

Replacing Timbercorp Securities Limited (TSL) as Responsible Entity

26 June 2009

Issues to consider for a company wishing to replace TSL as Responsibility Entity of the Timbercorp Managed Investment Schemes

As advised to the Court, TSL is insolvent. TSL is currently unable to operate any of the Managed Investments Schemes (**MIS**) for which it is the Responsible Entity (**RE**).

Under the *Corporations Act 2001* (Cth), the RE of an MIS can be changed or removed. The Administrators will consider any bona fide proposals by third parties to take over the role of RE. Any party interested in taking over the role of the RE and completing any of the Timbercorp MIS should obtain its own independent legal and financial advice.

In order to expedite this process set out below are some issues which need to be considered by any party considering taking over the role of RE:

1. The party must be:
 - A registered Australian public company, and
 - Hold an AFS licence authorising the company to operate the MIS.
2. Under section 601FS of the *Corporations Act*, if the RE changes, the rights, obligations and responsibilities of the former RE in relation to the MIS become rights, obligations and liabilities of the new RE (with some exceptions).
3. A party interested in taking over the role of RE may propose to Grower Investors to vary or restructure the MIS schemes. This may require significant amounts of new capital (depending on the MIS) from that party in addition to contributions from Grower investors.

Further, the structure and content of the various documents which govern the schemes may not allow any RE (current or new) to effect increases to fee amounts, fee structures or the imposition of any new fees or contributions by growers.

For any restructure to be successful, the party must have considered dealing with the following stakeholders in relation to their roles in the MIS schemes, namely:

Party	Detail
Growers	In some schemes the Growers make annual payments to meet a range of costs. In other schemes Growers are not committed to make any additional annual payments. They receive their proceeds when crops/trees are harvested.
Land	Scheme land is owned either by other insolvent Timbercorp entities (and secured in favour of lenders) or external landlords.

Party	Detail
Water Rights	Permanent water rights are owned either by other insolvent Timbercorp entities (and secured in favour of lenders) or external entities.
Property, Plant & Equipment	Property Plant & Equipment is either owned by other insolvent Timbercorp entities or leased from financiers.
Irrigation Infrastructure	Project infrastructure, predominantly irrigation equipment is owned either by other insolvent Timbercorp entities (and secured in favour of lenders) or external entities.
Management Agreements	Project partners or other insolvent Timbercorp companies provide a range of services, e.g. harvesting operations, processing facilities or distribution services.

Any party seeking to take over the role of RE should be mindful of the following:

- The extent of restructuring required may amount to the creation of a new MIS.
- The time and cost of documenting the new arrangements may be considerable.
- Until (or unless) the Grower Investors agree to alternative arrangements, operating costs will be incurred before fees and rent can be received from Grower Investors. Significant working capital requirements may be needed pending completion of the restructure. Further, under some of the MIS, no further fees are payable by Growers prior to harvest.
- Generally,
 - Forestry scheme rental liability from 1 July 2009 to 30 September 2009 is approximately \$9.6m;
 - Olive schemes require approximately \$66.2m of operations, rental and capital expenditure to complete the 2010 harvest; and
 - Almond schemes require approximately \$252.5m of operations, rental and capital expenditure to complete the 2010 harvest.
- A new RE will need to establish and fund the employees, systems and processes necessary to administer the MIS.
- Insolvent Timbercorp group companies currently hold interests in some of the MIS. Those interests may need to be terminated, acquired, funded, and/or paid for if any MIS is restructured/recapitalised.
- The willingness and financial capacity of Grower Investors to fund short-term negative cash flows is uncertain. Some Grower Investors previously borrowed from Timbercorp Finance Pty Ltd to meet their annual commitments. Funding from this source is not available.
- There is uncertainty surrounding the number of Grower Investors who have terminated (or may terminate) their participation in the MIS, and this will have a flow-on impact on operational costs.

Although this process is attended with difficulty the Court and ASIC may play a role in assisting the process.