

Liquidation application

The Forestlands companies are opposing the liquidation application brought by the FMA.

The director has instructed KordaMentha in relation to the matters raised by the FMA. KordaMentha has already completed a number of key tasks, including:

- Obtaining independent valuations of the forestry assets as at the sale date. These independent valuations support the sale price achieved for the forests; and
- Conducting a tracing exercise in respect of inter-company lending.

The director has reported to the FMA on the tasks set out above.

KordaMentha is now part way through a second stage of engagement. In connection with this and based on estimates provided by KordaMentha and their solicitors, Buddle Findlay, the director has fully funded KordaMentha to:

- assess the legitimacy of deductions from the sale proceeds by entities associated with Mr Kearns;
- advertise for and assess creditor claims against the sale proceeds; and
- prepare a framework for distributions to shareholders

all with the assistance of their independent legal advisers.

Whilst acknowledging it has been difficult to fund this process, the director has at all times sought to work with the FMA to achieve a resolution to this matter.

The director's view is that the analysis currently being undertaken by KordaMentha is no different to what a liquidator would assess regarding entitlement to the sale proceeds. The difference is that KordaMentha's analysis is being funded by the director, Mr Kearns. To the extent that certain costs incurred by Mr Kearns would ordinarily be met by the Forestlands companies, Mr Kearns intends to offset those costs against any amounts determined as owing to the companies from Mr Kearns or entities associated with him.

If a liquidator is appointed, all of the liquidators' costs and additional associated legal costs will be payable from the funds held on trust for the Forestlands Companies, so reducing the amount available to shareholders. In the director's view, liquidation means that much of the work undertaken by KordaMentha and Buddle Findlay would likely be repeated at the cost of the shareholders.

The director considers that the engagement of KordaMentha (with independent legal advice) will bring the requisite degree of independence and certainty to the process and enable the director to properly determine distributions to shareholders and any creditors. KordaMentha's engagement is now fully funded, and the analysis is so close to completion that it would be highly inefficient for the FMA to step in and appoint a liquidator at this stage.

The director would also like to highlight that the FMA has applied to have their costs in bringing the liquidation application paid out of the assets of the Forestlands Companies. In the director's view, this adds an additional layer of unnecessary cost for shareholders. Presently the director has and intends to continue to fund the analysis, up to the point of preparing a distribution proposal.

Tax liabilities

The sale of the Forestlands Companies' assets in October 2016 gave rise to income tax liabilities for the year ended 31 March 2017. The Forestland Companies' accountant has assessed the income tax payable by the companies, having regard to tax losses brought forward from previous years. This assessment results in income tax being payable by 10 of the Forestland Companies (Forestlands No 2, 10, 11, 12, 14, 16, 17, 18, 19, 20).

The FMA declined to agree to a request for the tax liabilities to be paid out of funds held on trust by Anthony Harper, as the liquidation proceedings had been filed and the matter was already before the Courts. The Forestlands Companies therefore filed an urgent application to the Court for an order that the tax liabilities plus accrued interest may be paid from those trust funds. This order was granted by judgment dated 23 April 2018. Accordingly, a payment of \$1,641,789 is being made to the Inland Revenue Department in respect of those tax liabilities.
