



representing private forest growers

3 July 2009



Committee Secretary
Parliamentary Joint Committee on Corporations and Financial Services
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretariat,

Inquiry into Agribusiness Managed Investment Schemes.

Australian Forest Growers (AFG) is the national association representing and promoting the interests of private forest growers in Australia. Numerically, AFG members are predominately small farm forest growers and managers of native forests on private land. There is also a range of forest service providers within its membership, including nurseries and forest consultants, as well as large scale plantation companies including most of the retail forestry companies.

AFG recognises that a joint submission from the Australian Plantation Products and Paper Industries Council and the National Association of Forest Industries is the principal vehicle for providing substantive input into the above inquiry from the companies involved in managed forestry investment and the broader plantation and processing industry.

AFG believes that continued investment in plantations generated by pooled investments is vital to provide a significant regionally based resource. The advantage to smaller growers is that this complements their own resource, and that it will provide a sufficient scale of resource for maintaining or establishing vibrant, competitive processing and exporting industries. The preferred model to achieve this is an investment model that recognises the time lag between establishment and harvest of the crop, is integrated into the rural landscape, preferably in multiple land ownership structures, including joint venture or leasehold arrangements, and is recognised as a key component of the regional economy.

AFG developed and owns the *AFG Disclosure Code for Afforestation Managed Investment Schemes*. This code was originally developed over 20 years ago and was upgraded in 2003 with the aim of helping to get ASIC recognition. In addition there was also a companion *Investors' Guide to Afforestation Investment* produced which is attached to this submission. The AFG Disclosure Code was available to industry through review by JASANZ accredited auditors who certified the MIS forestry companies' offer documents and therefore investors in evaluating offer documents had detail an investor could reasonably expect to make an informed decision. The Code was withdrawn after the 2008 financial year as member companies did not consider ASIC attributed any value to the process. AFG would consider reviewing and reintroducing this code in appropriate circumstances.

29 Torrens Street, Braddon ACT 2612, Australia
Tel: 02 6162 9000 Fax: 02 6162 9001
Email: national.office@afg.asn.au Web: www.afg.asn.au
ABN 39 000 694 904



AFG seeks to draw the attention of the committee to some general issues that are of specific concern to this organisation. They are best summarised in the following areas:

- i) the potential conflict of interest of administrators in seeking to act on behalf of both secured and unsecured creditors, shareholders AND grower/investors;
- ii) the impact on landholders leasing land to managed investment schemes;
- iii) the importance of continued investment in plantations; and
- iv) the impact on regional communities, including the employees and their families, of the failed companies, local contractors and suppliers.

The potential conflict of interest of administrators in seeking to act on behalf of both secured and unsecured creditors, shareholders AND grower/investors.

AFG is very concerned that in the case of both Timbercorp and Great Southern the Responsible Entities (REs), Timbercorp Securities Limited and Great Southern Managers Ltd respectively, were both placed concurrently under the control as the same respective administrators as the balance of the entities. Responsible Entities have a specific obligation to act in the interests of investors under the Corporations Act. AFG does not consider that an administrator can therefore act, and be perceived to act in the interests of shareholders and creditors and also be expected to act in the interests of the investors. AFG is of the view that this has created unrealistic expectations on administrators, are unlikely to be able to be met, and mechanisms should be enacted to ensure the interests of investors are pursued by entities external to the administrators of the promoter / manager and original Responsible Entity, to continue to act beneficially on behalf of the interests of investors in projects issued by the RE.

AFG is particularly concerned that, in the future, the combination of the Boards of Responsible Entities and their Compliance Committees are sufficiently independent from any management companies such that there is at least a majority that are external to any entity undertaking management or delivering services to investors.

The impact on landholders leasing land to managed investment schemes

AFG understands that there is a range of ownership models for underlying land for managed plantation investment, which includes, but is not limited to, arrangements where land is leased by farmers to MIS companies for tree cropping.

AFG is concerned that, despite seemingly robust leasing agreements, the administration of the MIS companies means that the ongoing lease payments (rent) may be in jeopardy. This may cause a situation where a landowner may be unable to receive their legitimate lease payments but remain precluded from either access to the trees (which they do not hold title to) or alternative use of that portion of land.

AFG is of the view that a mechanism should be developed to give greater comfort to current and potential lessors over the certainty of these lease payments. This might be a mechanism where the lease costs are held by the RE and paid directly to the lessee or alternatively a mechanism that protects the capacity of the investor and lessor to act, for mutual benefit

where the scheme or RE is insolvent or in administration. The latter option would have the effect of the investor and lessor being considered outside the bounds of the insolvent or under administration entity in terms of being a holder of neither asset nor liabilities within the provisions of insolvency or administration.

The importance of continued investment in plantations

Plantations, whatever the ownership and management structure, are a difficult crop to attract investment into. The long term nature of the forest crop of up to 30 years, means that the provision of finance is largely contingent on the capacity of the investor to await their returns.

The implementation of secondary markets for immature MIS plantations is a significant and appropriate improvement (supported by AFG). A difficulty remains in that the asset has little direct market value until it reaches an age where it develops a salvage value. This means an investor may need to be prepared to wait for a significant period, maybe up to 10 years, before a value can be apportioned and demonstrated in the market.

There remains a significant (approximately \$2 billion/annum) trade shortfall in forest and wood products, which justifies that Australia continues to invest in further plantation expansion. A mechanism needs to remain to allow a continuation in plantation investment, and at present only the MIS model seems capable of attracting such investment.

AFG would be content to see this MIS investment continue, but with further thought given to mechanisms that would encourage greater plantation establishment on farmland by farmers. Mechanisms such as income averaging, greater tax deductibility for establishment of non MIS plantations, or even subsidised Government loans, could all be instruments worthy of consideration. However, unless and until such mechanisms can be shown to create the plantation investment Australia needs, the current alternative of MIS forestry should be supported.

The impact on regional communities

One of the major concerns is that any exit of MIS from regional communities is likely to have an impact on regional economies, particularly unless there are arrangements for the ongoing management of the established forest resource. It is imperative for the health of regional communities that such arrangements are allowed to be pursued. The Committee should not need reminding that neither the investors nor the lessors of land are necessarily insolvent entities when management service providers are placed into administration or insolvency.

It is the case that the land still exists as a tangible asset (though potentially compromised in some ownership structures by it being used as a collateral), and the trees are still a growing biophysical asset owned by an investor. It therefore follows that mechanisms, largely unrelated to the administration or insolvency, should be pursued to allow the ongoing provision of lease payments and management of a continually growing crop. Suitable provisions, raised herein, which would put an RE into a separate management structure to that which is undertaking administration or liquidation, will significantly assist negotiations for ongoing management of tree crops and for greater certainty in meeting leasing costs.

In summary AFG continues to believe that an MIS-type investment structure remains the most proven mechanism for plantation establishment. However, recent events have focussed on some difficulties that this model presents in the event that the promoter / manager and the RE companies can no longer trade.

AFG is of the view that it ought not be beyond the collective wit to make the subtle and necessary adjustments that will provide greater protection for investors and lessors. AFG supports the existing model, MIS, that demonstrably can attract the patient investment needed for this unique sector to expand and also fund the replanting of existing stands of trees.

AFG also favours support for existing landowners and farmers to be assisted to become involved in the planting of trees on their own land in a way that recognises that there is a very long time frame between the establishment of commercial plantations and harvest returns. AFG also recognises that the scale that will make future management and harvest commercially viable is also a deterrent for many landowners to undertake plantation establishment on their own account. Therefore there is a case for alternative plantation funding models or structures to be considered, but as complementary to the MIS model and not instead of it.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Warwick Ragg'.

Warwick Ragg
Chief Executive

Attachment: Investors' Guide to Afforestation Investment

A Message From The Minister



Growers in managed investment plantations have financed more than 70 per cent of the half million hectares of new plantations established since the Plantations 2020 Vision strategy was launched in 1997. I expect such investment to continue building the resource to support more plantation-based industries that will benefit not only regional communities but the whole nation.

For plantation investment to continue to be competitive and attractive, investors must have confidence in the industry, the projects and the managers. Initiatives such as this Investors' Guide and its companion Disclosure Code for Afforestation Managed Investment Schemes contribute to that confidence, and complement the investor protection provided by the disclosure and compliance requirements of ASIC and the product rulings program of the ATO.

I congratulate Australian Forest Growers and its special branch, Treefarm Investment Managers Australia, for their initiative and commitment to strong self-regulation. I urge potential investors to use this Investors' Guide to help evaluate the information provided in the company offer documents.

Senator the Hon Ian Macdonald
Minister for Fisheries, Forestry and Conservation

Australian Forest Growers

Australian Forest Growers (AFG), formed in 1969, is the national association representing and promoting private forestry and commercial treegrowing interests in Australia. AFG members grow trees for timber and other products and benefits, on small and large holdings, on farms, in plantations, and in private native forests. Members include farmers and foresters, urban dwellers with rural land, small block holders, plantation investors and investment companies, researchers, consultants, tree and equipment suppliers, industrial forestry companies, and tree enthusiasts.



Treefarm Investment Managers Australia

Treefarm Investment Managers Australia (TIMA) is a special self-funded branch of AFG representing the interests of managed investment plantation companies and their many thousands of small-scale growers. TIMA's main focus is national plantations policy and the provisions of Corporations Law and Tax Law that govern the managed investments sector.



Contact for both AFG and TIMA

PO Box 318, Deakin West ACT 2600
Phone: (02) 6162 9000 Fax: (02) 6285 3855
Email: national.office@afg.asn.au and tima@afg.asn.au
Web: www.afg.asn.au

Version 2

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Q Where do I start when comparing a number of forestry investments?

A Right here.

AFG, together with TIMA, the Association of Consulting Foresters, government agencies, and the financial planning industry, have developed the AFG Disclosure Code for Afforestation Managed Investment Schemes.

When a Product Disclosure Statement (PDS) for a forestry managed investment scheme complies with that Code and carries the 'tick' logo, you can be sure that:



1. you will find all the information you need to make an informed choice within that document,
2. the information is clearly and consistently presented to make comparison easy.

Q That's fine, but what questions should I be asking?

A That's easy too.

We've prepared this short guide to the questions you need answers to. Use this guide to help you when reading a forestry PDS. You can be confident the questions will be answered in a PDS displaying the compliance logo.

Important references

- Australian Forest Growers website: www.afg.asn.au. Click on 'Code', for...
 - **Investors' Short Guide to Afforestation Investment (e-copy)**
 - **AFG Disclosure Code for Afforestation Managed Investment Schemes**
 - **Code Compliance Register**
- Australian Securities and Investments Commission website: www.asic.gov.au, for Corporations Act references and ASIC policy statements
- Australian Taxation Office website: www.ato.gov.au, for Tax Law references, tax rulings, fact sheets, etc

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The 8 key areas to look at...

1. Formal requirements

Managed Investment companies must comply with the Corporations Act 2001. They should also comply with non-regulatory requirements if they are to meet their responsibilities with respect to due diligence. Answering the following questions will help to determine whether a company is meeting its legal responsibilities.

- Does the scheme have an Australian Registered Scheme Number (ARSN)? Does the Responsible Entity (RE) hold a current Australian Financial Services Licence (AFSL)? Does the PDS contain a summary of the Scheme Constitution and Compliance Plan?
- Does the PDS display a numbered AFG Code Compliance Logo, indicating certification under the AFG Disclosure Code for Afforestation Managed Investment Schemes?
- Does the scheme have a Product Ruling issued by the Australian Taxation Office? If not, does the PDS indicate why? If not, how does the PDS address the Non-commercial loss provisions of the tax law, and do you need to obtain a separate Private Binding Ruling?
- Does the product disclosure statement (PDS) indicate that the scheme satisfies or will satisfy all the relevant statutory requirements of Australian corporations law and tax law and applicable State codes of forest practice?
- Has the company received certification under any non-statutory national or international standards (eg ISO, sustainable forest management, forest valuation, risk management)?

2. Company Profile

The managed investment company must have the capacity to competently manage the project for the duration of your investment. Answering the following questions will help you establish the management company's credentials.

Is the project manager a public company? Is it also the recognised Responsible Entity (RE), or has it engaged a separate RE (not common)? Who are the key personnel responsible for establishing and managing the project, and what are their qualifications?

- Does the RE have adequate levels of expertise and experience available to manage an afforestation managed investment scheme? Does the RE have ready access to relevant professional consultants and research organizations? How has the company performed in managing existing or previous projects? Has the company satisfactorily demonstrated its commitment to the afforestation investment industry?
- Does the managed investment company have sufficient financial backing to support the scheme? Is this demonstrated in the most recent audited accounts presenting company assets and liabilities?

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3. Description of the Managed Investment Scheme

An afforestation managed investment scheme is an investment activity that has particular defining features. Investors become plantation 'Growers' engaged in a managed primary production business by entering management contracts via a product disclosure statement. The Grower pays tax on assessable income derived from harvest proceeds, and is also entitled to deduct the non-capital business expenses incurred in establishing and managing the plantation. It is essential that potential investors understand this type of investment activity.

How the scheme works

- Does the PDS clearly explain the actions the RE must take to operate and manage the afforestation scheme? (For example: identifying and securing suitable land; preparing the sites; accepting Grower applications; planting, tending and harvesting the trees, and marketing their products.)

Nature of the Grower's interest

- What is the nature of a Grower's investment in the scheme? (For example: allotment size; duration of project; agreed rights and obligations of the Grower and manager; what the Grower owns or has an interest in; what can be sold or transferred, etc.)

Land tenure

- What steps have been or will be taken to acquire and secure the land? Who owns the land? What is the relationship between the landholder, the RE and the Grower? Does the investor have a lease, a licence or a forestry right?
- How does the scheme ensure the Grower has security in the land for the duration of the project? How is the investor protected in the event of the landowner selling the land?

Risks and risk management

- What are the significant known and anticipated risks associated with the project? Is there a discussion of the likelihood and consequences of the risks occurring? How will the RE prevent, minimise and manage risks that are within its control?

Financial structure

- Does the PDS clearly explain what fees the Grower will be charged over the full life of the project for what purpose – establishment, management and maintenance, harvesting, marketing, and unexpected costs? How is GST applied? Are the fees expressed in consistent terms? Are they sufficient to cover the costs of the project? Do Grower fees match the expected outcomes of the project?
- The effect of ASIC Policy Statement PS170 "Prospective Financial Information" has been to discourage plantation management companies including forecast returns in their PDSs. How does the PDS indicate potential returns to Growers? Is there a commentary about the factors and variables affecting potential returns? Does the company offer a mechanism for Growers and their advisers to do their own estimation of potential returns?

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Fees and benefits

- Does the PDS disclose the commissions, fees and benefits the RE has agreed to pay others to help develop and promote the scheme? Have these been included in any guidance about potential returns from the project? [In turn, financial advisers and those selling these investments must be appropriately licensed, and must disclose the commissions and benefits they receive from the sales.]

4. Forestry Operations

The Grower must be confident that the managed investment company is competent to conduct the forestry operations that are integral to the project. Answering the following questions should increase your confidence in the operation of the project.

- Does the PDS provide a comprehensive description of the whole chain of forestry operations – establishment, maintenance and management, harvesting and marketing – that are the purpose of the project?
- Does this description include an explanation of the physical attributes of the scheme – intended location, site quality and selection, tree species, growth rates, products, etc – and the section on which these are based?
- Does the PDS provide a report by a qualified Independent Forester? Does the PDS also provide report/s by independent experts who are specialists in other parts of the forestry production chain (eg, harvesting, marketing, product potential)?

5. Independent Forester's report

A report from an Independent Forester should provide a comprehensive briefing on the afforestation project to potential investors. Some of the broader issues, such as processing and logistics, market outlook and product potential, may be addressed by other independent experts.

Does the Independent Forester's Report contain information about the following?

- a) Verification of the forester's qualifications and relevant experience, and an explanation of the relationship with the management company.
- b) Suitability of the selected species with respect to region, site, products and markets, and estimated growth rate.
- c) Land selection criteria (eg, slope, soil quality, rainfall, previous land use, distance to markets, etc), and the means of verifying that these have been complied with.
- d) Forest establishment and management operations (in detail) required to achieve the nominated growth rate over the proposed rotation, and the proposed maintenance and monitoring program.

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- e) Processing and logistics (eg, proposed harvesting and processing options, existing and proposed regional infrastructure, road quality and access, accessibility to mills and ports).
- f) Domestic and export market outlook and product potential for all the plantation produce; rotation length with respect to markets; and project estimates of forest yields, product prices and potential grower returns.
- g) The managerial capability and technical competence of the RE and project manager, and the infrastructure, technology and systems they employ, to carry out all project operations and successfully complete the project.
- h) Manager's long-term establishment program/plans in the region.
- i) The ongoing role, if any, of the Independent Forester.

6. Products and markets

Because of the long-term nature of afforestation projects, it is essential for the potential investor to be confident that there will be a market for the harvested products. Answers to the following questions may be covered in the main body of the PDS or in a report from an independent expert.

- Does the PDS contain a marketing strategy for the project's forest produce? Does that strategy enable the company to respond to changing markets, if relevant to the project?
- What are the target domestic and export markets, how certain are they (eg, are there arrangements already in place for the forest products?), and what are the current product prices and returns, if available?
- How will Growers be kept informed on market trends and any changes to the marketing plan?

7. Corporate governance

The afforestation managed investment company is accountable to Growers with respect to the afforestation project. This includes performance reporting and provision for dealing with Grower dissatisfaction. The management company is also accountable to the community at large for the impacts of the forestry operations. Answering the following questions will increase your confidence in the management company's commitment to good corporate governance.

- Does the PDS explain how the company monitors and ensures its compliance with internal policies and standards and with external mandatory and voluntary standards, including the ATO Product Ruling? Does it explain company policy on social and environmental governance, how it engages with stakeholders and the community, and how it minimises and manages potentially adverse social and environmental impacts?

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- Does the PDS provide information about: the auditors of the scheme and compliance plans, and timing of inspections; monitoring of the growth, health and management of the plantation; quality assurance and certification; and mediation and dispute resolution?
- What means will the company employ to report to Growers on all the relevant matters they need to know about in order to effectively monitor their investments?

8. Comparing Projects

The Disclosure Code for Afforestation Managed Investment Schemes provides guidance to scheme managers to help streamline the information provided in company product disclosure statements. This enables Growers to compare projects more easily.

Several factors besides financial returns are important to consider when comparing projects. These factors include:

- corporate management;
- business strategy and corporate resources;
- product sales and marketing;
- silviculture;
- application of funds and costs;
- investment structure;
- product disclosure statement assumptions;
- risks and risk management;
- taxation; and
- financial returns.
(Internal Rate of Return (IRR) is the preferred method of calculating and comparing financial returns. The AFG website (Code) provides worked examples of IRR outcomes for three common models of afforestation projects.)

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Investors' Short Guide to
Afforestation Investment