

2000 CSIR Courses

CSIR in South Africa is offering the following 2 tree breeding courses in year 2000. Our courses have attracted many international participants from as far a field as Australia, Indonesia, Europe, South America and of course Africa. The courses are: Specialist Eucalypt Breeding Techniques 17th July - 2nd August 2000. Optimising Tree Breeding Strategies: A course and workshop 2nd - 6th October 2000. More information is also available on the Internet and in the brochures which will be mailed shortly. Please go to the CSIR's home page <http://www.csir.co.za> select "Inside CSIR" and then select "CSIR courses". Tree Improvement, Forestry & Forest Products, Environmentek, CSIR, PO Box 395, Pretoria 0001, RSA. Tel: +27 12 841 4258; Fax: +27 12 841 2228; email: www.csir.co.za

September 27-29

First Announcement and Call for Papers for the ERB2000 Conference on Monitoring and Modeling Catchment Water Quantity and Quality, to be held in Gent (Belgium), September 27-29, 2000. The provisional registration deadline is February 15. More detailed information can be found on: <http://neiden.rug.ac.be/erb2000>. Conference themes comprise a wide range of hydro(geo)logical, environmental and meteorological issues

8-13 October

Conference of the IUFRO Working Party 2.08.01 Tropical Species Breeding and Genetic Resources Durban, South Africa Theme: "Forest Genetics for the next Millennium" For more information contact The Conference Organiser, P O Box 11636, Dorpspruit 3206, South Africa. Tel: +27 33 3425779; Fax: +27 33 3944842; e-mail: iufro@icfr.unp.ac.za There will also be a pre- and post conference tour.

28-29 October

NZ Pine Manufacturers' Association, Mt Maunganui, New Zealand. Venue and theme to be finalised. nzpm@xtra.net.nz



Forestry rights explained

Tim Storey

Introduction

The purpose of this article is to explain the legal status and background of forestry rights and to describe the terms and conditions you would expect a forestry right to contain.

Forest investment

Historically, a forest investor owned both land and trees. As forestry investment has become more popular, and sophisticated, there has been a move towards splitting the ownership of land from the ownership (and management) of trees.

Prior to the passing of the Forestry Rights Registration Act in 1983, there were various structures that allowed this separation of ownership, but they had their problems. While those previous structures are still used, the creation of the forestry right structure introduced an easy, flexible and legally binding mechanism to allow the division of ownership.

Other legal mechanisms

It is a fundamental concept of land law that trees growing on land belong to the owner of the land. Conceptually, it is difficult to give someone other than the landowner, legal ownership of trees. If the owner did not wish to cut the trees there were other ways an owner could allow a third party the rights to cut the trees – in practice (if not strictly legally) pass ownership of the trees.

Lease

One way was granting a lease of the land that allows a lessee the right to harvest the trees. The parties to the lease agree terms including rights of access. But a lease is not suitable in every situation. A lease must give exclusive possession of the land to the lessee, meaning that the lessor's rights in relation to the land are significantly reduced and this isn't always acceptable. Other problems arise. Due to the long-term nature of a forestry venture a lessee would normally be advised to register the lease against the title to the land. This may be straightforward if the land is contained in one certificate of title, however it can be difficult to register a lease if it is for an area that is less than all the land on the title. In that situation a plan of subdivision is required. Or, if it is for a term in excess of 20 years, in general the lease would be classified as a subdivision under the Resource Management Act 1991 and the parties would need to obtain a resource consent from the local authority before the lease is granted. Resource consents can be expensive particularly with the possible associated costs of reserve fund contributions.

Profit a prendre

Another vehicle commonly used by landowners was a legal device called a profit a prendre. A profit is a licence to cut and remove something from another's land, in this

case timber. It is different from a lease in that a profit can give the holder of it an exclusive right to take the product from the land but not exclusive possession of the land. This situation suits farmers that may want to retain control and possession of their land but sell the right to harvest the timber. The main problem with profits is that they can not permit planting although they could allow for maintenance and harvest. So, a profit can not cover the situation where an owner wishes to grant the right to plant and establish a forest.

The Forestry Rights Registration Act 1983

It was to overcome the sorts of hurdles described above that in 1983 the Government introduced the Forestry Rights Registration Act 1983 ("the Act").

The Act allowed for the creation and registration against title to land of an agreement that allowed for the separate ownership and management of trees. In effect, it permitted a profit *a prendre* to be granted by a landowner enabling the holder to plant and establish forest as well as to cut standing timber.

A forestry right is defined in the Act as a right granted to any... person to:

- a) establish, maintain and harvest; or
- b) maintain and harvest, a crop of trees on that land together with:
- c) ... ancillary rights of access and of constructing and using such tracks culverts, bridges, buildings and other works and facilities as may be necessary to establish maintain and harvest or as the case may be, to maintain and harvest that crop; and
- d) any provisions for charges, payments, royalties or division of the crop or proceeds of the crop.

As can be seen the concept of a "forestry right" is very broad and can mean many things. Depending on its terms, it can range from a simple cutting right to a long term (+ 20 years) right to plant, tend and harvest a forest. Of course, this flexibility can cause confusion. When talking about forestry rights, the first thing to find out is the terms of the forestry right! As is apparent, the forestry right regime is a framework, rather than a specific single structure.

Nevertheless, its advantages over other legal mechanisms are several.

Advantages

- All of the law relating to profits *a prendre* and more, applies to forestry rights.
- All of the various combinations of terms that are required in a workable forestry joint venture agreement can be contained in a forestry right.
- The forestry rights can be registered against the title to the property without the need to comply with the standard land transfer requirements as to survey. The boundaries in an application for registration of a forestry right can be shown by reference to a diagram or an aerial photograph.
- A forestry right is deemed not to be a subdivision for the purposes of the Resource Management Act 1991 and the landowner does not need to comply with the

provisions of that Act in relation to esplanade reserves and strips.

- An overseas person can acquire an interest in a forestry right without the need to obtain the consent of the Ministers of Finance and Land under the Overseas Investment Act 1973.
- Rather than mortgaging land a forestry owner can raise money using a forestry right – as a mechanism to sell trees or perhaps as security for the loan. This can be of particular benefit to Maori land owners who can use the trees as security but cannot alienate the land.
- The ability to transfer a forestry right gives investors the flexibility to sell their investment at any time (unless the parties decide themselves to prohibit assignment).
- Once the forestry right is registered it continues regardless of the changes in ownership of the underlying land.
- Owners may sell the land but retain ownership of the trees by granting a forestry right to themselves.
- But there are some disadvantages.

Disadvantages

Once the forestry right is registered against the title its terms can be searched by any member of the public. The parties may need to enter into extra (unregistered) documentation if any details are to be kept confidential.

From a landowner's point of view if there is a mortgage registered against the title to the land, the landowner will usually need to obtain the consent of the mortgagee before granting and registration of the forestry right.

Generally, the advantages of forestry rights far outweigh the disadvantages and the use of forestry rights has taken off, particularly after more favourable tax changes were introduced in 1991. Nowadays, they are common structure in the forestry industry.

Terms of the forestry rights

When looking at forestry rights, a number of things need to be considered. Some of the more important:

- What sorts of rights are given – does it include planting?
- What does the grantee (holder) pay for the forestry right – a lump sum up front? An annual rental? A share of the eventual harvest?
- How long is the term? Can it be renewed?
- Does the grantee have to replant? What condition must the holder leave the land in on termination?
- Does the holder have to remove all timber, or is the right only permissive?
- Who is responsible (as between the owner and the grantee of the forestry right) for obtaining and complying with all the necessary resource consents? Consents are usually required to cover all the activities from planning to harvesting including establishment and thinning.
- Who is responsible for maintenance of boundary fencing and gates?
- Who is responsible for paying rates and any other