Future Forestry Finance 2010

FUTURE FORESTRY FINANCE

The Changing Face of Forestry Plantation Investment in Australasia – What are the Legal Implications?

Carrie Follas
Sydney, 1 March 2010

Martin Thomson
Auckland, 4 March 2010

Overview

- Ownership changes in New Zealand and Australia
- Sales processes
- Legal due diligence review
- Foreign investment controls
- Agreements for sale and purchase
- Forest management arrangements
Plantation ownership in New Zealand

(Net stocked planted production area at 1 April 2007)

Ownership category:
- Registered public companies
- State owned enterprises
- Local government bodies

<table>
<thead>
<tr>
<th>Estimated total area (ha)</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>32,082</td>
<td>2%</td>
</tr>
<tr>
<td>55,775</td>
<td>3%</td>
</tr>
<tr>
<td>36,821</td>
<td>2%</td>
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<tr>
<td>244,313</td>
<td>14%</td>
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<tr>
<td>1,420,559</td>
<td>79%</td>
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<tr>
<td>1,789,550</td>
<td>100%</td>
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</tbody>
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Plantation ownership in Australia

<table>
<thead>
<tr>
<th>Ownership of the total plantation estate by industry category, 2008</th>
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<tr>
<td>37% (A)</td>
</tr>
<tr>
<td>11% (B)</td>
</tr>
<tr>
<td>9% (C)</td>
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<tr>
<td>54% (D)</td>
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</table>

(A) Superannuation funds  (B) Timber industry companies  (C) Other private owners  (D) Managed investment scheme  (E) Governments (including joint ventures)

Source: Department of Agriculture, Fisheries and Forestry – Australia's Plantations – 2009 Inventory Update
Changes in plantation ownership

New Zealand
- Sale of central government owned plantations
- Treaty settlements
- Reduction in ownership by public vertically integrated companies
- Increased ownership by foreign funds

Australia
- Collapse and subsequent sale of MIS plantations
- Proposed sales of State government owned plantations
- Increased ownership by foreign funds
- Increased control of wood supply by forest product companies

Sales processes

- Competitive process/exclusivity
- Often asset sales rather than sales of shares
- Confidentiality
- Due diligence
- Structure of the purchasing entity
- Sale and purchase agreement
- Competition law issues
Legal due diligence review

- Ownership of land and trees
  - Freehold land
  - Forestry right/forest property agreement/profit a prendre
  - Crown Forest Licence (NZ)
  - Plantation licences (Vic)
  - Leases
- What other assets are included
- Access—is it adequate/ legal
- Third party arrangements
- Identification of security interests to be released

Legal due diligence review cont.

- Contracts/commitments for the sale of forest produce
- Regulatory compliance
- Material disputes/litigation
- Existing management arrangements including ownership of forest records
- Contingent liabilities including any contaminated land
- Carbon
Foreign investment controls

New Zealand – OIO
Australia - FIRB
• Consent/notification required?
• Any special land (NZ)
• Timing implications
• Form of application
• Fees (NZ)

Agreement for sale and purchase

• Identification of assets being purchased
• Liabilities being assumed
• Purchase price - is it to include working capital
• Contracts being transferred - early identification of any third party consent requirements
• Conditions precedent
• Timing of completion
• Completion deliverables
• Period between signing and completion - in particular
  • Restrictions imposed on the seller
  • Rights of parties on damage or destruction of the trees occurring
Agreement for sale and purchase cont.

- Completion inventory and apportionments
- Warranties and indemnities
- Restraints

Forest management arrangements

- Forest/property management as opposed to investment management
- Services to be provided and costs calculated
- Ownership of assets
- Apportionment of liability
- Management fee
- Performance incentives
- Duration and termination rights
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