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From: s22
Sent: Wednesday, 15 December 2010 4:28 PM
To: s47F
Cc: Colmer, Patrick; s22 Di Giorgio, Frank
Subject: FIRB Minute for your comments
Attachments: E0195615 2010 SD47E(d) ANZF - GREAT SOUTHERN - FORESTRY cleared by MR.docx
Importance: High

Dear FIRB

Please find attached a draft minute for your comments. Comments by cob Thursday would be greatly appreciated.

Kind regards

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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.

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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.

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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.

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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.

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- 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.

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ADDITIONAL INFORMATION

CONSULTATIONS

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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?

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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 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.

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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 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.

ATTACHMENT A

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

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