

Chapter 2

Background information

2.1 This chapter provides a brief overview of the structure of agribusiness managed investment schemes (MIS) and how they operate; the Australian regulatory environment for MIS; the tax arrangements that apply to agribusiness MIS; and the current state of the sector, including a description of the Timbercorp and Great Southern collapses.

2.2 Debates about agribusiness MIS policy issues are included in Chapters 3 and 4.

MIS structure

2.3 The term managed investment schemes (MIS) describes a variety of structures based on collective investment in a common enterprise. All MIS share the following characteristics, as defined in section 9 of the Corporations Act:

- (a) people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme (whether rights are actual, prospective or contingent and whether they are enforceable or not);
- (b) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the members) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders); and
- (c) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or give directions).

2.4 The MIS structure is used for a wide range of investment options, including cash management trusts, equity trusts and property trusts. These are generally structured as unit trusts, where investors receive a proportion of the trust's profits equal to the proportion of their units to the total number issued.¹

2.5 ASIC recently provided an overview of the sector:

The MIS is really a generic term to describe a variety of structures for the creation and operation of collecting investment schemes or projects. Basically it covers everything that involves an investor acquiring something other than a security; that is, a share or a debenture or an interest in a prudentially regulated entity such as a bank deposit, a superannuation

1 Treasury, *Review of Non-Forestry Managed Investment Schemes*, December 2008, p. 2

interest or a life interest. The sector includes things like managed funds; public unit trusts; ASX listed trusts; common funds; limited partnerships; investment pools and clubs; cash management trusts; property trusts; property syndicates; mortgage trusts; serviced strata schemes; agricultural schemes, including forestry, horticulture, viticulture; and alternative investment schemes such as horse racing syndicates, for example.

There are something in the order of 5,200 registered managed investment schemes in Australia. They are operated by 674 responsible entities. Statistics on total funds invested that are under management in these different types of MIS are not reliable but we estimate that it is around about \$350 billion. The registered MIS schemes can be listed or unlisted. We have got something in the order of 110 listed schemes. Mostly they are invested in property or infrastructure.²

2.6 Although MIS as a whole constitutes a significant portion of Australian investment, the committee's present interest is in agribusiness MIS. The regulation of this broader category of MIS products and the advice given in relation to them is not being considered as part of this inquiry.

Agribusiness MIS

2.7 Agribusiness MIS is generally split into two categories: forestry and non-forestry MIS. Forestry MIS refers to plantation forestry projects which may be ready to harvest in 8-25 years, necessitating a long period between investment and return. Non-forestry MIS generally covers a range of horticultural activities; primarily olives, almonds and wine grapes but also including macadamias, stone fruit, citrus, mangoes, avocados and table grapes.³ The wait for a return on investment in these projects differs between crops but is less than forestry MIS. However, horticulture projects are labour and capital intensive in comparison.⁴

2.8 As with other MIS, investors (or growers) in an agribusiness MIS pool their funds for a common purpose, in this case to finance large scale agricultural operations. Rather than investing in the unit trust structure outlined above, though, investors gain an interest in an agricultural project on an allocated parcel of land. Fees paid by investors secure the right to have their 'allotment' used for a particular agricultural purpose, and a limited right to what is grown on that land by the scheme's manager, operating under a management agreement.

2.9 Investors do not purchase a physical asset, including the land the projects occur on. In forestry MIS, the growers usually own the trees on the land, while growers in non-forestry MIS are entitled to the crop but not the trees that produces it.

2 Senate Economics Committee, *Estimates Hansard*, 4 June 2009, Canberra, pp 89-90

3 ASIC, *Submission 58*, pp 18-19. Non-forestry MIS can also include beef, poultry and aquaculture.

4 ASIC, *Submission 58*, pp 19-20

Investors receive a share of harvest proceeds after the scheme's manager has been paid for plantation/crop maintenance, harvesting, land costs and selling the crop.⁵ The harvest proceeds are pooled and distributed to investors in proportion to the number of 'allotments' of land they hold.⁶

Responsible Entities (RE)

2.10 Agribusiness MIS are operated by a Responsible Entity (RE) in accordance with the scheme's constitution and the conditions attached to their Australian Financial Services Licence (AFSL). The *Managed Investments Act 1998* introduced the single RE structure in place of the previous dual party structure where responsibility was shared between a funds manager and trustee.⁷ The regulation of REs is outlined further from paragraph 2.17.

2.11 Prior to raising funds from investors, the RE acquires land for the purpose of establishing MIS projects. The land may be sourced via a number of arrangements, including:

- the RE purchasing the land freehold;
- a leasehold arrangement where rent is paid to a third party for the life of the project; or
- a sale and leaseback arrangement that moves debt off the RE's balance sheet but necessitates rent payments to the landholder.

2.12 Whichever approach is taken, the RE is required to meet land (and associated water rights) costs through either servicing debt or rental payments.⁸ The RE and the landholding company will often be related through a common parent company.⁹

2.13 The land is subleased to investors in small allocations and the agribusiness project managed on behalf of investors in accordance with management agreements. These are generally standard for all investors via a master agreement to which all investors are attached. The fees investors pay the RE for managing the MIS project are described below.

2.14 Once capital for the project has been raised, the RE enters into an agreement with an operations manager to oversee the on-the-ground operational requirements of

5 These activities are often contracted out to another entity.

6 Treasury, *Review of Non-Forestry Managed Investment Schemes*, December 2008, p. 2; ASIC, *Submission 58*, p. 20

7 Parliamentary Joint Committee on Corporations and Financial Services, *Report of the review of the Managed Investments Act 1998*, December 2002, p. 5

8 Macquarie Agricultural Funds Management, *Submission 48*, p. 7

9 ASIC, *Submission 58*, p. 27

the project such as cultivation, maintenance and harvest. These tasks are usually undertaken by third parties under subcontracting arrangements. The RE, operations manager and (less commonly) those contracted to undertake work on the project may be related entities.¹⁰

Fee structures

2.15 The fee structures paid by investors in agribusiness MIS differ between forestry and non-forestry MIS. Non-forestry MIS charge investors an up-front fee and additional annual fees for rent and management of the project. These annual fees may be paid out of net proceeds from harvests once crops begin to yield. In the case of forestry MIS, the lag time between establishing the project and harvest is much longer. Typically, annual project costs are incorporated in the up-front fee or deferred until plantations are harvested and growers receive their share of the proceeds.¹¹

2.16 The reason for this distinction is attributable to the marketability of the MIS. Selling forestry MIS where investors need to make annual payments without receiving any income proved difficult and led to a reliance on up-front payments. However, the practice of securing funds up-front to meet long term and continuing operational requirements, and deferring maintenance and rental fees until harvest, creates cash flow issues for the RE that are discussed in the next chapter.

MIS regulation

2.17 Agribusiness MIS are regulated by the Australian Investments and Securities Commission in accordance with the Corporations Act.

Specific legislative requirements

2.18 Chapter 5C of the Corporations Act regulates the operation of an MIS. Section 601ED of the Corporations Act requires that an MIS with more than 20 members be registered with ASIC, if intended to be sold to retail investors. A registered MIS must be operated by a Responsible Entity (RE) under section 601FB. The RE is required to be a public company and hold an Australian Financial Services Licence (AFSL) under section 601FA.

2.19 Section 601EA(4) stipulates that registered schemes must have a scheme constitution and a compliance plan. Section 601GA requires that the constitution sets out the rights and obligations of MIS members and the RE. The requirement to have a scheme constitution generally takes the form of a contract (management agreement) between the RE and its members.¹² Section 601HA provides that the compliance plan must set out the measures the RE will take to ensure that it is complying with the

10 Treasury, *Review of Non-Forestry Managed Investment Schemes*, December 2008, p. 27

11 ASIC, *Submission 58*, p. 21

12 Treasury, *Review of Non-Forestry Managed Investment Schemes*, December 2008, p. 25

Corporations Act requirements and its constitution. Section 601HG requires the compliance plan to be audited annually and lodged with ASIC. Under section 601JA the RE must establish a compliance committee to monitor adherence to the compliance plan, where fewer than half the RE's directors are independent.

2.20 The duties of a RE are contained in section 601FC of the Corporations Act. They include:

- acting honestly and exercising the care and diligence of a reasonable person in the RE's position; and
- acting in the best interests of members and give priority to members' interests over those of the RE where there is a conflict between the two.

2.21 A3P and NAFI informed the committee that forestry MIS companies mostly use wholly-owned subsidiaries as the RE, while some employ an external group for this purpose.¹³

Australian Financial Services Licence (AFSL) conditions

2.22 As AFSL holders, REs for agribusiness MIS are also subject to a number of general obligations contained in section 912A of the Corporations Act. These include:

- providing the financial services covered by the licence efficiently, honestly and fairly;
- having adequate arrangements in place to manage conflicts of interest;
- complying with licence conditions and financial services laws, including taking steps to ensure compliance by representatives;
- having adequate resources to carry out the services covered by the licence;
- maintaining competence to provide these services, including the competence of representatives;
- having a dispute resolution mechanism for retail clients; and
- having adequate risk management systems.

2.23 AFS licences are granted and administered by ASIC, which also supervises the conduct of REs in complying with their licence conditions. ASIC informed the committee that:

13 A3P and NAFI are the Australian Plantation Products and Paper Industry Council and the National Association of Forest Industries respectively. A3P and NAFI, *Submission 56*, p. 16

This supervision is done on a risk-assessed basis, and will often be triggered by a breach notification from the RE, a report from a compliance plan auditor or compliance committee, a complaint, or ASIC's targeted supervision of entities or sectors identified as problematic.¹⁴

Disclosure requirements

2.24 Investment products available to retail clients, including agribusiness MIS, are subject to the disclosure requirements set out in Chapter 7 of the Corporations Act. This includes the requirement to provide a Product Disclosure Statement (PDS). The disclosure requirements for financial advisers recommending MIS are described below. ASIC is responsible for monitoring and enforcing the disclosure requirements of the Corporations Act.

2.25 The information contained in PDS must be up to date (section 1012J); be worded and presented in a clear, concise and effective manner (section 1013C(3)); and must contain certain information necessary for potential investors to make an informed decision about the product, including the cost, potential benefits and risks of the investment (section 1013D). Section 1013E stipulates that the PDS is required to include 'any other information that might reasonably be expected to have material influence' on potential investors' decision about whether to invest in the product.

2.26 Aside from the requirement to provide certain information, the Corporations Act also stipulates that the PDS must not contain false or misleading statements (section 1041E) and issuers must not engage in misleading and deceptive conduct (section 1041H). ASIC also has authority under the Act to prevent the distribution of a misleading PDS via a stop order (section 739), or it may alternatively give the issuer the option of providing remedial information.

2.27 Of close relevance to agribusiness MIS disclosure is the regulatory treatment of investor return projections or forecasts in their PDS. Section 728(2) of the Corporations Act provides that statements about future matters (including projections) are taken to be misleading if they do not have reasonable grounds.

2.28 ASIC's guidance on what constitutes 'reasonable grounds' is contained in its regulatory guide on prospective financial information.¹⁵ The following underlying principle directs ASIC when assessing this issue:

The less reliable information is, the less relevant it becomes to investors, and the less likely it should be included in the disclosure document or PDS.

We think that prospective financial information based on hypothetical assumptions (rather than reasonable grounds) is likely to be misleading and provide little information to investors.¹⁶

14 ASIC, *Submission 58*, p. 12

15 ASIC, *Regulatory Guide 170*, 'Prospective financial information', September 2002

16 ASIC, *Regulatory Guide 170*, 'Prospective financial information', September 2002, pp 3-4

2.29 According to ASIC, the provision of prospective financial information, particularly over longer time horizons, can discount future risk variables and can mislead investors with information based on unrealistic assumptions. The guidance note indicates that independent experts' industry reports may provide reasonable grounds for providing prospective information, where their credentials and the facts they rely on to make their assessment are verifiable.¹⁷ However, the guide emphasises that the longer the period the projections relate to, the less likely the grounds for including it in the PDS.¹⁸

2.30 ASIC also states that prospective information should be accompanied by a warning about its lack of reliability.¹⁹

Financial product advice regulation

2.31 The provision of financial advice on agribusiness MIS products is also regulated by the Corporations Act. In accordance with section 766A, only entities holding an AFSL (and their authorised representatives) to provide a financial service are permitted to provide financial product advice. Section 766B(1) defines financial product advice as a recommendation or statement of opinion intended to influence a person about a decision relating to a financial product.

2.32 Section 766B(3) stipulates that where an advisor takes the personal circumstances of the client into account when giving advice, then it is deemed to be personal advice. Advice of this nature must be accompanied by a statement of advice, which discloses the advice given, the basis on which it is provided, details of remuneration, commissions and other benefits resulting from the provision of the advice, and relevant conflicts of interest that may influence the advice given.²⁰

2.33 The legislative standard of advice required under the Corporations Act is that there is a reasonable basis for the advice (section 945A). This necessitates knowing the client's circumstances, knowing the product (or subject matter) and ensuring the advice is appropriate to the client. ASIC has indicated that 'personal advice does not need to be ideal, perfect or best' to comply with the Corporations Act.²¹ Subject to meeting the disclosure requirements outlined above, advisers can therefore lawfully recommend an agribusiness MIS product knowing it is not in the best interests of the client.

17 ASIC, *Regulatory Guide 170*, 'Prospective financial information', September 2002, p. 9

18 ASIC, *Regulatory Guide 170*, 'Prospective financial information', September 2002, p. 12

19 ASIC, *Regulatory Guide 170*, 'Prospective financial information', September 2002, p. 23

20 ASIC, *Regulatory Guide 175*, 'Licensing: Financial product advisers—Conduct and disclosure', May 2009, p. 7

21 ASIC, *Regulatory Guide 175*, 'Licensing: Financial product advisers—Conduct and disclosure', May 2009, p. 34

Regulations applying in the event of a collapse

2.34 Under section 588G of the Corporations Act directors have a duty to not incur a debt where they have reasonable grounds to suspect that the company is insolvent or likely to become insolvent as a consequence of that debt. Companies are insolvent when they cannot meet their financial obligations when they fall due.²²

2.35 In the event that a company board reaches the conclusion that it is insolvent or in danger of becoming so, they may appoint a voluntary administrator to manage the affairs of the company (section 436A). After investigating the company's situation, the administrator reports to creditors on the most appropriate course of action (section 438A). One option may be for creditors to agree to the company entering into a deed of company arrangement, under which the administrator seeks to maximise the chances of the company continuing, or if this is not possible, to improve returns to the company's creditors and members than would result from an immediate winding up (section 439C).²³ Alternatively, creditors may decide to have the company immediately placed in the hands of a liquidator and wound up (section 439C).

2.36 In the context of agribusiness MIS, it should be noted that the collapse of an RE does not necessarily mean that each scheme it operates ceases to be a going concern. ASIC explained:

A MIS itself is not a legal entity; it cannot, for example, enter contracts or borrow money. The insolvency of the RE does not automatically mean the MIS that RE operates is insolvent. It is quite possible for the RE to be insolvent while the scheme itself remains a going concern.

In such a situation the Act contemplates mechanisms for the replacement of a RE or the appointment of a temporary RE. We acknowledge that the insolvency of a RE may destabilise the operation of a scheme, however it is not always the case that when the RE fails, the scheme fails.²⁴

2.37 Under section 181 of the Corporations Act the directors and other officers of a corporation must act in the best interests of the corporation. However, section 601FD(1) of the Corporations Act states that officers of a RE must act in the best interests of members. Any conflict between these obligations is resolved in favour of members under section 601FD(2). These conflicting duties are discussed in the next chapter in the context of an RE appointed as an administrator or liquidator following its collapse (paragraphs 3.99 – 3.110).

22 See section 95A of the Corporations Act.

23 See also section 435A of the Corporations Act.

24 ASIC, *Submission 58*, p. 49

Agribusiness MIS tax arrangements

2.38 The tax deductibility of expenses associated with agribusiness MIS has been subject to some uncertainty in recent years. The revised ATO interpretation, legislative amendment and court judgment are described as follows.

The MIS tax regime

2.39 Prior to 2006, the ATO had allowed up-front tax deductions for investment in agribusiness MIS under the general business deductions provisions in section 8-1 of the *Income Tax Assessment Act 1997*. The fee component of the investment was an allowable deduction on the basis that it is not considered appropriate for the ATO to dictate how much taxpayers should pay to earn an income.²⁵ In practical terms, the rule meant that investors in agribusiness MIS could defer some of their tax liability until the investment paid returns, which might occur when they had ceased to earn income in the higher tax brackets, thus minimising their overall tax liability.

ATO product rulings

2.40 To provide certainty to investors about the deductibility of their MIS investment, the ATO issues product rulings for eligible MIS projects. The ATO explained:

In response to the spread of mass marketed schemes, product rulings were introduced in 1998 to offer an avenue for potential investors to satisfy themselves about the bona fides of tax benefits claimed in the marketing of so-called tax effective investments.²⁶

2.41 The MIS operator is required to provide certain information supporting the project's profitability before the ATO will issue a product ruling:

This includes cash flow forecasts, budgeted profit and loss statements, expert reports supporting those forecasts and proposed marketing materials for the project. In order to ensure the MIS makes a significant contribution to primary production, the ATO set minimum forestry and horticultural expenditure requirements for a person's investment.²⁷

2.42 For the product ruling to be binding, the scheme must be carried out in the way described in the ruling.²⁸

2.43 The ATO stressed that these rulings are not intended to serve as a promotional tool for the MIS operator:

25 ATO, *Submission 18*, p. 1

26 ATO, *Submission 18*, Attachment 1, p. 3

27 ASIC, *Submission 58*, p. 24

28 ATO, *Submission 18*, Attachment 1, p. 4

The ATO warns potential participants to closely examine the overall financial merits of an investment product before making a decision on whether or not to invest.

We expressly caution potential participants that the ATO does not sanction or guarantee any product as an investment. We do not give any assurance that the product is commercially viable, that the projected returns will be achieved or that fees charged by managers or projected returns are reasonable.²⁹

2.44 The non-commercial loss provisions in Division 35 of the ITAA require the ATO to consider commercial viability when allowing deductions against other assessable income in the year the loss is incurred. The Commissioner is given discretion to exempt losses in business activities where there is a long lead time between the commencement of the activity and income from production. MIS projects are granted this exemption in the relevant product rulings.³⁰

Revised ATO ruling

2.45 In 2006, on the basis of previous court decisions, the ATO revised its view on the deductibility of agribusiness MIS investments altogether, not just in relation to the fee component. They determined that the amounts paid by investors constituted capital and were therefore not allowable deductions.³¹ From 1 July 2008, the ATO ceased to provide product rulings on agribusiness MIS products. It also published the view that it would administer section 8-1 of the *Income Tax Assessment Act 1997* covering general business deductions on the basis that deductions were not available for investors in these schemes.³²

Court case

2.46 Following consultation with industry a test case was run in the Federal Court to clarify the matter. In December 2008 the court found that the expenses were not in fact capital in nature and were allowable deductions incurred in carrying on a business via agribusiness MIS arrangements.³³ The consequence of the Court's decision is that investments in agribusiness MIS are subject to the same treatment by the ATO as they were prior to its revised ruling in 2006.

Forestry MIS

2.47 The exception is forestry MIS, where separate arrangements were enacted in 2007 to guarantee upfront tax deductibility for investment in that sector, often referred

29 ATO, *Submission 18*, Attachment 1, p. 3

30 ATO, *Submission 18*, Attachment 1, p. 2

31 ATO, *Submission 18*, p. 1; ATO, *Committee Hansard*, 15 July 2009, Canberra, pp 13-14

32 ASIC, *Submission 58*, p. 19

33 ATO, *Submission 18*, p. 1

to as the Division 394 arrangements. Investors in forestry MIS marketed under these arrangements are no longer required to demonstrate that they are carrying on a business. As an integrity measure, it contains a requirement for no less than 70 per cent of the payments received by forestry MIS to be used for direct forestry expenditure. This includes the costs of the land and planting, tending and harvesting the trees, but excludes costs such as management fees, administration and marketing the scheme. Other integrity measures are the requirement to establish trees within 18 months of investors entering the project and a requirement for investors to hold their interest for a minimum of four years before trading it to a secondary buyer.³⁴

2.48 Other agribusiness MIS remained subject to the ordinary tax provisions, which have since been determined according to the court's findings described above. The consequence is that investment in both forestry and non-forestry MIS are allowable deductions at present, though they now operate under different legislative provisions. NAFI explained that forestry MIS would continue to operate under the new statutory arrangements:

Despite the test case decision that effectively allows retail forestry to operate once again under the general business deduction entitlements (section 8-1 of ITAA 1997), all plantation investment companies are now operating under Division 394, and will continue to do so.³⁵

Arrangements for failed schemes

2.49 The ATO indicated that there is still some uncertainty about the tax treatment of failed schemes and that they are developing a draft tax ruling to deal with the matter.³⁶ At present, the main sources of confusion relate to:

- the tax deductibility of members' continuing payment obligations to schemes that have been wound up or operate in a different way from that described in the product ruling; and
- the application of the forestry MIS secondary trading provisions designed to prevent scheme interests being sold within the designated four year period.

Agribusiness MIS industry conditions

2.50 Agribusiness MIS in Australia has been characterised by rapid growth followed by a period of instability in the sector. The collapses of Great Southern and Timbercorp are both a reflection of, and a contributor to, this instability. The following section provides a brief outline of the state of the MIS industry today, recent trends and a preliminary explanation of the collapse of Timbercorp and Great

34 A3P and NAFI, *Submission 56*, p. 9

35 A3P and NAFI, *Submission 56*, p. 9

36 ATO, *Committee Hansard*, 15 July 2009, Canberra, pp 7-8, 19

Southern. The policy implications of the current situation are explored in Chapters 3 and 4.

Current industry conditions

2.51 ASIC provided the following information on agribusiness MIS in Australia, up-to-date as of 14 July 2009:

- There are 371 registered MIS under 70 different Responsible Entities. Of these, 198 schemes are forestry, 162 horticultural and 11 'other'.
- Agribusiness MIS have raised approximately \$8 billion since 1998 and approximately \$5 billion in the past five years.
- Agribusiness MIS represent around 3.2 per cent of the entire retail MIS industry.
- Investment in forestry MIS is just over double that raised by non-forestry MIS over the last five years.
- Of horticultural MIS, grapes (45 per cent), almonds (17 per cent) and olives (14 per cent) are the most common.³⁷

2.52 Recent industry trends have been outlined in the annual survey of the MIS sector by agribusiness research house AAG. They found that timber investments accounted for 90 per cent of total agribusiness MIS funds raised in 2008-09 and horticulture MIS raised only \$13 million, a 95 per cent decrease from the previous year.³⁸

2.53 A3P and NAFI reported that there are now fewer than ten companies offering forestry MIS products; from as many as 16 in the three years previous.³⁹ They also informed the committee that Great Southern and Timbercorp schemes account for about half the retail forestry area under management.⁴⁰

Timbercorp collapse

2.54 Timbercorp Securities Ltd (Timbercorp) was the RE for 34 registered MIS, including (by size) eucalypts, almonds, olives, citrus, avocados, mangoes and grapes. These schemes were funded by over 18,000 investors contributing just under \$1.1

37 ASIC, *Submission 58*, pp 47-49

38 Hopkins, P. 'Tough harvest ahead for agribusiness', *The Age*, 21 July 2009, accessed on 20 August 2009 at <http://business.theage.com.au/business/tough-harvest-ahead-for-agribusiness-20090720-dqu1.html>

39 A3P and NAFI, *Submission 56*, p. 7

40 A3P and NAFI, *Committee Hansard*, 15 July 2009, Canberra, p. 76

billion. The Timbercorp group of companies had an ASX-listed parent company and 40 associated entities, in addition to its AFS licensed RE.⁴¹

2.55 Timbercorp's associated entities appointed voluntary administrators on 23 April 2009 after it was unable to meet its financial obligations; operating the schemes and servicing debt.⁴² After the administrators' application to the Victorian Supreme Court to have the olive and almond schemes wound up was opposed by some growers, the application was adjourned to give members an opportunity to explore alternatives. At the time of writing, investors in Timbercorp's olive schemes were considering potential options, including seeking recapitalisation to keep the schemes operating for members.⁴³ Scheme members in Timbercorp's forestry MIS have agreed for timber assets to be sold and the proceeds to be distributed among members and creditors.

2.56 Many growers used borrowed funds to purchase their interest in MIS projects with Timbercorp and Great Southern, which maximised the tax benefits. Both companies provided direct finance to investors, or provided finance in conjunction with another lender. Despite the collapse of these companies, the borrowed money used to invest in their projects is still owed.⁴⁴

Great Southern collapse

2.57 Great Southern Managers Australia Limited (Great Southern) was the RE for 43 registered MIS, including (by size) pulpwood, high value timber, olives, wine grapes and almonds. The schemes had raised around \$2 billion from 43,000 investors in the past five years. The Great Southern group of companies had an ASX-listed parent company and 36 associated entities, in addition to its AFS licensed RE.⁴⁵

2.58 Three weeks after Timbercorp went into administration, on 16 May 2009 voluntary administrators were appointed to Great Southern after it was also unable to meet its financial commitments. Two days later creditors appointed receivers to take control of the charged assets of Great Southern and 11 of its subsidiary companies. At the time of writing, the receivers had sought additional capital to protect and maintain

41 ASIC, *Submission 58*, pp 50-51

42 ASIC, *Information for Timbercorp growers*, accessed on 20 August 2009 at <http://www.asic.gov.au/asic/asic.nsf/byheadline/Information+for+Timbercorp+growers?openDocument>

43 Nickless, R. 'Timbercorp investors granted a reprieve', *Australian Financial Review*, 21 July, 2009, p. 9

44 ASIC, *Submission 58*, p. 24

45 ASIC, *Submission 58*, pp 51-52

their forestry and horticulture plantations and maximise their value for investors and creditors.⁴⁶

2.59 The circumstances surrounding the collapse of these companies are discussed further in Chapter 3.

46 Great Southern Limited, Explanatory note, 'Application to Supreme Court of Victoria 7 August 2009', accessed on 18 August 2009 at <http://www.great-southern.com.au/Application.aspx>; Wood, L. *Sydney Morning Herald*, 'More funds for Great Southern', 18 August 2009, accessed on 18 August 2009 at <http://business.smh.com.au/business/more-funds-for-great-southern-20090817-enqb.html>