

# Securities law for forestry investment schemes

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The opportunity to invest in a forest can be tempting for many New Zealanders. Traditionally many kiwis have an interest in land-based industries and they also like to support home-grown products.

Despite this interest people may not be very knowledgeable about forestry as a business. In particular, they may not fully understand its long-term nature and the difficulties of predicting the future value of forest products.

Most forestry investment schemes involve offers of securities and therefore they must comply with securities law. Just as forestry is a highly specialised area of land use, securities law is a specialised area of law. People who want to offer securities should get advice from a lawyer who is experienced in securities law. Ideally they should do this in the planning stages for their scheme, and certainly long before they begin preparing the necessary documents or advertising the investment.

Disclosing information about the investment is one of the main requirements of the Securities Act 1978. These rules are designed with the "prudent but non-expert" investor in mind. They require investors to be given relevant and important information about the investment so they can make an informed decision on whether or not to invest. The information must be accurate and up to date.

Offers of securities to the public must have an investment statement and a prospectus which is registered with the Companies Office. The information that must be included in these offer documents is set out in the legislation. Above all, they must not contain any information that would be likely to deceive, mislead, or confuse investors.

The Securities Commission reviews offer documents for forestry schemes from time to time. When offer documents do not comply with the law the Commission takes enforcement action under the Securities Act.

Problems with documents for forestry schemes which the Commission has encountered in the past include:

- failure to fully disclose the manager's or promoter's interests in the scheme;
- failure to fully disclose the risks of the scheme; and
- projections and forecasts which could confuse or mislead investors.

Forestry is a long-term investment, and it is difficult to predict what an investment might be worth in 30 years or so. However it is not acceptable for promoters to use simplistic comparisons of historical log prices which could give a misleading picture of likely returns on the investment. Some offer documents have used statistics based on the best scenario and do not refer to the worst case outcome, or even to recent times.

Issuers and promoters of forestry schemes which fail to comply with securities law can expect costly delays. The Commission has powers to ban offer documents and advertisements which do not comply with the law. If the securities have already been issued in a way which does not comply with the law, the issuer may be required by law to refund money to investors. The manager, the directors and principal officers, and any promoter of the offer may in some cases face criminal prosecution if they break securities laws, or be sued by investors if advertisements or offer documents are misleading.

It is not in anyone's interests to cut corners when preparing an investment offer for the market. Investors are legally entitled to know what they are investing in.

The Commission will take appropriate action wherever it finds offer documents or advertisements for a forestry scheme fail to comply with securities law.