



RELEASE TO AUSTRALIAN SECURITIES EXCHANGE

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COMMON FUND ORDERS IN AUSTRALIAN CLASS ACTIONS

Summary

- **A High Court decision today has determined that courts do not have power under existing legislation to make common fund orders, at least not in the early stages of litigation.**
- **IMF welcomes this decision which provides much needed clarity and confirms the future importance of bookbuilding in Australian class actions which is something IMF has been successfully doing for close on two decades.**

High Court Decision

IMF Bentham Limited (**IMF**) confirms that the High Court of Australia has ruled that the Federal Court and the NSW Supreme Court do not have authority under existing legislation to make a common fund order in Australian class actions, at least not in the early stages of the litigation. In general terms, common fund orders bind all group members to certain arrangements with lawyers and litigation funders irrespective of which funder or lawyer a group member may have elected to contract with. IMF believes, this decision will result in a reversion to previous practice, with class actions being brought on a closed class basis with each group member deciding for themselves whether they wish to be involved in the action and if so which lawyers and litigation funder they wish to contract with via a bookbuilding process.

IMF welcomes this decision which provides much needed clarity and supports the right to free choice for group members. IMF notes that bookbuilding has been central to its investments in Australian class actions for nearly two decades and that it has market leading infra-structure to facilitate this process and is well placed to continue doing so.

IMF notes that there is no common fund order in the Brisbane Floods Class Action. There are class actions funded by IMF which do have common fund orders in place. IMF, together with the lawyers acting for the relevant group members, will review these cases and the implications of today's High Court decision. However, IMF notes that it has undertaken substantial bookbuilds in these cases and will, where appropriate, continue to do so.

IMF background

Following the merger of the IMF and Omni Bridgeway operations in November 2019, the combined group is a global leader in dispute resolution finance, with expertise in civil and common law legal and recovery systems, and operations spanning Asia, Australia, Canada, Europe, the Middle East, the UK

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and the US. IMF and Omni Bridgeway have built their reputations as trusted providers of funding solutions and together offer end-to-end dispute finance from case inception through to post-judgment enforcement and recovery.

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