

NOTICE OF PROPOSED SETTLEMENT
FEDERAL COURT OF AUSTRALIA
ALLCO FINANCE GROUP CLASS ACTION

Blairgowrie Trading Ltd & Ors v Allco Finance Group Ltd (recs & mgrs apptd) (in liq) & Ors

NSD 1609 of 2013

This notice contains important information about the Allco Finance Group Class Action (**Allco Class Action**) proceeding which is currently pending in the Federal Court of Australia.

You should read this notice carefully. If there is anything that you do not understand, you should seek legal advice.

On 16 February 2017 the Court will be asked to approve a proposed settlement of the Allco Class Action. If approved, the settlement will affect the legal rights of group members in the Allco Class Action. If you wish to make submissions opposing the proposed settlement, you must take the steps referred to in section 4 of this notice.

The Federal Court of Australia has ordered that this notice be sent to those group members in the Allco Class Action who, on or prior to 4 November 2016, had registered their claims with, and provided share trading information to, Maurice Blackburn (**Registered Group Members**). A separate notice has been sent to those group members in the Allco Class Action who, on or prior to 4 November 2016, had not registered their claims with, and provided share trading information to, Maurice Blackburn (**Unregistered Group Members**).

1. BACKGROUND TO THE ALLCO CLASS ACTION

The Allco Class Action was commenced in the Federal Court of Australia on 8 August 2013 by Blairgowrie Trading Ltd and Alan & Chrystine Flitcroft (**Applicants**) against Allco Finance Group Ltd (recs & mgrs apptd) (in liq) (**AFG**) and KPMG (collectively, the **Respondents**). The action arises out of a claim that the Respondents either contravened the continuous disclosure requirements of the *Corporations Act 2001* (Cth), or otherwise made statements that were misleading or deceptive, thereby causing loss to persons who acquired an interest in ordinary shares in AFG during the period 21 August 2007 to 27 February 2008 (**Relevant Period**). The Respondents to the Allco Class Action (AFG and KPMG) have denied the allegations, and defended the action.

The Applicants are represented by solicitors Maurice Blackburn, and the action is being funded by International Litigation Funding Partners Pte Ltd (**ILFP**).

2. PROPOSED SETTLEMENT OF THE ALLCO CLASS ACTION

The parties to the Allco Class Action have agreed on terms for the settlement of the action. Settlement cannot be concluded until the Court approves the settlement.

Under the terms of the proposed settlement, the Respondents are to pay (on a without admissions basis) a settlement amount:

- of \$30 million to settle the claims of Registered Group Members and a portion of the claims of Unregistered Group Members (other than those Registered and Unregistered Group Members who were 'related parties' of AFG) (**Tier 1 Settlement Amount**); and
- a further amount of up to \$10 million to settle the claims of any other Unregistered Group Members (other than those Unregistered Group Members who were 'related parties' of AFG) (**Tier 2 Settlement Amount**) – the precise amount of the Tier 2 Settlement Amount (if any) will depend upon: (i) the number of Unregistered Group Members who, prior to the applicable deadline, register their claims and provide share trading information to Maurice Blackburn; and (ii) the numbers of shares which those persons acquired and sold during the period 21 August 2007 to 10 February 2008.

The process by which the Tier 1 Settlement Amount and the Tier 2 Settlement Amount (if any) is proposed (subject to Court approval) to be distributed will be outlined in a 'Settlement Distribution Scheme' which can be inspected at the offices of Maurice Blackburn, Level 10, 456 Lonsdale Street, Melbourne, Victoria from 16 December 2016 between the hours of 9.00 am and 5.00 pm Monday to Friday, or a copy will be provided on request by Maurice Blackburn. Any loss assessment formula which may be referred to in the Settlement Distribution Scheme will also be made available on request to Maurice Blackburn, subject to an undertaking of confidentiality.

For the settlement to take effect, it must be approved by the Court under s 33V of the *Federal Court of Australia Act 1976* (Cth). If the settlement is not approved by the Court, the Allco Class Action will continue.

As part of the settlement approval, the Applicants also propose to seek orders which would have the effect that the costs of the proceeding be deducted proportionately from the Tier 1 Settlement Amount and the Tier 2 Settlement Amount prior to any distributions to group members, such that all group members bear a proportionate share of those costs. For this purpose, 'costs' includes Maurice Blackburn's legal costs, and also any entitlements of the funder of the proceeding (ILFP) pursuant to funding agreements which it entered into with Registered Group Members and/or pursuant to orders of the Court via a 'common fund' mechanism.

As advised in previous notices to group members, for the purpose of funding the Allco Class Action, the Applicants and some group members entered into Funding Agreements with ILFP, the terms of which included that:

- ILFP would pay part of the costs incurred in conducting the Allco Class Action (with the balance of those costs to be paid upon a successful outcome);
- ILFP would pay any adverse costs orders which were made in the Allco Class Action; and
- at the conclusion of the Allco Class Action (whether by settlement or judgment), ILFP would be entitled to receive, as a first priority out of that person's share of the settlement or judgment amount: (i) reimbursement of that person's share of the amounts paid by ILFP under the Funding Agreements (which includes legal costs and disbursements); and (ii) a commission, being a percentage of that person's share of the settlement or judgment amount, which would vary for each group member depending on how many shares in AFG they held. Relevantly, the percentages were:

Number of Shares Held	Resolution after 30 June 2015
< 1,000,000	35%
> or = 1,000,000	32.5%

(If you wish to see the full terms of the Funding Agreements, you may contact Maurice Blackburn by email or telephone as set out below)

The Applicants propose to seek orders from the Court which would have the effect that the above funding arrangements will apply to all group members who have not opted out of the Allco Class Action and who have registered, or subsequently register, to participate in the proposed settlement (irrespective of whether they have entered into a Funding Agreement with ILFP), but with a reduced funding commission applicable to all group members of 30% of the net amount remaining after reimbursement of costs (which is a reduction from the amounts set out in the above table, being up to 35% of the gross amount before reimbursement of costs) (**Common Fund Orders**). Assuming costs of approximately \$10 million, this would equate to a commission to ILFP of between \$6 million (if the Tier 2 Settlement Amount is zero – i.e. (\$30m – \$10m) x 30%) and \$9 million (if the Tier 2 Settlement Amount is \$10 million – i.e. (\$40m – \$10m) x 30%). However, ILFP and Maurice Blackburn have determined to defer part of the commission and legal costs to ensure that the amount available for distribution to group members represents at least 50% of the total settlement sum. Thus, if the Tier 2 Settlement Sum is zero, a maximum of \$15 million will be deducted from the Tier 1 Settlement Sum on account of costs and commission. If the Tier 2 Settlement Sum is greater than zero, any costs and commission above \$15 million may be deducted, but the total costs and commission will never exceed 50% of the total settlement sum. Full details will be set out in the ‘Settlement Distribution Scheme’ which, as noted above, can be inspected at the offices of Maurice Blackburn, or a copy will be provided on request.

The Applicants previously applied for similar orders. Those orders were opposed by the Respondents and the Federal Court declined to make the orders at that stage of the Allco Class Action (but did not rule out the possibility of making such orders at a later stage of the action). A copy of the Court’s earlier decision is available on the website of the Applicants’ solicitors (www.mauriceblackburn.com.au/allco).

It is possible that the Court may make no order, or other orders, in respect of funding arrangements. An example of an alternative order is an "equalisation order", which would result in ILFP being paid only the total amount to which it is entitled under the funding arrangements it has actually agreed with group members, but that amount being shared across all group members rather than only those who have entered the funding arrangements.

Whatever orders the Court makes (if any), group members will **not** be required to pay any amounts to ILFP (or to Maurice Blackburn) otherwise than as a deduction from their entitlements under the proposed settlement (and under no circumstances will they exceed those entitlements). Thus, no group member will be ‘out-of-pocket’ as a result of such orders.

Full details of the proposed common fund mechanism will be set out in the ‘Settlement Distribution Scheme’ which, as noted above, can be inspected at the offices of Maurice Blackburn, or a copy will be provided on request.

3. WHO THIS NOTICE AFFECTS

This notice affects the applicants and group members in the Allco Class Action. **You are receiving this notice because you are a Registered Group Member (that is, you previously registered your claim with, and provided your share trading information to, Maurice Blackburn). There is nothing which you need to do at this stage in order to progress your claim or participate in the proposed settlement. Maurice Blackburn will be in touch with you soon to outline your expected entitlement (if any) from the Tier 1 Settlement Amount.**

4. IF YOU WISH TO MAKE SUBMISSIONS OPPOSING THE SETTLEMENT

If you wish to make submissions on why the Court should not approve the above settlement, the Common Fund Orders, or if the Common Fund Orders were made, the percentage of the funding commission payable to ILFP, you are required to file with the Court, and serve on Maurice Blackburn, **by no later than 2 February 2017**, any affidavit evidence relied upon in opposition to the settlement, together with a written outline of your grounds for opposing the proposed settlement.

The address for Maurice Blackburn is:

Level 10
456 Lonsdale Street
Melbourne Vic 3000
(Attention: Steven Foale)

The address for the Court is:

Re Allco Class Action NSD 1609/2013
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

You may also attend and make submissions to the Court at the hearing of the application for approval of the proposed settlement. That hearing has been scheduled for **16 February 2017 at 10.15 am** in Sydney.

If you have any questions in relation to the above, or wish to obtain copies of relevant documents, you should contact Maurice Blackburn by email: allcoclassaction@mauriceblackburn.com.au, or telephone: (03) 8102 2007, or seek your own legal advice without delay.