 7% of the profits earned by the scheme (\$236,000) to reflect intellectual property contributed by LGHA to the scheme. Investors were accordingly entitled to 43% of scheme profits. It is unclear whether investors were aware of these arrangements. The Receivers have seen no documentation that supports these arrangements.
62. An information memorandum was provided to investors in September 2005 to contribute to the scheme.
63. The joint venture agreements sighted by the Receivers identified Rosebery as the manager of the joint venture.
64. As at 25 February 2010 (the date of appointment of the Receivers) \$3.1 million had been returned to investors, together with distributions of \$757,000. The distributions made to investors over the life of the project substantially exceeded retained earnings of \$1.4 million. This suggests that these amounts were paid from other sources. Further, despite the sale of the property in November 2007, 25 investors are yet to receive their initial contribution of \$780,000 and share in undistributed earnings of the scheme of \$694,000. If LGHA is not entitled to 7% of the scheme profits, this amount would increase from a total of \$1.5 million to \$1.7 million.
65. As the proceeds of the property investment (including monies borrowed against the property) appears to have been dispersed amongst the other Schemes directly, or by LGHA, the property of the scheme is presently represented by claims that may be made against LGHA or other Schemes of a trust/tracing nature. The books and records indicate that the total quantum of these claims is \$1.5 million.

Yarra Valley Golf Joint Venture

**(the twenty-first defendant, Yarra Valley Golf Pty Ltd and associated entities,
the twenty-second to twenty-eighth and thirtieth to forty-fifth defendants)**

66. The information contained within the Yarra Valley Golf Joint Venture Disclosure Report (exhibit DJT-30 to the sixth affidavit of Damian John Templeton sworn on 27 April 2010) is summarised in the table below:




Property	The Heritage Golf and Country Club Cnr Hughes and Yarraview Roads Chirnside Park VIC
Property purchase	1996
Purchase value (approximately)	\$6.7 million (Henley and St John land)
Land title holder	Yarra Valley Golf Pty Ltd
Secured Debt owing as at 25 February 2010	\$29.1 million
Direct investor fundraising	1998 to 2000
Direct investor funds raised (approximately)	\$17.9 million (net of returns to investors who exited the scheme)
Indirect investor fundraising	2001 and 2008
Indirect investor funds raised (including Equity Deposit Bond investors)(approximately)	\$24.8 million (net of returns to investors who exited the scheme)
Total number of investors identified over scheme life (approximately)	581 direct investors 575 indirect investors (including Equity Deposit Bond investors)
Total number of investors as at 25 February 2010 (approximately)	546 direct investors 397 indirect investors (including Equity Deposit Bond investors)
Property sold	Part sold. Majority still held as at 25 February 2010
Property sale value	\$106.5 million (land and villas)
Total payments to investors (approximately): -Periodic distributions	\$9.4 million ('indirect' investors only)

67. The property of the Yarra Valley Golf joint venture (“**YVG joint venture**”) is situated within the Heritage Golf Club and Country Club complex, corner of Hughes and Yarraview Roads, Chirnside Park, Victoria. The complex includes residential, hotel, day spa, conference and golf facilities, albeit these have different owners.
68. The YVG joint venture property comprises the two golf courses (St John and Henley), clubhouse and residential development land (of which the twenty-first defendant, Yarra Valley Golf Pty Ltd (“**YVG**”) is the registered owner), and 92% of the shares in The Heritage Golf and Country Club Pty Ltd (“**HGCC**”) (the “**YVG property**”). HGCC

operates the Heritage Golf Club and Country Club (an unincorporated association). The St John course is subject to a lease to HGCC. It is intended that HGCC also obtain a similar lease over the Henley course.

69. YVG is responsible for the day to day management of the golf operations and the development, marketing and sale of the residential land. The hotel operations, including conference and day spa facilities are not owned by YVG.
70. Investments in the YVG joint venture fell into a number of categories:
- (a) the initial partners' investments;
 - (b) those who invested in the joint venture, of which there were two subcategories, being:
 - i. direct joint venture investors; and
 - ii. indirect joint venture investors; and
 - (c) those who invested through what were described as "Equity Deposit Bonds" (incorporated in the 'indirect investor' figures in the table above).

Original Partners

71. The initial source of funds for the YVG joint venture was raised from a small group of sophisticated investors, including Laser Corporate Services Pty Ltd and Pratt Land Holdings Pty Ltd, who entered into a partnership agreement in July 1996 (amended in November 1997) with FBN Property Pty Ltd, Keywear Pty Ltd and YVG (as manager) (collectively, the "**Original Partners**"). In FY95 to FY97, the Original Partners collectively invested approximately \$6.9 million.
72. In 1997, the partnership was seemingly restructured. Mr Letten and LGHH took over the project, converting the Original Partners' investment into an interest bearing loan in the name of LGHA and sought funds from third party investors. Certain original partners have been repaid a portion of their investments. The Receivers are unaware of the specific terms surrounding the repayments other than that they occurred at the direction of Mr Letten.

Direct joint venture investors

73. In the FY98, FY99 and FY00, approximately \$17.9 million (net of returns to investors who exited the scheme) was raised from 581 investors described in the books and records as 'direct' joint venture investors, of which 546 are still active.
74. Investors entered into joint venture agreements. Pursuant to the joint venture agreements, each of the investors invested in a project which was described as 'The Heritage Golf & Country Club' and a number of corporate managers were appointed. It

appears that all direct investors funds were deposited with YVG. The Receivers have not verified whether the funds were deposited directly with YVG or deposited initially with LGHA and then deposited with YVG. The Receivers are not aware of any documentation which governs the relationship between the corporate managers and YVG in relation to the direct joint venture investments.

75. It does not appear that any joint venture assets were directly held by the corporate managers. Under the joint venture agreements, direct joint venture investors were not entitled to and were not paid annual distributions during the life of the project.
76. For the FY98 direct joint venture investments ("**direct JV #1**"), there were five identified managers: the twenty-second defendant, Adina Rise Pty Ltd; the thirty-second defendant, Hallmark Corporation Pty Ltd; the thirty-fourth defendant, Norton Ridge Pty Ltd; the forty-first defendant Tulloch Downes Pty Ltd; and the thirty-ninth defendant, The Virtual Mlmer Pty Ltd. Approximately \$6.1 million (net of returns to investors who exited the scheme) was raised from the direct JV #1 investors.
77. Direct JV #1 was identified as "The Heritage Golf & Country Club" in the information memorandum issued to investors. The joint venture agreements sighted by the Receivers identified the interest to be acquired by investors as a "share or interest in the investment known as S10 HGCC Investment".
78. For the direct joint venture investments in FY99 ("**direct JV #2**"), there were six identified managers: the twenty-third defendant, Albright Investments Pty Ltd; the twenty-fifth defendant, Bradfield Corporation Pty Ltd; the twenty-seventh defendant, Devlin Way Pty Ltd; the thirtieth defendant, Glenvale Way Pty Ltd; the thirty-third defendant, Moorleigh Holdings Pty Ltd; the thirty-fifth defendant, Raleigh Glen Pty Ltd; and the thirty-eighth defendant, Sutton Rise Pty Ltd. Approximately \$7.5 million (net of returns to investors who exited the scheme) was raised from the direct JV #2 investors.
79. Direct JV #2 was identified as "The Heritage Golf & Country Club" in the information memorandum issued to investors. The joint venture agreements sighted by the Receivers similarly identified the interest to be acquired by investors as a "share or interest in the investment known as The Heritage Golf and Country Club".
80. For the FY00 direct joint venture investments ("**direct JV#3**"), there were six identified managers: the twenty-fourth defendant, Ashfield Rise Pty Ltd; the twenty-sixth defendant, Copeland Enterprises Pty Ltd; the twenty-eighth defendant, First Hazelwood Pty Ltd; the thirty-first defendant, Greenview Lane Pty Ltd; the thirty-seventh defendant, Suri Corporation Pty Ltd; and the fortieth defendant, Tivendale Pty Ltd. Approximately \$4.3 million (net of returns to investors who exited the scheme) was raised from the direct JV #3 investors.



81. In the information memorandum issued to investors, the investment opportunity was identified as the "S10" site of the Heritage Golf and Country Club, to be acquired by LGHH and investors. The joint venture agreements sighted by the Receivers similarly identified the interest to be acquired by investors as a "share or interest in the investment known as S10 HGCC Investment".

Indirect joint venture investors

82. The Receivers identified six indirect joint venture investments where funds were raised by LGHA through the use of 'sub joint venture entities' and then injected into the YVG joint venture.
83. Investors entered into joint venture agreements pursuant to which each of the investors intended to invest in a particular aspect of the YVG joint venture. Pursuant to the joint venture agreements, a number of corporate managers were appointed. It does not appear that any joint venture assets were directly held by the corporate managers. It also appears that all investors' funds were paid directly to LGHA. The Receivers are not aware of any documentation which governs the relationship between the corporate managers, LGHA and YVG in relation to the indirect joint venture investments.
84. Notwithstanding that indirect joint venture investors were not entitled to receive annual distributions during the life of the project, \$9.4 million in annual distributions was paid by LGHA to the indirect joint venture investors.
85. The manager of the first indirect joint venture was the forty-fourth defendant, Allblue Pty Ltd ("**Allblue**"). It is not clear which project Allblue was managing. The YVG books and records disclose that Allblue was the designated manager for "Yarraview 1 & 2". The information memorandum issued by LGHH similarly refers to Yarraview. The joint venture agreements for Allblue however, referred to the project as "St Johns East House & Land Subdivision", which is a different (closed) joint venture. Approximately \$1.5 million (net of returns to investors who exited the scheme) was raised in October 2006 from the first indirect joint venture investors.
86. The manager for the second indirect joint venture investment was the forty-fifth defendant, Aranbay Pty Ltd ("**Aranbay**"). The joint venture agreements and information memorandum sighted by the Receivers identified the project as the "Henley Golf Course" and "Henley Golf Course Investment" respectively. Approximately \$5.3 million (net of returns to investors who exited the scheme) was raised in August 2001 from the second indirect joint venture investors.



87. The manager for the third indirect joint venture investment was the forty-third defendant, Topglen Pty Ltd (“**Topglen**”). It is not clear which project Topglen was managing. The YVG books and records disclose that Topglen was the designated manager for "Henley house". The information memorandum issued by LGHH similarly refers to the "Henley and other real Estate Joint Venture". The joint venture agreements for Topglen however, referred to the project as "Yarraview". Approximately \$1 million (net of returns to investors who exited the scheme) was raised in October 2005 from the third indirect joint venture investors.
88. The manager of the fourth indirect joint venture investment was the forty-second defendant, Maining Pty Ltd (“**Maining**”). Maining was the designated manager for a project known as "Botanica stage 3 funding". The information memorandum sighted by the Receivers relating to this project is entitled "Stage 3 Botanica Real Estate Joint Venture At the Heritage Golf & Country Club". The joint venture agreements between the investors and Maining identified the project as "Stage 2A Real Estate at Heritage Golf & Country Club". Approximately \$6.1 million (net of returns to investors who exited the scheme) was raised in August 2003 from the fourth indirect joint venture investors.
89. The manager of the fifth indirect joint venture was LGHH and related to a project known as "Sebel Heritage Lodge Investment Stage 2". The joint venture agreements sighted by the Receivers identified the project as "Sebel Lodge Stage 2". The information memorandum issued by LGHH provided for the development of "32 Suites in Stage 2 of the Sebel Heritage Lodge". Approximately \$2.6 million (net of returns to investors who exited the scheme) was raised in May 2006 from the fifth indirect joint venture investors.
90. The manager for the sixth indirect joint venture investment was also LGHH. The information memorandum and joint venture agreements sighted by the Receivers identified the project as the "Augusta" project. Approximately \$5 million (net of returns to investors who exited the scheme) was raised in February 2007 from the sixth indirect joint venture investors.
91. The Yarraview 1 & 2 and Augusta projects have not commenced. The Receivers have been informed by Mr Letten that those investor funds were paid to LGHA but have not been provided to YVG, in that indirect investor funds were contributed to the YVG joint venture via an LGHA working capital loan. The Receivers are yet to ascertain the monthly movements in the working capital loan to confirm whether the funds raised by indirect joint venture investors were used for their intended purpose or whether they were even invested by LGHA in the YVG joint venture.



Equity Deposit Bonds

92. A number of contributions to the YVG joint venture were also made pursuant to "Equity Deposit Bonds". The Receivers have identified 52 current investors who contributed approximately \$3.3 million (net of returns to investors who exited the scheme) between June 2003 and May 2008 in what are described as Equity Deposit Bonds.

Additional claims

93. The Receivers have also received claims from 35 investors claiming to have invested in the YVG joint venture but who were not recorded in the YVG books and records. Their funds have not been incorporated in the table above.

Overall financial position

94. According to the books and records reviewed by the Receivers, as at 28 February 2010 YVG owed LGHA approximately \$45 million due to funds advanced to the benefit of the joint venture project by LGHA, including capitalised interest of approximately \$21.3 million. Further, from 1998 to 25 February 2010, the YVG joint venture had operated at an overall trading loss of around \$13 million. Once adjusted for non-cash items, the cash loss amounts to approximately \$38.1 million.

Glenbelle Project

(the twenty-ninth defendant, Glenbelle Pty Ltd)

(the thirty-sixth defendant, Redcrest Holdings Pty Ltd)

95. The information contained within the Glenbelle Project Disclosure Report (exhibit DJT-31 to the sixth affidavit of Damian John Templeton sworn on 27 April 2010) is summarised in the table below:

Property	Management Lot for The Sebel Lodge Yarra Valley (Hotel food and beverage operation, incl. restaurant, conference facilities) Cnr Hughes and Yarraview Roads Chirnside Park VIC Heritage Retreat (Recreation facility and Day Spa) Heritage Avenue Wonga Park VIC
Property purchase	July 2002 (Management Lot) November 2006 (Heritage Retreat)
Purchase value (approximately)	\$3.4 million (Management Lot) \$1.8 million (Heritage Retreat)
Land title holder	Glenbelle Pty Ltd

Secured Debt Raised (during the life of the scheme)	\$2.5 million
Initial investor fundraising (year)	February to November 2002
Initial investor funds raised (approximately)	\$5.8 million
Additional investor fundraising	January to August 2008
Additional funds raised and contributed (approximately)	\$1.6 million
Total number of investors identified over scheme life	165
Total number of investors as at 25 February 2010	116
Property sold	Still held as at 25 February 2010
Property sale value	N/A
Total payments to investors (approximately):	
-Periodic distributions	\$3.4 million
-Return of capital/capital gain	\$1.1 million

96. The property of the scheme is identified as the Management Lot for The Sebel Lodge Yarra Valley, corner Hughes and Yarraview Roads, Chirnside Park, Victoria and the Heritage Retreat (Retreat facility and Day Spa), Heritage Avenue, Wonga Park, Victoria.
97. The Management Lot covers those areas of The Sebel Lodge Yarra Valley which are needed to operate the hotel as a business, including kitchens, the reception and conference facilities. It was purchased by the twenty-ninth defendant, Glenbelle Pty Ltd (“Glenbelle”) for \$3.4 million in July 2002 (Phase I). To finance the acquisition, Glenbelle raised \$5.8 million from investors over the course of 2002. LGHA paid the deposit.
98. The Heritage Retreat was purchased by Glenbelle in November 2006 for \$1.8 million (Phase II). This was largely financed from Phase I surplus funds. The scheme only launched Phase II fund raising in October 2007, raising \$1.6 million from investors in January to August 2008.
99. Investments in the scheme occurred came about by the following means:
- (a) Execution of a joint venture agreement (68 investors);
 - (b) Rollover from another scheme (14 investors);

- (c) Payment of funds without execution of a joint venture agreement or any other document (83 investors).
100. Information memorandums were issued in June 2002 and October 2007 for investors to contribute to Phase I and Phase II of the scheme.
 101. Glenbelle was the manager of original joint venture, the Management Lot (Phase I). The thirty-sixth defendant, Redcrest Holdings Pty Ltd (“Redcrest”) was the joint venture manager of The Heritage Retreat (Phase II). Notwithstanding this, Glenbelle held all the assets of the scheme, namely, the Hotel Management Lot and the Heritage Retreat properties. It is not clear what, if any, joint venture assets are held by Redcrest. The Receivers have not sighted any documentation which governs the relationship between Glenbelle and Redcrest.
 102. The joint venture agreements sighted by the receivers and managers only identified Glenbelle as the manager of the joint venture.
 103. LGHA performed the treasury function of the scheme, collecting all receipts from any debt or investment raising and funding distributions to investors.
 104. Cash investments were made by investors to LGHA, generally by way of cheques payable to LGHA.
 105. 165 investors contributed approximately \$7.4 million over the two stages of the scheme (\$5.8 million in Phase I and \$1.6 million in Phase II). 49 investors left the scheme. \$1.1 million of contributions was returned to these investors. Further, \$3.4 million in monthly distributions was also paid to investors, compared to retained profits of \$0.7 million. This suggests that these amounts may have been funded by LGHA and from other sources.
 106. According to Glenbelle's accounts, as at 25 February 2010, the scheme had a commercial bill of \$2.5 million and an overdraft of \$1 million. Of this, \$1.2 million raised in July 2008 went to finance returns to investors. The scheme also had a loan payable to LGHA of \$66,000.
 107. The Receivers received claims from 16 investors claiming to have invested in the scheme but who were not recorded in the books and records. Their funds have not been incorporated in the table above.




Sworn by the deponent
at Melbourne
in Victoria
on 14 October 2011
Before me:

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)
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)
)



Signature of deponent



Signature of witness

Tony Tsiavis
of 120 Collins Street, Melbourne
An Australian Legal Practitioner within
the meaning of the Legal Profession Act 2004

SCHEDULE OF DEFENDANTS

Mark Letten

First Defendant

LGH Holdings Limited ACN 077 191 943

Second Defendant

211 Wellington Road Pty Ltd ACN 092 663 860

Third Defendant

Bluemist Holdings Pty Ltd ACN 097 306 922

Fourth Defendant

Dellwood Holdings Pty Ltd ACN 098 505 803

Fifth Defendant

Enmore Enterprises Pty Ltd ACN 082 158 487

Sixth Defendant

Firbank Arch Pty Ltd ACN 059 464 381

Seventh Defendant

Glenline Pty Ltd ACN 098 532 364

Eighth Defendant

Gerling Holdings Pty Ltd ACN 091 726 457

Ninth Defendant

LGH Administration Pty Ltd ACN 077 165 069

Tenth Defendant

LGH Finance Pty Ltd ACN 078 859 248

Eleventh Defendant

Low Head Village Pty Ltd ACN 091 731 958

Twelfth Defendant

Nicholson Street Pty Ltd ACN 069 104 089

Thirteenth Defendant

Holloway Crest Pty Ltd ACN 091 731 967

Fourteenth Defendant

Rosebery Enterprises Pty Ltd ACN 091 826 229

Fifteenth Defendant

Simms Investments Pty Ltd ACN 093 504 511

Sixteenth Defendant

SY21 Retail Pty Ltd ACN 107 874 564

Seventeenth Defendant

The Glen Centre Hawthorn Pty Ltd ACN 089 906 543

Eighteenth Defendant

Castello Holdings Pty Ltd ACN 088 204 175

Nineteenth Defendant

Twinview Nominees Pty Ltd ACN 097 307 278

Twentieth Defendant

Yarra Valley Golf Pty Ltd ACN 066 632 479

Twenty-First Defendant

Adina Rise Pty Ltd ACN 083 181 122

Twenty-Second Defendant

Albright Investments Pty Ltd ACN 088 204 166

Twenty-Third Defendant

Ashfield Rise Pty Ltd ACN 093 504 806

Twenty-Fourth Defendant

Bradfield Corporation Pty Ltd ACN 088 204 371

Twenty-Fifth Defendant

Copeland Enterprises Pty Ltd ACN 093 504 824

Twenty-Sixth Defendant

Devlin Way Pty Ltd ACN 088 264 813

Twenty-Seventh Defendant

First Hazelwood Pty Ltd ACN 093 505 303

Twenty-Eighth Defendant

Glenbelle Pty Ltd ACN 097 306 646

Twenty-Ninth Defendant

Glenvale Way Pty Ltd ACN 088 287 021

Thirtieth Defendant

Greenview Lane Pty Ltd ACN 093 505 312

Thirty-First Defendant

Hallmark Corporation Pty Ltd ACN 083 180 812

Thirty-Second Defendant

Moorleigh Holdings Pty Ltd ACN 088 287 058

Thirty-Third Defendant

Norton Ridge Pty Ltd ACN 078 821 066

Thirty-Fourth Defendant

Raleigh Glen Pty Ltd ACN 088 204 380

Thirty-Fifth Defendant

Redcrest Holdings Pty Ltd ACN 100 836 486

Thirty-Sixth Defendant

Suri Corporation Pty Ltd ACN 093 505 321

Thirty-Seventh Defendant

Sutton Rise Pty Ltd ACN 088 204 399

Thirty-Eighth Defendant

The Virtual Mlmer Pty Ltd ACN 065 374 665

Thirty-Ninth Defendant

Tivendale Pty Ltd ACN 093 505 349

Fortieth Defendant

Tulloch Downes Pty Ltd ACN 078 895 048

Forty-First Defendant

Maining Pty Ltd ACN 100 790 485

Forty-Second Defendant

Topglen Pty Ltd ACN 096 857 564

Forty-Third Defendant

Allblue Pty Ltd ACN 100 836 388

Forty-Fourth Defendant

Aranbay Pty Ltd ACN 098 532 319

Forty-Fifth Defendant

Melville Corporation Pty Ltd ACN 091 911 045

Forty-Sixth Defendant

Tilley Lane Pty Ltd ACN 086 136 361

Forty-Seventh Defendant

HPSC Pty Ltd ACN 059 930 139

Forty-Eighth Defendant

Jensdale Pty Ltd ACN 098 367 974

Forty-Ninth Defendant

Oakdale Rise Pty Ltd ACN 091 598 908

Fiftieth Defendant

Maywood Investments Pty Ltd ACN 091 599 218

Fifty-First Defendant

Acetrain Pty Ltd ACN 100 820 282

Fifty-Second Defendant

Sagebay Pty Ltd ACN 097 306 628

Fifty-Third Defendant

Tobago Holdings Pty Ltd ACN 093 504 520

Fifty-Fourth Defendant