

**SENATE RURAL & REGIONAL AFFAIRS & TRANSPORT  
REFERENCES COMMITTEE**

**INDEX OF TABLED DOCUMENTS**

**Inquiry into the Examination of the Foreign Investment Review Board  
National Interest Test**

**Thursday, 09 May 2013**

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Mr Chris Vedelago	Freedom of Information Request	40



15 June 2012

Dear Mr Vedelago

### **FREEDOM OF INFORMATION REQUEST**

I refer to your email dated 4 April 2012 in which you sought access to the following documents under the *Freedom of Information Act 1982* (the Act):

*Documents and reports which contain information received, produced or commissioned by The Treasury and The Foreign Investment Review Board relating to:*

*The involvement of Treasury and the FIRB in considering and approving the sale of assets controlled or formerly controlled by Great Southern to Alberta Investment Management Corp (AIMCo) and New Forest Pty Ltd.*

*Any Treasury or FIRB reports, reviews or assessments relating to the application of the national interest test in the sale of assets controlled or formerly controlled by Great Southern to Alberta Investment Management Corp (AIMCo) and New Forest Pty Ltd.*

*I am NOT seeking financial information relating to the sale that might be deemed commercial in confidence.*

I am an authorised decision maker under section 23 of the Act. This letter sets out my decision and reasons for the decision in relation to your application.

### **Materials relevant to making of decision**

The materials, information and advice to which I have had reference in making this decision are:

- the terms of your FOI request;
- advice provided by Treasury officers;
- advice provided by affected third parties;
- the relevant provisions of the Act;
- guidelines issued by the Australian Information Commissioner; and
- the contents of the documents relevant to your request (as set out in the attached schedule).

### **Decision**

I have identified 17 documents relevant to your request. Of these, 3 documents will be released in part and 14 are exempt. A schedule of documents and details of my decision in relation to each document is at Attachment A. My reasons for this decision are set out below.

### **Reasons for Decision**

Where the schedule of documents indicates an exemption claim has been applied to a document or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of that document are set out below.

### **Subparagraph 22(1)(a)(ii) – material irrelevant to the request**

Subparagraph 22(1)(a)(ii) allows an agency to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request. Where section 22 is listed against a document in the attached schedule I have found that the document contains material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly.

### **Exemptions claimed**

#### **Section 33 – documents affecting national security, defence or international relations**

Section 33 (a)(iii) provides that a document is an exempt document if disclosure of the document would, or could reasonably be expected to, cause damage to the international relations of the Commonwealth.

Document 5 contains information provided by a third party that comments on decisions of a foreign government and as such I find that disclosure of parts of document 5 could reasonably be expected to cause damage to the international relations of the Commonwealth.

Accordingly, I find that part of document 5 meets the requirement of section 33 (a)(iii) of the Act and is exempt from release.

#### **Section 45 – documents containing material obtained in confidence**

Section 45 provides that a document is exempt if its disclosure under the Act would found an action by a person (other than an agency of the Commonwealth) for breach of confidence.

The material in respect of which the exemption is claimed includes information provided in confidence on the understanding that the Treasury and the Foreign Investment Review Board would accept the information and respect its confidence. It was provided on the publicly stated understanding that the information would be used only for the purpose for which it was collected.

The Foreign Investment Review Board outlines its approach to handling commercial-in-confidence and personal information in its Annual Report, which is available through the Foreign Investment Review Board's website, and in information provided to applicants. I am satisfied that, consistent with this longstanding policy, the parts of the documents exempted are those which, if released, would be contrary to the undertaking of confidentiality and disclosure of the documents would breach the terms of the obligation of confidence owed to the applicants.

Based on the context in which the information was received and my consultations with the relevant officers within the Treasury, I consider that:

- confidential information has been identified;
- that information is confidential, in the sense that it is not publicly available and is not common knowledge; and
- the information was communicated based on a mutual understanding that the confidentiality of that material would be maintained.

I find that documents 2, 3, 4, 5, 7, 8, 9, 11, 15, and 17 and parts of documents 1, 10 and 16 meet the requirements of section 45 of the Act and are exempt from release.

#### **Section 47 – documents disclosing trade secrets or commercially valuable information**

Section 47 provides that a document is an exempt document if its disclosure would disclose trade secrets or any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The documents contain sensitive commercial and financial information relating to a particular organisation. Disclosure of the documents could be reasonably expected to harm the interests of the organisations providing information and could prejudice the Commonwealth's ability to obtain information from organisations regarding their business and commercial affairs in the future. I find that such an outcome would impair the ability of the Treasury and the Foreign Investment Review Board to effectively discharge their role of examining foreign investment proposals and providing advice to Government.

I find that documents 2, 3, 4, 5, 7, 8, 9, 11, 15, and 17 and parts of documents 1, 10 and 16 contain commercially valuable information that could reasonably be expected to be diminished were the document disclosed. Accordingly, documents 2, 3, 4, 5, 7, 8, 9, 11, 15, and 17 and parts of documents 1, 10 and 16 are exempt under section 47.

### **Section 47C — deliberative process**

Section 47C provides that a document is conditionally exempt if it includes deliberative material; that is, opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative process of an agency or Minister.

Documents 10, 11, 12, 13, 14, 15 and 16 contain deliberative material in the nature of consultation between the Treasury and members of the Foreign Investment Review Board, correspondence between the Treasury and a legal practitioner and advice prepared for the Treasurer in respect of a foreign investment proposal. Accordingly, I find documents 11, 12, 13, 14 and 15 and parts of documents 10 and 16 are exempt under section 47C.

#### *Public interest*

Access must generally be given to a conditionally exempt document unless access would, at that time, on balance be contrary to the public interest.

I have considered the factors in favour of disclosure such as promotion of the objects of the Act, promotion of public participation in government decision-making, and the benefits of informing debate based on transparent and accurate information.

I can envisage that there may be some benefit in the release of documents where they provide an indication of the Government's general approach to foreign investment. However, the specific facts relating to particular foreign investment proposals are such that they cannot provide an indication of the Government's general approach to foreign investment. The documents contains material that may not form part of government decision-making and government policy going forward and, accordingly, disclosure would not assist in enhancing government accountability, or otherwise further the public interest.

I do not consider that disclosure of these documents will make the public better informed and promote discussion of public affairs or effectively contribute to participation in government decision-making and policy formulation because the documents, and advice contained therein, are specific to the particular foreign investment application under consideration. This reflects the fact that the Government considers each foreign investment application on a case-by-case basis having regard to the particular facts and circumstances.

In addition, I find that release of the documents would focus attention on a specific investment application in isolation of the Government's broader objectives to manage foreign investment in Australia. I find that such an outcome would not be in the public interest.

I have carefully weighed the factors for and against disclosure of the documents.

In my view, in relation to these documents, the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I find documents 11, 12, 13, 14 and 15 and part of documents 10 and 16 exempt under section 47C.

### **Section 47E – certain operations of agencies**

Paragraph 47E(d) provides a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Documents 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15 and 17 and parts of documents 1, 10 and 16 contain information provided by third parties and relate to the business affairs of a particular entity. To fulfil its role appropriately and effectively, it is critical that The Treasury and the Foreign Investment Review Board are able to liaise and consult openly with individuals, businesses and their representatives and government entities in relation to proposed foreign investments.

Disclosure of the material provided could reasonably be expected to have a negative impact on the operations of the Treasury and the Foreign Investment Review Board.

*Public interest*

Access must generally be given to a conditionally exempt document unless access would, at that time, on balance be contrary to the public interest.

I have had regard to the public interest arguments favouring disclosure such as promotion of the objects of the Act, promotion of public participation in government decision-making, and the benefits of informed debate based on transparent and accurate information. I find that the release of these documents would do little to further the public interest.

I have also considered the following public interest arguments weighing against disclosure of this material.

There is a strong public interest in preserving an environment of confidentiality in dealings with the Treasury and the Foreign Investment Review Board. The Treasury and the Foreign Investment Review Board rely on the submissions and advice of individuals, businesses and their representatives and government entities in relation to proposed foreign investments. Having complete information and an open dialogue with external parties is crucial to the Treasury's and the Foreign Investment Review Board's capacity to make informed and detailed assessments of investment proposals and in turn to advise on the national interest implications of these under the *Foreign Acquisitions and Takeovers Act 1975*. The availability of such information is therefore central to the public interest in maintaining the proper and efficient administration of Australia's foreign investment arrangements.

The release of such information is likely to have a negative impact on the future provision of information to the Treasury and the Foreign Investment Review Board. This would significantly impair the quality of advice provided to the statutory decision-maker and therefore the quality of decisions made under the *Foreign Acquisitions and Takeovers Act 1975*. This in turn would adversely impact on the public interest which is served by the continued effective operation of the *Foreign Acquisitions and Takeovers Act 1975* and decisions made under it. The release of such information would therefore be contrary to the public interest within the meaning of the Act.

In determining what impact the disclosure of these documents could have on the willingness of parties to provide information voluntarily to the Treasury and the Foreign Investment Review Board, I have had regard to the potential to invoke the compulsory information powers available to the decision-maker under the *Foreign Acquisitions and Takeovers Act 1975*. In particular, I have considered the difficulties in obtaining such information through use of the Treasurer's compulsory information powers under section 36 of the *Foreign Acquisitions and Takeovers Act 1975*.

In my view, this power, while potentially available, would introduce significant complexities for the Treasury and the Foreign Investment Review Board in obtaining important information, and would have a significant adverse impact on the efficiency of the agency. I consider that should the material be released, the Foreign Investment Review Board would be increasingly reliant on obtaining information under its statutory powers (where available), rather than through voluntary provision of information by parties (based on their expectation of it remaining confidential).

Further, in practice it would be highly problematic to rely on officials' capacity to formulate an effective and valid notice, procure compliance with it and then assess the information within the 30 day statutory timeframe under which decisions are normally made under the *Foreign Acquisitions and Takeovers Act 1975*. Any systemic increase in the period within which decisions are normally made would have a material commercial impact and incur costs on foreign investors, on sellers, on target companies and to the Australian economy and community

I find that this would result in a substantial adverse impact on the efficiency and effectiveness of the Foreign Investment Review Board in supporting the Treasurer in discharging his statutory role under the *Foreign Acquisitions and Takeovers Act 1975*. This would detract from the effectiveness of this statutory function and from the public interest in its satisfactory operation as outlined above.

I have carefully weighed the factors for and against disclosure of the documents. In my view, in relation to these documents, the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I find that documents 2, 3, 4, 5, 6, 7, 8, 9, 11, 15 and 17 and parts of documents 1, 10 and 16 are exempt under paragraph 47E(d).

**Charges**

The preliminary assessment of the charge for processing your request was \$394.50. On 30 April 2012, we received payment of a deposit for the amount of \$98.63. The balance of \$295.87 remains outstanding.

**Rights of Review**

In accordance with paragraph 26(1)(c) of the Act, a statement setting out your rights of review under the Act is attached.

Yours sincerely

Deidre Gerathy  
Chief Adviser  
Foreign Investment and Trade Policy Division  
FOI Decision Maker

**RIGHTS OF REVIEW, WHERE ACCESS REFUSED****INFORMATION ON RIGHTS OF REVIEW****1. APPLICATION FOR INTERNAL REVIEW OF DECISION**

Section 54 of the Freedom of Information Act gives you the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request.

Application for a review of the decision must be made in writing within 30 days of receipt of this letter.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed.

Application for a review of the decision should be addressed to:

The Treasury  
Langton Crescent  
PARKES ACT 2600

Attention: FOI and Legal Services

**OR**

**2. APPLICATION TO AUSTRALIAN INFORMATION COMMISSIONER (INFORMATION COMMISSIONER) FOR REVIEW OF DECISION**

Section 54L of the Act gives you the right to seek a review of the decision from the Information Commissioner. An application for review must be made within 60 days of receiving the decision.

Applications for review must be in writing and must:

- give details of how notices must be sent to you; and
- include a copy of the notice of decision.

You should send your application for review to:

The Information Commissioner  
Office of the Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

**AND/OR**

**3. COMPLAINTS TO THE INFORMATION COMMISSIONER**

Section 70 of the Act provides that a person may complain to the Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the Act.

A complaint to the Information Commissioner must be in writing and identify the agency the complaint is about. It should be directed to the following address:

The Information Commissioner  
Office of the Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

The Information Commissioner may decline to investigate the complaint in a number of circumstances, including that you did not exercise your right to ask the agency, the Information Commissioner, a court or tribunal to review the decision.

## THE TREASURY

## Schedule of documents – ER2012/01400

Doc No	Author	Addressee	Date	Description	No. pages	Release	Exempt in Part	Exempt in Full	Not Relevant S22
1	Foreign Investment Review Board Secretariat	Consultees	5/11/10	Consult Letter	4	P4 Pp1-3	Pp1-3 s45, s47, s47E(d)		Pp1
2	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	1	Nil		s45, s47, s47E(d)	
3	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	2	Nil		s45, s47, s47E(d)	
4	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	2	Nil		s45, s47, s47E(d)	
5	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	1	Nil	Pp1 s33a(iii)	s45, s47, s47E(d)	
6	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	2	Nil		s47E(d)	
7	Consultee	Foreign Investment Review Board Secretariat	12/11/10	Consult Response	1	Nil		s45, s47, s47E(d)	
8	Consultee	Foreign Investment Review Board Secretariat	15/11/10	Consult Response	1	Nil		s45, s47, s47E(d)	



Doc No	Author	Addressee	Date	Description	No. pages	Release	Exempt in Part	Exempt in Full	Not Relevant S22
9	Consultee	Foreign Investment Review Board Secretariat	15/11/10	Consult Response	2	Nil		s45, s47, s47E(d)	
10	Foreign Investment Review Board Secretariat	Foreign Investment Review Board	15/12/10	Email of draft Minute	9	P1 Pp2-3, 5-9	Pp2-3, 9, P4 s45, s47, s47C, s47E(d)  Pp5, 7-8 s47C  Pp6 s47E(d)		
11	Foreign Investment Review Board Member	Foreign Investment Review Board Secretariat	15/12/10	Email	1	Nil		s45, s47, s47C, s47E(d)	
12	Foreign Investment Review Board Member	Foreign Investment Review Board Secretariat	16/12/10	Email	1	Nil		s47C, s47E(d)	
13	Foreign Investment Review Board Member	Foreign Investment Review Board Secretariat	16/12/10	Email	2	Nil		s47C, s47E(d)	
14	Foreign Investment Review Board Member	Foreign Investment Review Board Secretariat	16/12/10	Email	2	Nil		s47C, s47E(d)	
15	Foreign Investment Review Board Secretariat	Lawyer	16/12/10	Email	1	Nil		s45, s47, s47C, s47E(d)	

<b>Doc No</b>	<b>Author</b>	<b>Addressee</b>	<b>Date</b>	<b>Description</b>	<b>No. pages</b>	<b>Release</b>	<b>Exempt in Part</b>	<b>Exempt in Full</b>	<b>Not Relevant S22</b>
16	Foreign Investment Review Board Secretariat	Treasurer	17/12/10	Email of Minute	9	Pp1-3, 5-9	Pp1-2, 5, 9, P4 s45, s47, s47C, s47E(d)  Pp3 s45, s47, s47E(d)  Pp6 s47E(d)  Pp7-8 s47C		
17	Foreign Investment Review Board Secretariat	Lawyer	22/12/10	Letter	2	Nil		s45, s47, s47E(d)	

P= Full page

Pp = Part page



26 April 2013

Dear Mr Vedelago

### **FREEDOM OF INFORMATION REQUEST – REVISED DECISION**

I refer to your email dated 4 April 2012 in which you sought access to the following documents under the *Freedom of Information Act 1982* (the Act):

*‘Documents and reports which contain information received, produced or commissioned by The Treasury and The Foreign Investment Review Board relating to:*

*The involvement of Treasury and the FIRB in considering and approving the sale of assets controlled or formerly controlled by Great Southern to Alberta Investment Management Corp (AIMCo) and New Forest Pty Ltd.*

*Any Treasury or FIRB reports, reviews or assessments relating to the application of the national interest test in the sale of assets controlled or formerly controlled by Great Southern to Alberta Investment Management Corp (AIMCo) and New Forest Pty Ltd.*

*I am NOT seeking financial information relating to the sale that might be deemed commercial in confidence. ‘*

On 15 June 2012, I made a decision in relation to your request (‘original decision’).

You sought a review of my original decision with the Office of the Australian Information Commissioner (OAIC) and, following discussions with the OAIC, I have decided to make a revised decision under subsection 55G(1) of the Act in relation to your request.

I am an authorised decision maker under section 23 of the Act. This letter sets out my revised decision and reasons for the revised decision in relation to your application.

#### **Materials relevant to making of revised decision**

The materials, information and advice to which I have had reference in making this revised decision are:

- the terms of your FOI request;
- your email of 20 March 2013 in which you agreed to treat the names and contact details of officers below Senior Executive Service (SES) level as irrelevant to your request;
- advice provided by Treasury officers;
- correspondence received from the OAIC in relation to your request for an Information Commissioner review of my original decision;

- the relevant provisions of the Act;
- guidelines issued by the Australian Information Commissioner;
- the Administrative Appeals Tribunal decision in *Mangan and The Treasury* [2005] AATA 898; and
- the contents of the documents relevant to your request (as set out in the attached schedule).

### **Decision**

I have identified 17 documents relevant to your request. In my original decision of 15 June 2012, I decided that 14 documents were exempt in full and 3 documents would be released in part.

In the course of making my revised decision, I located another version of document 5 (a consultation response). Accordingly, I have determined there are 18 documents within scope. Of these, I have decided to release additional parts of the above three documents. The remaining 15 documents are exempt in full.

A schedule of each document and details of my decision in relation to each document is attached. My reasons for this decision are set out below.

### **Reasons for decision**

Where the schedule of documents (attached) indicates an exemption claim has been applied to a document or part of a document, my findings of fact and reasons for deciding that the exemption provision applies to that document or part of the document are set out below.

### **Section 22 – material irrelevant to the request**

Subparagraph 22(1)(a)(ii) of the Act allows an agency to delete irrelevant material from a document which is only partially relevant to an applicant's FOI request. Where section 22 is listed against a document in the attached schedule I have found that the document contains material which is irrelevant to your FOI request. I have withheld or deleted that material accordingly.

I have also treated the names and contact details of officers below Senior Executive Service level as irrelevant, as agreed with you on 20 March 2013, and have withheld or deleted this material accordingly.

### **Exemptions claimed**

#### **Section 45**

Subsection 45(1) exempts a document if its disclosure would found an action by a person for breach of confidence. To support a breach of action, a person must be able to:

- specifically identify the information in question;
- show that the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge);
- show that the information was communicated in a mutual understanding that the receiver was to keep the information confidential; and
- show that there is actual or threatened misuse of that information which would be inconsistent with the understanding that the information would be kept confidential.

I have considered each of the above factors in turn.

*Identified with specificity*

The information is able to be identified with specificity as being the information contained in the documents.

*Confidential in nature*

Documents 1, 10, 16 and 17 contain information drawn from the documents submitted by a foreign investment applicant. The relevant application was made in 2010 on the basis that the information in it was confidential. While some of the information provided in the application is publicly known, the particular information over which I have sought to claim an exemption under section 45 is, as far as I am aware, not publicly known and therefore remains confidential.

*Communicated in confidence*

I find that the information was communicated within the context of a mutual understanding that the Treasury would treat it as confidential. There is a longstanding practice and understanding that information communicated in respect of foreign investment applications would be kept confidential. The following is an extract from *Australia's Foreign Investment Policy*.

## CONFIDENTIALITY/PRIVACY

The Government may share your application with government departments and agencies for consultation purposes, including Australian State and Territories. However, the Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government will not provide your application to third parties outside of the Government unless it has your permission or it is ordered to do so by a court of competent jurisdiction. The Government will defend this policy through the judicial system if needed.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

*Disclosure a misuse*

I find that disclosure under FOI of information would constitute a misuse of the information. Such disclosure would be inconsistent with the understanding that it would be kept confidential. There is nothing to suggest that the person or body that communicated the information authorised the Treasury to disclose it under FOI.

For the reasons outlined above, I find that documents 1, 10, 16 and 17 contain information which meets the requirements of section 45 of the Act and are exempt from release.

**Section 47C**

Section 47C provides that a document is conditionally exempt if it includes deliberative matter; that is, opinion, advice, or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the deliberative process of an agency.

Documents 2 to 9 and document 18 contain deliberative material as they record advice and opinion received from various Commonwealth agencies and State governments on a foreign investment proposal. Documents 10 to 16 contain deliberative material in the nature of advice, recommendations and opinion of the Treasury and members of the Foreign Investment Review Board, correspondence between the Treasury and a legal practitioner which took place as part of the deliberative processes of the Treasury, and advice prepared for the Treasurer in respect of a foreign investment proposal.

I have decided that these documents are all deliberative in nature and, accordingly, conditionally exempt under section 47C. In coming to this view, I have been careful to not assert a section 47C exemption over any material that is, as far as I am aware, purely factual (as required under subsection 47C(2)).

#### *Public interest*

Access must generally be given to a conditionally exempt document unless access would, at that time, on balance be contrary to the public interest.

I note that an extensive amount of information about Australia's foreign investment policy, administration and processes is available at [www.firb.gov.au](http://www.firb.gov.au). In addition, the Foreign Investment Review Board prepares an annual report which is tabled in Parliament and is also available on this website.

I have considered the factors in favour of disclosure such as promotion of the objects of the Act, promotion of public participation in government decision-making, and the benefits of informed debate based on transparent and accurate information.

#### *Documents 2 to 9 and document 18*

In relation to documents 2 to 9 and document 18, which record advice and opinion from various Commonwealth agencies and State governments, having regard to the contents of the documents, I do not consider that disclosure of the documents will: make the public better informed and promote discussion of public affairs; effectively contribute to participation in government decision-making and policy formulation; or enhance the scrutiny of government decision-making processes.

The documents do not provide an insight into the Government's overall approach to foreign investment; rather they provide information on a specific foreign investment application. This is particularly the case with regard to the Commonwealth agencies and State governments that the Treasury consults with as this will vary from application to application.

Furthermore, the release of the documents may have the effect of curtailing the willingness of foreign investment applicants to provide non-mandatory information in their foreign investment applications. While there are compulsory information-gathering powers in the *Foreign Acquisitions and Takeovers Act 1975*, there is heavy reliance on applicants voluntarily disclosing information when submitting foreign investment applications (*Mangan v The Treasury (2005)*). A central reason why applicants are willing to disclose information is because they understand that its confidentiality will be maintained and the information provided will not be disseminated widely.

While the foreign investment policy does indicate that information may be provided to other Commonwealth agencies and State governments and that this information will be appropriately protected, I am concerned that if these documents — which reveal the consultation process associated with a particular foreign investment application — were released, it could give rise to concerns amongst foreign applicants as to whether the confidentiality of the information provided could practically be protected against inadvertent or voluntary disclosure given the consultation process. Any perception that information provided as part of a foreign investment application may not be appropriately protected would, in my view, result in applicants becoming reluctant to voluntarily submit extensive material, which would ultimately diminish the capacity of the Treasury, the Foreign Investment Review Board and Treasury ministers to make well-informed judgements, recommendations and decisions. This would be contrary to the public interest.

I also believe the disclosure of the particular Commonwealth agencies that the Treasury consulted with on this application may allow an applicant to deduce the types of inquiries that the Treasury makes and factors that the Treasury takes into account when assessing foreign investment applications. My concern is revealing these factors may have an effect of restricting the supply of some valuable information that applicants would otherwise disclose to the Treasury. The Treasury would have difficulty obtaining such information in the absence of voluntary disclosure by the applicant and, for reasons already outlined, I believe that this would ultimately diminish the capacity of the Treasury, the Foreign Investment Review Board and Treasury ministers to make well-informed judgements, recommendations and decisions and would be contrary to the public interest.

I have carefully weighed the factors for and against disclosure and I find that, on balance, the factors against disclosure outweigh those in favour of disclosure. Accordingly, I have decided to refuse access to documents 2 to 9 and document 18 on the basis the documents are exempt under section 47C.

*Documents 11 to 14*

Documents 11 to 14 record advice and opinion of Foreign Investment Review Board members. The documents focus on one particular foreign investment application and do not deal with the Government's overall approach to foreign investment. Furthermore, having had regard to the contents of the documents, I have come to a view that the release of the documents would have a negligible benefit to the public in terms of making the public better informed and promoting discussion of public affairs; effectively contributing to participation in government decision-making and policy formulation; or enhancing the scrutiny of government decision-making processes.

I have also had regard to the factors against disclosure. I find that it is important that Foreign Investment Review Board members be able to provide their views on foreign investment applications in a frank and timely manner. I find that maintaining confidentiality over communications between Foreign Investment Review Board members and the Treasury will support this. Disclosure of these documents, in my view, may reasonably be thought to have the effect of fettering the frankness of future communications between the Foreign Investment Review Board members and the Treasury, which will affect the quality of these deliberations and ultimately adversely affect the quality of advice to the Treasurer, impeding his ability to freely and appropriately exercise his power in this area — a factor I consider to be contrary to the public interest.

In balancing the public interest factors for and against release, I have come to a view that the factors against release outweigh those in favour of release. Accordingly, I have decided that documents 11 to 14 are exempt under section 47C.

*Documents 10, 15 and 16*

Documents 10 and 16 contain detailed analysis and opinions of the Treasury and Foreign Investment Review Board members and incorporate information received from the foreign investment application, as well as views from other Commonwealth agencies and State governments. Document 15 was prepared as part of the deliberative processes of the Treasury. Accordingly, the documents are deliberative in nature. As noted above, there are parts of the documents that contain, as far as I am aware, purely factual information and I have not sought to claim a section 47C exemption over those parts of the documents.

Having regard to the contents of the documents, I find that their release will provide some benefit to the public although I note the benefit will be limited by the fact that the material contained in the documents is specific to the particular foreign investment application and therefore does not provide an insight into the Government's general approach to managing foreign investment. In the same way, it should be noted that the documents focus on the specific facts of this foreign investment proposal and, accordingly, contain material that may not form part of government decision-making and government policy going forward.

I find there is a public interest in the foreign investment applicant, Commonwealth agencies and State governments, the Treasury and Foreign Investment Review Board members being able to provide frank, comprehensive and robust written advice to assist the Treasurer to assess and decide the outcome of a foreign investment application. In my view, this requires that there be confidentiality of communications between the relevant parties. I find that the release of the documents may result in the relevant parties being less frank and forthright in communicating information and their views, which will make it more difficult for the Treasurer to discharge his role in this area, which will be contrary to the public interest.

In my view, having balanced the public interest factors for and against disclosure, the factors against disclosure outweigh those in favour of disclosure and accordingly, I have decided that documents 10, 15 and 16 are exempt in part under section 47C.

#### **Section 47E – certain operations of agencies**

Paragraph 47E(d) provides a document is conditionally exempt if its disclosure under the Act would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Documents 1 to 18 contain information provided in confidence or that relate to the business affairs of a particular entity. Disclosure of the material provided is likely to have a negative impact on the future provision of information to the Treasury and the Foreign Investment Review Board, which would reasonably be expected to have a substantial adverse effect on the operations of the Treasury and the Foreign Investment Review Board.

#### *Public interest*

Access must generally be given to a conditionally exempt document unless access would, at that time, on balance be contrary to the public interest.

I have had regard to the public interest arguments favouring disclosure such as promotion of the objects of the Act, promotion of public participation in government decision-making, and the benefits of informed debate based on transparent and accurate information.

As I advised in my original decision, I consider that there is a strong public interest in preserving an environment of confidentiality in dealings with the Treasury and the Foreign Investment Review Board. In my view, the release of such information is likely to have a negative impact on the future provision of information to the Treasury and the Foreign Investment Review Board, which would introduce significant difficulties for the Treasury and the Foreign Investment Review Board in securing important information. This would, ultimately, result in a substantial adverse impact on the effectiveness of the Treasury and the Foreign Investment Review Board in supporting the Treasurer in discharging his statutory role under the *Foreign Acquisitions and Takeovers Act 1975*. Such an outcome would be contrary to the public interest.

I have carefully weighed the factors for and against disclosure of the documents. In my view, in relation to these documents, the factors against disclosure outweigh the factors in favour of disclosure. Accordingly, I find documents 2 to 9, 11 to 15 and 17 to 18 exempt in full and documents 1, 10 and 16 exempt in part under paragraph 47E(d).

#### **Section 47F — personal privacy**

Section 47F provides that a document is conditionally exempt if its disclosure would involve the unreasonable disclosure of personal information about any person other than the applicant.



### *Personal information of persons other than the applicant*

Documents 10 to 15 and 17 contain personal information of individuals other than yourself, being their names and email addresses. I have considered whether these documents would, if disclosed, involve the unreasonable disclosure of personal information. I have had regard to the following matters:

- the nature of the information and extent to which it is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- the availability of information from publicly accessible sources; and
- any other matters relevant, including whether a public purpose could be achieved through release of the information.

In relation to documents 15 and 17, the individuals, as far as I am aware, are not known to be associated with matters dealt with in the document and, in the case of one of the individuals, the personal information available in the documents would not be available from publicly accessible sources. In relation to documents 10 to 14, while the individuals are known to be associated with foreign investment review matters, their email addresses are not publicly known and not available from publicly accessible sources in relation to such matters. I do not consider that a public purpose could be achieved through the release of the personal information contained in documents 10 to 15 and 17. Having regard to the personal information contained in the documents, I have come to the view that disclosure of the documents would involve an unreasonable disclosure of personal information of other persons. Accordingly, I find these documents conditionally exempt in part under section 47F.

### *Public interest*

Access must generally be given to a conditionally exempt document unless access would, at that time, on balance be contrary to the public interest.

I have considered the factors in favour of disclosure such as promotion of the objects of the Act, promotion of public participation in government decision-making, and the benefits of informed debate based on transparent and accurate information. I have had regard to the contents of the documents and considered whether release of the personal information contained in these documents would provide a benefit to the public. I consider it is contrary to the public interest to disclose the documents where disclosure would reasonably be expected to prejudice the protection of an individual's right to privacy. This is particularly the case with respect to the names and email addresses of individuals that have not been otherwise provided publicly in association with the matters dealt with in relation to the documents, and where release may increase the likelihood of inappropriate or ad hoc contact. In my view, on balance, the factors against disclosure outweigh the factors in favour of disclosure.

Accordingly, I am satisfied that documents 10 to 15 and 17 are exempt in part under section 47F.

### **Charges**

The preliminary assessment of the charge for processing your request was \$394.50. On 30 April 2012, we received a deposit of \$98.65. On 14 December 2012 we received the balance of charges in full.

**Publication on disclosure log**

The Treasury publishes all documents disclosed in response to FOI requests (other than personal or business information that would be unreasonable to publish) on the Treasury website at the same time as the applicant receives the response. This is consistent with the arrangements established by section 11C of the Act, which formally commenced operation on 1 May 2011.

Yours sincerely

Deidre Gerathy  
Chief Adviser  
Foreign Investment and Trade Policy Division

FOI Decision Maker

The Treasury  
FOI Schedule of Documents

REVISED DECISION - SCHEDULE OF DOCUMENTS

FILE: ER2012/01400  
FOI: 1155

Doc No	Author	Addressee	Date	Description	No of pages	Release	Exempt in Part	Exempt in Full	Not Relevant
1	Foreign Investment Review Board Secretariat	Consultees	5/11/2010	Consult letter	4	pp1-3, p4	s45, s47E(d) - pp1-3		s22 pp1, 3
2	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	1	Nil		s47C, s47E(d)	
3	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	2	Nil		s47C, s47E(d)	
4	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	2	Nil		s47C, s47E(d)	
5	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	1	Nil		s47C, s47E(d)	
6	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	2	Nil		s47C, s47E(d)	
7	Consultee	Foreign Investment Review Board Secretariat	12/11/2010	Consult response	1	Nil		s47C, s47E(d)	
8	Consultee	Foreign Investment Review Board Secretariat	15/11/2010	Consult response	1	Nil		s47C, s47E(d)	
9	Consultee	Foreign Investment Review Board Secretariat	15/11/2010	Consult response	2	Nil		s47C, s47E(d)	
10	Foreign Investment Review Board Secretariat	Foreign Investment Review Board Secretariat	15/12/2010	Email of draft Minute	9	pp1-9	s45 - pp2-4,9 s47C - pp2-8 s47E(d) - pp2,9 s47F - pp1		pp1,5
11	Foreign Investment Review Board member	Foreign Investment Review Board Secretariat	15/12/2010	Email	1	Nil		s47C, s47E(d), s47F	
12	Foreign Investment Review Board member	Foreign Investment Review Board Secretariat	16/12/2010	Email	1	Nil		s47C, s47E(d), s47F	
13	Foreign Investment Review Board member	Foreign Investment Review Board Secretariat	16/12/2010	Email	2	Nil		s47C, s47E(d), s47F	
14	Foreign Investment Review Board member	Foreign Investment Review Board Secretariat	16/12/2010	Email	2	Nil		s47C, s47E(d), s47F	
15	Foreign Investment Review Board Secretariat	Lawyer	16/12/2010	Email	1	Nil		s47C, s47E(d), s47F	
16	Foreign Investment Review Board Secretariat	Treasurer	17/12/2010	Email of Minute	9	pp1-9	s45 - pp2,5,9 s47C - pp1,2,4-8, s47E(d) - pp1-9		pp1,5
17	Foreign Investment Review Board Secretariat	Lawyer	22/12/2010	Letter	2	Nil		s45, s47E(d), s47F	pp1,2
18	Consultee	Foreign Investment Review Board Secretariat	13/11/2010	Consult response - later version of document 5	1	Nil		s47C, s47E(d)	

# Document 01

Section 22

Section 22

**From:**  
**Sent:** Friday, 5 November 2010 12:08 PM  
**To:** Section 22 ; Antioch, Gerry  
**Cc:** Miller, Geoff; Section 22  
**Subject:** FIRB Consultation - s45, s47E(d) ;/AIMCO/GREAT SOUTHERN DUE 12  
November 2010  
**Attachments:** Section 22 ; Consultation  
Letter.docx  
**Importance:** High

## FOREIGN INVESTMENT PROPOSAL FOR COMMENT

Please see the attached documents from the Foreign Investment Review Board.

We seek any comments your area may wish to provide by **12 November 2010**.

### Foreign Investment Review Board

c/- Foreign Investment & Trade Policy Division

The Treasury

Langton Crescent

PARKES ACT 2600

Phone: (02) 6263 3795

Fax: (02) 6263 2940

Email: [firbconsultations@treasury.gov.au](mailto:firbconsultations@treasury.gov.au)

Web: <http://www.firb.gov.au>



**Australian Government**  
**Foreign Investment Review Board**

Telephone: 02 6263 3795  
Overseas: +61 2 6263 3795  
Facsimile: 02 6263 2940  
Website: www.firb.gov.au  
firbbusinessapplications@treasury.gov.au

3 November 2010  
File: 47E(d)

**FOREIGN INVESTMENT PROPOSAL:** <sup>s45, s47E(d)</sup>  
**GREAT SOUTHERN FORESTRY (GREAT SOUTHERN)**

Please find enclosed a copy of an application for foreign investment approval received by Treasury under the *Foreign Acquisitions and Takeovers Act 1975* (the FATA) or the Government's Foreign Investment Policy (the Policy). These papers contain information provided in commercial confidence to the Government and should not be disclosed outside your organisation.

**The purpose of consulting your organisation is to seek comment or information on the investment proposal so that the Treasurer receives whole of government advice on the application. While proposals are examined individually, any advice to the Treasurer can also incorporate broader information and comment on the industry sector or the investing entity. Any comments should address potential national interest issues arising from the investment.**

We invite your organisation to provide any such comments, information or advice that it wishes to make. We also seek your assistance in passing this material to relevant officers within your agency and in coordinating your agency's response. Attached is an outline of Australia's foreign investment review framework as context for your officers in providing comments or information.

**Summary of the foreign investment proposal**

Summary of the proposal

s45, s47E(d)

Forests Australia New Zealand Forest Fund (ANZFF) and Alberta Investment Management Corporation (and AIMCo Investors) are proposing to acquire Australian rural land for \$415 million from Great Southern <sup>s45, s47E(d)</sup>

s45, s47E(d)

s45, s47E(d)

AIMCo is one of Canada's largest institutional investment managers as measured by assets under management (CAD \$69 billion). It is crown corporation wholly owned by Her Majesty the Queen in right of Alberta, the legal personification of the Province of Alberta. It invests funds across a wide range of asset classes, including public equities, private equities, infrastructure timberland, and real estate, both domestically and internationally. The investment activities of AIMCo help support healthcare, education, infrastructure, social programs, scholarships, and medical research initiatives in the Province of Alberta and the retirement income of the provincial public sector employees.

<sup>s45, s47E(d)</sup>

Great Southern, a Perth-based company (before receivership in 2009 it had assets worth \$1.8 billion) controls Australia's largest freehold hardwood estate. The land estate comprises over 640 individual freehold properties.

On 18 May 2009, McGrathNicol (Receivers) were appointed as receivers over various companies in the Great Southern group. The Receivers have commenced a sale process to divest the Great Southern Forests assets, which includes the rural land that the Buyer wishes to acquire. The assets consist of approximately 269,000 ha of freehold forestry land with a net productive area of approximately 167,500 ha. These are predominately located in Australia's prime forestry regions of Albany on the south coast of Western Australia, Bunbury on the west coast of Western Australia and the Green Triangle region of south eastern Australia.

#### **Timing and contact details**

Your organisation's response should be provided to [firbconsultations@treasury.gov.au](mailto:firbconsultations@treasury.gov.au) as early as practicable and by no later than 12 November. In the event a response is not received by that date it will be treated as signifying that your organisation had no comment on the proposal.

The action officer in your organisation may wish to contact <sup>s22</sup> on (02) 6263 <sup>s22</sup> and <sup>s22</sup> [@treasury.gov.au](mailto:@treasury.gov.au) to discuss the material and any issues prior to your formal response.

Patrick Colmer  
Executive Member  
Foreign Investment Review Board

## AUSTRALIA'S FOREIGN INVESTMENT REVIEW FRAMEWORK

Australia's foreign investment screening arrangements are designed to encourage foreign investment recognising the substantial contribution it makes to our economy and community. They provide a process to consider whether individual investments are contrary to the national interest.

The acquisition of certain interests in Australia businesses by 'foreign companies' and 'persons' are subject to the *Foreign Acquisitions and Takeovers Act 1975* (the FATA). The FATA defines a 'foreign person' as foreign controlled companies and natural persons not ordinarily resident here.

The FATA provides the power to prohibit acquisitions resulting in foreign control of Australian businesses or ownership of land where the Treasurer considers it to be contrary to Australia's national interest. The Government's foreign investment policy and the FATA apply to:

- acquisitions of a substantial interest in the shares or voting power in Australian businesses, with assets exceeding, or the transaction valuing it above, \$231 million;
- acquisitions of the assets of an Australian business valued at more than \$231 million;
- acquisitions in Australian businesses where more than 50 per cent of its assets is land;
- direct investments by foreign Governments and their related entities, regardless of the value of the investment; and
- acquisitions of land (including via a lease of more than 5 years, or via a licence or right).

The Treasurer can within 30 days of receiving a notification (extendable by up to 90 days), make an order prohibiting an acquisition of shares, assets or land where the Treasurer considers:

- the company/business/assets would become controlled by a foreign person; and
- this result would be contrary to the national interest.

Instead of making an order, the Treasurer can impose legally binding conditions that are considered necessary to prevent the acquisition being contrary to the national interest.

The FATA does not define the 'national interest' or what is contrary to it. The Government's foreign investment policy provides guidance. However, under the FATA decisions on the national interest as it applies to a particular foreign investment are for the Treasurer to make.

## THE CONSULTATION PROCESS

Consultation with Commonwealth/State/Territory organisations is intended to identify any potential national interest issues and assist Treasury formulate whole of government advice to the Treasurer.

Organisations are requested to provide any comments, information or advice they consider will assist in evaluating the proposed investment and any potential national interest issues. This can include material on the investing entity, the target entity or on the industry sector involved. It can also include information or comment that provides a broader perspective on the industry or sector. Organisations are invited to include in responses material received by them from portfolio agencies.

Further information is available at the Foreign Investment Review Board website [www.firb.gov.au](http://www.firb.gov.au).





# FOREIGN INVESTMENT REVIEW BOARD MINUTE

Minute No.

15 December 2010

File: 47E(d)

Deputy Prime Minister and Treasurer cc: Minister for Financial Services and Superannuation

## ALBERTA INVESTMENT MANAGEMENT CORPORATION AND FORESTS AUSTRALIA NEW ZEALAND FOREST FUND – ACQUISITION OF RURAL LAND FROM GREAT SOUTHERN LIMITED

Timing: s47C, s47E(d)

**Recommendation:** That you note:

- the acquisition by Alberta Investment Management Corporation (**AIMCo**) and Forests Australia New Zealand Forest Fund (**ANZFF**) of Australian rural land valued at \$415 million from Great Southern Limited (**Great Southern**); and
- s47C, s47E(d)

Noted

...../...../2010

### KEY POINTS

#### *Overview of the proposal*

- ANZFF, a registered managed investment scheme that invests in forestry-based properties and environmental assets, and AIMCo, an entity wholly government owned by the Province of Alberta, Canada, s45, s47E(d) are proposing to acquire Australian rural land for \$415 million from Great Southern to carry out a forestry business.
  - Great Southern is currently under receivership and was previously an ASX-listed managed investment scheme (**MIS**) manager that specialised in producing and managing forestry and horticultural assets.

s45, s47E(d)

s45, s47E(d)

s45, s47E(d)

#### *Parties to the proposal*

##### *Target Company*

- Great Southern, a Perth-based company (before receivership in 2009, it had assets worth \$1.8 billion) was a MIS manager that controls Australia's largest freehold hardwood estate. It was previously an ASX-listed managed investment scheme (**MIS**) manager that specialised in

producing and managing forestry and horticultural assets. The land estate comprises over 640 individual freehold properties located in Queensland, New South Wales, Victoria, South Australia, Western Australia and Tasmania.

- On 18 May 2009, McGrathNicol (Receivers) were appointed as receivers over various companies in the Great Southern group. They commenced a sale process to divest assets owned by Great Southern, which includes the rural land that the Buyers seek to acquire (see Additional information for further details about Great Southern).

#### *Acquiring Parties*

##### *ANZFF*

- ANZFF is a registered managed investment scheme that invests in forestry-based properties and environmental assets in Australia.

( s45, s47E(d)

##### *AIMCo*

- AIMCo manages investments on behalf of the Province of Alberta, Canada, and is one of Canada's largest institutional investment managers as measured by assets under management (CAD \$69 billion). It invests funds across a wide range of asset classes, including public equities, private equities, infrastructure timberland, and real estate, both domestically and internationally. The investment activities of AIMCo help support healthcare, education, infrastructure, social programs, scholarships, and medical research initiatives in the Province of Alberta and the retirement income of the provincial public sector employees.

s45, s47E(d)

s47C, s47E(d)

*Issues relating to the collapse of MIS*

- There has been considerable public interest as to the causes of the collapses of agribusiness groups in recent years, including Timbercorp, Great Southern, Forest Enterprises Australia, Rewards Group and Willmott Forests.

s47C, s47E(d)

- Following the collapses of these agribusiness much discussion has been generated over the appropriate taxation and regulatory policy settings for agribusiness MIS.

- In 2009, following the collapse of Timbercorp and Great Southern, the Parliamentary Joint Committee (PJC) on Corporations and Financial Services conducted an inquiry in agribusiness MIS, with a report tabled on 7 September 2009. The PJC made three recommendations regarding: taxation; the appointment of temporary Responsible Entities (RE); and disclosure of qualifications and accreditations of expert third parties that provide opinion on likely scheme performance.

s47C, s47E(d)

s47C, s47E(d)

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s45, s47E(d) s47C, s47E(d)  
s47C, s47E(d)

- s47C, s47E(d)

- s45, s47E(d)

s45, s47E(d)

s47C, s47E(d)

Patrick Colmer  
Executive Member  
Foreign Investment Review Board

**Contact Officer:** s22  
**Telephone:** (02) 6263 s22

## ADDITIONAL INFORMATION

### CONSULTATIONS

s47C, s47E(d)

### FOREIGN INVESTMENT POLICY

The proposal is subject to the *Foreign Acquisitions and Takeovers Act 1975* (the **FATA**) as a foreign person is proposing to acquire assets of an Australian business valued at more than \$231 million. If the applicant would be in a position to determine the control of the target company and it was decided to be contrary to the national interest, action to either prohibit the proposal or attach ameliorating conditions would be available under the FATA. The concept of national interest is not defined by the FATA and embodies a number of elements, including considerations of national security matters, community interests, economic development, environmental issues and Australia's international obligations.

### THE PARTIES

#### Great Southern

- Great Southern was a publicly listed MIS manager that specialised in producing and managing forestry and horticultural assets. There were two corporations in the Great Southern Group that were responsible entities and Australian financial services licensees:
  - Great Southern Managers Australia Limited (GSMAL) – the responsible entity of 43 registered tax driven forestry and horticultural schemes, which raised around \$1.8 billion over the past 5 years from 43,000 investors.
  - Great Southern Funds Management Limited (GSFML) – the responsible entity of the Great Southern Rural Opportunities Fund, a non-tax driven fund of 9 sub-funds worth around \$160 million with 3,300 investors (this fund invested in agricultural property and infrastructure).
- The Great Southern controlled MISs account for 47,000 investors and around \$2.0 billion in funds raised.
- On 16 May 2009, Ferrier Hodgson was appointed as voluntary administrator of Great Southern and 36 other associated entities. On 19 May 2009, McGrath Nicol was appointed Receivers and Managers of Great Southern. Control of the business and assets of the receivership companies now rests with McGrath Nicol.
- Great Southern's core business was to structure and operate tax-deferred forestry and horticultural schemes. In 2008, 75 per cent of its revenue came from GSMAL MIS sales. Each scheme is different, but in general, investors (and Growers) paid an upfront (tax-deductible) application price to acquire interests in a scheme, which entitled them to use a parcel of land leased from Great Southern. Investors would enter contracts with Great Southern to cultivate, maintain and harvest the assets on their land. In doing so, investors acquired a right to derive profits from agricultural assets (forestry, wine grapes, olives and almonds) produced on their specified land net of management and lease fees paid to Great

Southern. Investors would also be entitled to potential tax deductions for the upfront investment and any annual fees paid to Great Southern and its related entities.

- Investors (and Growers) used leverage to maximise tax benefits. Investors geared heavily into Great Southern MISs and a majority of those who sought leverage borrowed 100 per cent of their investment.

### **Why did Great Southern go into administration?**

s47C, s47E(d)

### **What are agribusiness managed investment schemes?**

- MIS are collective investments. MIS investors contribute money that is pooled and used in a common enterprise, but they do not have day-to-day control over operations (section 9 of the *Corporations Act 2001*). Many investment options are structured as unit trust MIS (that is, including cash management, property and equity trusts).
- Agribusiness MIS are a subset of this broader class, and 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 Rather than being structured as unit trusts though, they are typically designed such that each MIS investor is treating as if they were carrying on their own business, by taking an interest in land, usually via a lease or sublease, and entering into a management agreement with a scheme manager.
  - Generally, each investor does not own any physical assets (such as land or trees), but rather has an interest in the scheme, which is essentially a bundle of rights over an area of land or allotment. In entering into the scheme, the investor typically assigns their right to the crop to the manager in return for a share of the harvest proceeds.
  - The scheme manager (or an associated entity) is responsible for operation, harvesting, marketing and selling the crop. The manager distributes the sale proceeds (less its harvesting and marketing fees) to the MIS investors in proportion to the number of allotments held. Typical agribusiness MIS structures can be quite complex.

s47C, s47E(d)

s47C, s47E(d)

**What is the state of the agribusiness MIS industry?**

- The agribusiness MIS industry has contracted sharply in the number and size of new MIS following a spate of corporate collapse since the commencement of the Global Financial Crisis. According to the Australian Agribusiness Group, only around \$100 million in new funds were raised by MIS in 2009-10 (from around 2,500 individual investors), with forestry schemes accounting for around three quarters of this amount.

**EXAMINATION AGAINST THE NATIONAL INTEREST CONSIDERATIONS FOR  
FOREIGN GOVERNMENT RELATED INVESTMENTS**

s45, s47E(d)



## Document 16

s22

**From:** s22  
**Sent:** Friday, 17 December 2010 11:20 AM  
**To:** s22 MG FIRB SDs to Treasurer's Office  
**Cc:** MG FIRB SDs to Treasurer's Office (cc's); MG FITPD Investment Review  
**Subject:** ALBERTA INVESTMENT MANAGEMENT CORPORATION AND FORESTS AUSTRALIA  
NEW ZEALAND FOREST FUND - ACQUISITION OF RURAL LAND FROM GREAT  
SOUTHERN LIMITED  
**Attachments:** alberta.pdf

s22

Attached is a copy of a minute on the above proposal.

Proponents: Alberta Investment Management Corporation and Forests Australia New Zealand Forest Fund.

s47C, s47E(d)

If you require any additional information, please ring me or s22 or s22 .

Regards

s22

Foreign Investment and Trade Policy Division  
The Treasury Australia  
Ph: +61 2 6263 s22  
Fax: +61 2 6263 2940  
Email: s22 @treasury.gov.au

# FOREIGN INVESTMENT REVIEW BOARD MINUTE

Minute No.

17 December 2010

File: 47E(d)

Deputy Prime Minister and Treasurer

cc: Assistant Treasurer and Minister for  
Financial Services and Superannuation

## ALBERTA INVESTMENT MANAGEMENT CORPORATION AND FORESTS AUSTRALIA NEW ZEALAND FOREST FUND – ACQUISITION OF RURAL LAND FROM GREAT SOUTHERN LIMITED

Timing: s47C, s47E(d)

**Recommendation:** That you note:

- the acquisition by Alberta Investment Management Corporation (AIMCo) and Forests Australia New Zealand Forest Fund (ANZFF) of Australian rural land valued at \$415 million from Great Southern Limited (Great Southern); and
- s47C, s47E(d)

Noted

...../...../2010

### KEY POINTS

#### *Overview of the proposal*

- ANZFF, a registered managed investment scheme that invests in forestry-based properties and environmental assets, and AIMCo, an entity wholly owned by the Government of the Province of Alberta, Canada s45, s47E(d), are proposing to acquire Australian rural land for \$415 million from Great Southern to conduct a forestry business.

s45, s47E(d)

- Great Southern is currently under receivership and was previously an ASX-listed managed investment scheme (MIS) manager that specialised in producing and managing forestry and horticultural assets.

s45, s47E(d)

s45, s47E(d)

s45, s47E(d)

### *Parties to the proposal*

#### *Target Company*

- Great Southern, a Perth-based company (before receivership in 2009, it had total assets of \$1.8 billion), was a MIS manager that controlled Australia's largest freehold hardwood estate. It was previously an ASX-listed MIS manager that specialised in producing and managing forestry and horticultural assets. Its land comprised over 640 individual freehold properties located in Queensland, New South Wales, Victoria, South Australia, Western Australia and Tasmania.
- On 18 May 2009, McGrathNicol (Receivers) was appointed as receivers over various companies in the Great Southern group. It commenced a sale process to divest assets owned by Great Southern, which included the rural land that the Buyers are seeking to acquire (see Additional information for further details about Great Southern).

#### *Acquiring Parties*

##### *ANZFF*

- ANZFF is a registered managed investment scheme that invests in forestry-based properties and environmental assets in Australia.

s45, s47E(d)

s45, s47E(d)

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s45, s47E(d)

s45, s47E(d)

s47C, s47E(d)

*Issues relating to the collapse of Great Southern*

- There has been considerable public interest as to the causes of the collapses of agribusiness groups in recent years, including Timbercorp, Great Southern, Forest Enterprises Australia, Rewards Group and Willmott Forests.

s47C, s47E(d)

- Following the collapses of these agribusiness, much discussion has been generated over the appropriate taxation and regulatory policy settings for agribusiness MIS.
  - In 2009, following the collapse of Timbercorp and Great Southern, the Parliamentary Joint Committee (PJC) on Corporations and Financial Services conducted an inquiry in agribusiness MIS, with a report tabled on 7 September 2009. The PJC made three recommendations regarding: taxation; the appointment of temporary Responsible Entities (RE); and disclosure of qualifications and accreditations of expert third parties that provide opinion on likely scheme performance.

s47C, s47E(d)

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s47C, s47E(d)

s47C, s47E(d)

s45, s47E(d)

s45, s47E(d)

s47C, s47E(d)

s22

*BCV* Patrick Colmer  
Executive Member  
Foreign Investment Review Board

**Contact Officer:** s22  
**Telephone:** s22

## ADDITIONAL INFORMATION

### CONSULTATIONS

s47C, s47E(d)

### FOREIGN INVESTMENT POLICY

The proposal is subject to the *Foreign Acquisitions and Takeovers Act 1975* (the **FATA**) as a foreign person is proposing to acquire the rural land assets of an Australian business valued at more than \$231 million. As the applicant would be in a position to determine the control of the target company and it was decided to be contrary to the national interest, action to either prohibit the proposal or attach ameliorating conditions would be available under the FATA. The concept of national interest is not defined by the FATA and embodies a number of elements, including considerations of national security matters, community interests, economic development, environmental issues and Australia's international obligations.

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  - Great Southern Funds Management Limited (**GSFML**) – the responsible entity of the Great Southern Rural Opportunities Fund, a non-tax driven fund of 9 sub-funds worth around \$160 million with 3,300 investors (this fund invested in agricultural property and infrastructure).
- The Great Southern controlled the MIS account for over 46,000 investors and around \$2 billion in funds raised.
- On 16 May 2009, Ferrier Hodgson was appointed as voluntary administrator of Great Southern and 36 other associated entities. On 19 May 2009, McGrath Nicol was appointed Receivers and Managers of Great Southern. Control of the business and assets of the receivership companies now rests with McGrath Nicol.
- Great Southern's core business was to structure and operate tax-deferred forestry and horticultural schemes. In 2008, 75 per cent of its revenue came from GSMAL MIS sales. Each scheme is different, but in general, investors (and growers) paid an upfront (tax-deductible) application price to acquire interests in a scheme, which entitled them to use a parcel of land leased from Great Southern. Investors would enter contracts with Great Southern to cultivate, maintain and harvest the assets on their land. In doing so, investors acquired a right to derive profits from agricultural assets (forestry, wine grapes, olives and

almonds) produced on their specified land net of management and lease fees paid to Great Southern. Investors would also be entitled to potential tax deductions for the upfront investment and any annual fees paid to Great Southern and its related entities.

- Investors (and growers) used leverage to maximise tax benefits. Investors geared heavily into Great Southern MIS, and a majority of those who invested borrowed 100 per cent of their investment.

#### **Why did Great Southern go into administration?**

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#### **What are agribusiness managed investment schemes?**

- MIS are collective investments. MIS investors contribute money that is pooled and used in a common enterprise, but they do not have day-to-day control over operations (section 9 of the *Corporations Act 2001*). Many investment options are structured as unit trust MIS (that is, including cash management, property and equity trusts).
- Agribusiness MISs are a subset of this broader class, and 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 is the other category which covers entities that, rather than being structured as unit trusts, they are typically designed such that each MIS investor is treated as if they were carrying on their own business, by taking an interest in land, usually via a lease or sublease, and entering into a management agreement with a scheme manager.
  - Generally, each investor does not own any physical assets (such as land or trees), but rather has an interest in the scheme, which is essentially a bundle of rights over an area of land or allotment. In entering into the scheme, the investor typically assigns their right to the crop to the manager in return for a share of the harvest proceeds.
  - The scheme manager (or an associated entity) is responsible for operation, harvesting, marketing and selling the crop. The manager distributes the sale proceeds (less its harvesting and marketing fees) to the MIS investors in proportion to the number of allotments held. Typical agribusiness MIS structures can be quite complex.

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**What is the state of the agribusiness MIS industry?**

- The agribusiness MIS industry has contracted sharply in the number and size of new MIS following a spate of corporate collapse since during the Global Financial Crisis. According to the Australian Agribusiness Group, only around \$100 million in new funds were raised by MIS in 2009-10 (from around 2,500 individual investors), with forestry schemes accounting for around three quarters of this amount.



ATTACHMENT A

**EXAMINATION AGAINST THE NATIONAL INTERST CONSIDERATIONS FOR  
FOREIGN GOVERNMENT RELATED INVESTMENTS**

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