

Version No. 001
Forestry Pulp and Paper Company's
Afforestation Contracts Act 1949

Act No. 5373/1949

Version as at 1 November 1999

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**Forestry Pulp and Paper Company's
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Act No. 5373/1949

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An Act to make provision for Facilitating the Realization of
certain Forestry Lands and Plantations and the Produce thereof
and for matters incidental thereto, and for other purposes.

Preamble

WHEREAS the Forestry Pulp and Paper Company of Australia Limited incorporated in Victoria and having its registered office at No. 440 Little Collins-street, Melbourne (hereinafter referred to as "the Company") acquired certain land in the district of Dartmoor and situated partly in Victoria and partly in South Australia and certain land at Pittwater and South Bruny Island in Tasmania and certain other land at Flinders in Victoria for the purpose of making and maintaining plantations of trees thereon intended to be used for commercial purposes:

AND WHEREAS the company and its predecessors in title have from time to time entered into contracts for the sale of subdivisional allotments of the said lands to various persons in Victoria and elsewhere whereby the respective vendors agreed with the respective purchasers to establish plantations of trees thereon and tend and cultivate the same and eventually to harvest such trees and realize the same for commercial purposes and distribute the net proceeds of such realization between the respective vendors and the respective purchasers in certain proportions set forth in the respective contracts and to transfer under certain conditions therein set forth the allotments therein

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described to the respective purchasers in fee simple:

AND WHEREAS large areas of the said lands have from time to time been improved and planted with trees pursuant to the said contracts and the company has erected mills with plant and machinery for the treatment and disposal of the produce of the plantations and has moneys available for distribution pursuant to the said contracts:

AND WHEREAS the company has acquired by assignment all such contracts as were made by its predecessor in title and has assumed all the obligations of the vendors thereunder:

AND WHEREAS in some cases the whole of the purchase money has been paid by the respective purchasers and in other cases part only of the purchase money has been paid:

AND WHEREAS it has become impracticable to carry out the said contracts according to the terms and conditions thereof and it is expedient that provision should be made for the modification thereof as hereinafter provided:

BE IT THEREFORE ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

1. Short title

This Act may be cited as the **Forestry Pulp and Paper Company's Afforestation Contracts Act 1949.**

2. Definitions

In this Act unless inconsistent with the context or subject-matter—

"Company" means the Forestry Pulp and Paper Company of Australia Limited;

"afforestation contract" means any existing agreement for sale of land made by the company or its predecessors in title with any person at any time prior to the commencement of this Act whereby the company or its predecessors agreed to plant tend and cultivate trees or plants on the land included in the agreement and in due course to harvest and realize the same for commercial purposes and divide the proceeds between the Company and the purchaser in the proportions stated in such agreement and to transfer to the purchaser the fee simple in the said land;

"purchaser" means a purchaser under an afforestation contract, and **"purchase money"** means the purchase money payable by the purchaser under an afforestation contract;

"stock" means a certificate entitling the registered holder thereof to a share in the real and personal property held by the Company in trust for purchasers under afforestation contracts, and **"stockholder"** means a registered holder of stock.

3. Application of Act

This Act shall apply to all afforestation contracts made by the Company and its predecessors in title prior to the commencement of this Act.

4. Vesting of real and personal property in the company

Immediately upon the commencement of this Act and notwithstanding any provision in any afforestation contract or in the memorandum or articles of association of the Company to the contrary the following real and personal property shall be held by the Company in trust for all purchasers in manner hereinafter provided—

- (a) all land at any time prior to the commencement of this Act acquired by the Company for afforestation purposes and whether included in any afforestation contract or not except—
 - (i) any parcel of land at any time prior to the commencement of this Act transferred or conveyed in fee simple by the Company to any purchaser or by his direction;
 - (ii) any parcel of land not included in any afforestation contract on which buildings or mills are now or hereafter erected;
- (b) all moneys and securities for money held by the Company in trust for purchasers at the date of the commencement of this Act; and
- (c) all trees timber and the produce of the trees and timber grown upon any land acquired by the Company for afforestation purposes prior to the commencement of this Act.

5. Issue of stock

- (1) The Company shall issue to every purchaser stock of the Company equal in amount to the amount of purchase money agreed to be paid by the purchaser under his contract together with an additional sum equal to a percentage of seven and
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one-half per centum per annum calculated at simple interest on such purchase money from the thirty-first day of December in the year in which the contract was made until the thirty-first day of December, One thousand nine hundred and forty-one, and the same shall be accepted by the purchaser in full satisfaction and discharge of all his right title and interest under his contract without prejudice to any right which the Company may have under the terms of any such contract to enter upon the land comprised therein for the purpose of performing its obligations to the purchaser as provided in this Act.

- (2) The Company shall not issue stock in respect of fractions of a pound but shall issue to every purchaser stock for an amount equal to the amount ascertained as aforesaid to the nearest pound.

6. Stock as set out in Schedule 1

To every purchaser who has prior to the commencement of this Act paid the whole of his purchase money the Company shall issue stock in the form set out in the First Schedule to this Act.

7. Stock as set out in Schedule 2

To every purchaser who is indebted to the Company at the date of the commencement of this Act in respect of any portion of his purchase money the Company shall issue stock in the form set out in the Second Schedule to this Act, and the Company shall have a first and paramount lien upon such stock for all unpaid purchase money (without interest) whether the period for payment has actually arrived or not and no equitable interest in any such stock shall be created except upon the footing and condition that section fourteen hereof is to have full effect and such lien shall extend to all dividends from time to time declared in respect of such stock. Save as

aforesaid no such purchaser shall be under any liability to the Company in respect of any unpaid purchase money but any such purchaser shall have the option at any time of paying to the Company such unpaid purchase money or any part thereof. Upon payment or satisfaction of the whole of the unpaid purchase money and upon delivery up of such stock to be cancelled the Company shall issue to the purchaser stock in the form set out in the First Schedule to this Act.

8. Stock register

The Company shall from time to time cause the names and last known addresses of stockholders with the amount of stock to which they are respectively entitled to be entered in a register to be kept for the purpose at the registered office of the Company and called "Register of Stockholders" and such register shall be accessible at all reasonable times to the several holders of stock. The surnames or corporate names of the stockholders shall be entered therein in alphabetical order.

9. Stock in name of deceased purchaser

If any purchaser (not being a joint purchaser with any other) be dead at the date of the issue of stock his name may be entered in the register for such stock as it would have been if he had been then alive and his executors or administrators may upon application to the Company become registered as the holders of such stock as such executors or administrators.

10. Certificate to be evidence

A certificate shall be admitted in all courts as primâ facie evidence of the title of such stockholder his executors administrators or assigns to the amount of stock therein specified subject to the conditions appearing thereon.

11. Two or more holders

A certificate of stock registered in the names of two or more persons shall be delivered to the person first named in the register.

12. Right to transfer stock

The several holders of stock may transfer their respective interests therein by an instrument of transfer in the form set forth in the Third Schedule to this Act or as near thereto as circumstances will admit.

13. Registration of transfer

The said instrument of transfer (when duly executed) shall together with the certificate be delivered to the secretary of the Company to be kept by him and the secretary shall enter a memorial thereof in a register to be called "Register of Transfers" and shall endorse such entry on the instrument of transfer and shall on demand deliver a new certificate to the purchaser and until such transfer has been so delivered to the secretary the purchaser of the stock shall not be entitled to receive any dividend declared in respect of the stock.

14. Registered holder or joint holders

Save as in this Act otherwise provided the Company shall be entitled to treat the registered holder of any stock as the absolute owner thereof and in case of the death of any one or more joint registered holders the Company will recognize

only the survivor or survivors as the absolute owner or owners thereof and accordingly shall not except as ordered by a court of competent jurisdiction be bound to recognize any equitable or other claim to or interest in such stock on the part of any other person.

15. Defaced or lost certificate

If any certificate be worn out or defaced then upon production thereof to the directors they may order the same to be cancelled and may issue a new certificate in lieu thereof; and if the directors are satisfied that any certificate has been lost or destroyed then on such indemnity as the directors deem adequate being given a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate.

16. Receipt by joint holders

Any one of several persons who are registered as the joint holders of any stock may give effectual receipts for all dividends and payments on account of dividends in respect of such stock.

17. Payment of dividends

Unless otherwise directed any dividend may be paid by cheque or warrant sent through the post to the registered address of the member or person entitled or in the case of joint holders to the registered address of that one whose name stands first on the register in respect of the joint holders; and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent.

18. Notice of dividend

Notice of the declaration of any dividend shall be given to the holders of registered stock in manner hereinafter provided.

19. Unclaimed dividends

All dividends unclaimed for one year after having been declared may be invested or otherwise made use of by the directors for the benefit of all registered stockholders until claimed and all dividends unclaimed for six years after having been declared may be forfeited by the directors for the benefit of the other registered holders of stock.

20. Obligation of Company to cultivate and maintain plantations, and harvest mill and market timber

- (1) The Company at its own expense shall tend cultivate and maintain under properly qualified supervision all the plantations now or hereafter standing or growing upon the lands acquired by it for afforestation purposes and take all such measures and precautions as shall be reasonably necessary or expedient for the protection and safety and cultivation of the plantations. The Company shall pay all municipal or shire rates and charges and any land tax payable with respect to such lands.
- (2) The Company shall in due course harvest and mill the timber grown on such lands and market and realize the same at such time or times and in such manner as the Company in its discretion thinks proper and may in its discretion either erect at its own expense any buildings mills plant and appliances reasonably required for the purpose or arrange by contract or otherwise for any harvesting milling and marketing to be done upon such terms and conditions as it thinks fit.

21. Distribution of profits

The Company shall be entitled to retain for its own use twenty per centum of the net profits made from the marketing and realization of the said timber. "Net profits" shall mean the total amount realized after deducting all costs and expenses of harvesting milling pulping and marketing the produce but not including any allowance to the Company in respect of buildings mills plant and appliances erected by it. Save as aforesaid the net profits made from the marketing and realization of the said timber shall be divisible by way of dividend from time to time among all the stockholders in proportion to the amount of stock held by them respectively.

22. Accounts to be kept

The Company shall cause true accounts to be kept of the sums of money expended by the Company in the harvesting milling pulping and marketing of the produce of the said lands and in the realization of the same and of all moneys received from such realization and the matters in respect of which such expenditure and receipt take place and of all sales of the said lands and the produce therefrom made by the Company. The books of account shall be kept at the registered office of the Company or at such other place or places as the directors of the Company think fit.

23. Annual profit and loss account

Once at least in every year the Company shall cause to be prepared a profit and loss account of the matters aforesaid made up to a date not more than six months before the preparation of the same from the date up to which the last preceding account was made up and in the case of the first account from the date of the passing of this Act. Such account shall disclose the amount available

for dividend among the stockholders. Every such account shall be signed by two directors and countersigned by the secretary. The Company shall from time to time pay to stockholders such dividends as the profits disclosed by the profit and loss account justifies.

24. Account to be sent to stockholders and filed

A printed copy of every profit and loss account shall be sent to each of the registered holders of stock in the manner in which notices are hereinafter directed to be served; and a printed copy shall be filed in the office of the Registrar-General within twenty-one days after its preparation.

25. Conversion by the Company of lands held by stockholders into cash and distribution of proceeds

- (1) The Company may from time to time sell and convert into money the lands held by the Company in trust for stockholders pursuant to this Act and shall so sell and convert the same when all timber or the produce of timber grown upon the same shall have been harvested milled and marketed as aforesaid.
- (2) The net proceeds of any such land so sold by the Company shall be divisible from time to time among all the stockholders in proportion to the amount of stock held by them respectively and the Company shall pay to each stockholder his due proportion thereof.
- (3) When all the property so held by the Company in trust for stockholders has been realized and converted into money the Company shall make a final distribution of any money held by it in trust for stockholders among the stockholders in proportion to the amount of stock held by them respectively.

26. Cancellation of stock certificates

Before making any such final distribution the Company may require all or any of the stock certificates to be given up to be cancelled and the same shall be given up accordingly.

27. Audit of accounts

Once at least in every year the accounts aforesaid shall be examined and the correctness of the profit and loss account aforesaid ascertained and certified by a duly qualified auditor to be appointed by the Company.

28. Service of notices

A notice may be served by the Company upon any registered holder of stock either personally or by sending it through the post in a prepaid letter envelope or wrapper addressed to such member at his registered place of address and with respect to any stock to which persons are jointly entitled notice to whichever of such persons is named first in the register shall be sufficient notice to all the holders of such stock.

29. Determination of questions relating to trust created by this Act by Supreme Court

The Company, any trustee substituted for it, the stockholder's director or any stockholder may at any time and from time to time apply to the Supreme Court or a Judge thereof for the determination of any question which may arise in relation to the trust created by this Act and the Supreme Court or a Judge thereof may make all such orders and give all such directions and confer such powers upon the Company or any trustee substituted for it as the Court or a Judge thereof may deem necessary or expedient for the purpose of carrying out such trust or protecting the rights and interests of stockholders. The powers hereby

conferred upon the Court or a Judge thereof shall be in addition to and not in substitution for any power vested in it or him under the **Trustee Act 1928** or otherwise. The power to appoint a new trustee or trustees in substitution for the Company shall be exerciseable only by the Supreme Court or a Judge thereof.

30. Stockholder's director to be appointed pending final distribution among stockholders by Company

- (1) Until the whole of the property so held by the Company in trust for stockholders has been realized and converted into money and the proceeds thereof distributed among the stockholders a stockholder or other person selected and appointed by the Governor in Council shall be a director of the Company in addition to the directors appointed by the Company and shall be called "the stockholder's director".
- (2) Notwithstanding the provisions of the memorandum and articles of association of the Company any person so appointed shall subject to this section hold office as the stockholder's director until requested to retire by the Governor in Council.
- (3) The stockholder's director shall not be required to hold any shares in the Company as a qualification to be such director.
- (4) The stockholder's director shall be paid by the Company the same remuneration as is payable by it to the other directors of the Company (other than the managing director).
- (5) The stockholder's director may at any time by notice in writing to the Company resign his office.

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- (6) As and whenever the person appointed as the stockholder's director vacates such office whether upon request as aforesaid or by death retirement or otherwise the Company shall notify the Governor in Council accordingly and the Governor in Council may appoint another person as stockholder's director in his place.
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SCHEDULES

FIRST SCHEDULE

Sections 6, 7.

THE FORESTRY PULP AND PAPER COMPANY OF AUSTRALIA
LIMITED.

No.

This is to certify that A.B. of _____ is the
registered holder of the sum of £ _____ stock (fully paid) of the
above-named Company subject to the provisions of the **Forestry Pulp and
Paper Company's Afforestation Contracts Act 1949**.

Given under the Common Seal of the Company this _____ day
of _____ 194 _____.

The Common Seal of the Company was }
hereunto affixed in the presence of }
..... }
..... } Directors.
..... }
..... Secretary.

(Seal of the
Company.)

NOTE—No transfer of the stock comprised in this certificate will be
registered until this certificate is delivered up at the Company's office.

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Section 7.

SECOND SCHEDULE

THE FORESTRY PULP AND PAPER COMPANY OF AUSTRALIA
LIMITED.

No.

This is to certify that A.B. of _____ is the
registered holder of the sum of £ _____ stock of the above-named
Company subject to the provisions of the **Forestry Pulp and Paper
Company's Afforestation Contracts Act 1949** upon which the sum of £
_____ is at the date hereof due and owing to the Company.

Dividends payable in respect of such stock may be applied by the Company
pro tanto in satisfaction of the balance of the sum due and owing.

Given under the Common Seal of the Company this _____ day
of _____ 194 .

The Common Seal of the Company was
hereunto affixed in the presence of

..... }
..... }
..... } Directors.
..... }
..... Secretary.

(Seal of the
Company.)

NOTE.—No transfer of the stock comprised in this certificate will be
registered until this certificate is delivered up at the Company's office.

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THIRD SCHEDULE

Section 12.

THE FORESTRY PULP AND PAPER COMPANY OF AUSTRALIA
LIMITED.

I _____ of
being the registered holder of £ _____ Stock numbered _____ of
the Forestry Pulp and Paper Company of Australia Limited in consideration
of _____ pounds paid to me by
of _____ hereinafter called "the transferee" do
hereby transfer to the transferee the said stock to hold unto the transferee his
executors administrators and assigns subject to the several conditions on
which I held the same immediately before the execution hereof; and I the
transferee do hereby agree to take the said stock subject to the conditions
aforesaid.

As witness our hands the _____ day of

Transferor.

Witness

Transferee.

Witness

=====

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Endnotes

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ENDNOTES

1. General Information

The **Forestry Pulp and Paper Company's Afforestation Contracts Act 1949** was assented to on 7 June 1949 and came into operation on 7 June 1949.

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Endnote

2. Table of Amendments

There are no amendments made to the **Forestry Pulp and Paper Company's Afforestation Contracts Act 1949** by Acts and subordinate instruments.

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3. Explanatory Details

No entries at date of publication.