



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 116

Commentary on compliance plans: Agricultural industry schemes

April 2004



ASIC

Australian Securities & Investments Commission

Commentary on compliance plans received by ASIC

Agricultural industry schemes

Practical feedback based on ASIC's review of compliance plans submitted since 1 July 1998 and other compliance plan related activities — including surveillances and breach notifications

April 2004

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First published March 2000

Revised April 2004

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How we developed this commentary

The managed investment industry asked for our feedback on compliance plans lodged with us. This commentary summarises the better compliance plans submitted to us and is a practical guidance for members of the industry.

This document is not a checklist for compliance with the *Corporations Act 2001* (Corporations Act). You should also refer to our Policy Statement 132 *Managed investments: Compliance plans* [PS 132]. Although this commentary reflects current compliance methodology it must not be used as a substitute for Australian Standard® AS 3806–1998: *Compliance programs* and other compliance information.

Review of approved compliance plans

Between 1 July 1998 and July 1999 we reviewed over 300 compliance plans that had been submitted for approval. Our reviews highlighted a wide variety of styles and content in compliance plans. We welcome this variety as it reflects the diversity in the nature of managed investment schemes and the scale of their operations.

In our review of plans we:

- compared the plans against [PS 132], which sets out our policy on compliance plans;
- separated the plans into industry type, ie financial assets, property and agricultural;
- reviewed each plan noting which sections and operations were used consistently in plans for each industry group; and
- for each section or operation, noted examples that stood out in clarity, format and meeting compliance objectives.

Further review in 2003

Between June 2003 and August 2003 we conducted an additional review of surveillance activities, breach notifications and associated compliance plans relating to the period 1 July 2001 to May 2003. This review covered:

- qualified compliance plan audit reports lodged with ASIC;
- breach notifications about inadequacies in compliance plans or breaches of compliance plan provisions reported to ASIC; and
- surveillance activities carried out by ASIC which discovered breaches of compliance plans.

These reviews highlighted a number of concerns about the quality of compliance plans, identified a number of plans that were inadequate and a number of instances of non-compliance with plans. In some cases the inadequacies were general in nature and in other cases the issues related to specific compliance measures not being included in a plan or being inadequately set out in the plan.

Choosing examples for this commentary

The comments and suggestions in this commentary are based on compliance plans that we believe contribute to an effective compliance plan. The commentary on operational procedures generally includes two examples for the different activities undertaken. We found that many plans included good and bad parts. Therefore the first example is often a combination of different plans. However, the second example is taken from an actual compliance plan we have reviewed.

Other commentaries

We recognise the diversity of the managed investments industry. Therefore, we have produced separate commentaries on compliance plans for:

- financial assets;
- property;
- agricultural schemes; and
- mortgage schemes.

We have not produced separate commentaries for different operational structures.

Features of better plans

Use plain language

Better plans use:

- plain English and avoid legal or industry jargon;
- a simple structure including a contents list and clear headings; and
- meaningful words to describe what is actually done, eg “a documented due diligence process is applied to each Product Disclosure Statement. The compliance manager is responsible for ensuring the process takes place and that it has been carried out properly.” This means that compliance with the plan can be audited against these measurable standards. (Avoid vague terms such as “appropriate”, “adequate” or “sufficient”.) See [PS 132] at [PS 132.4] and [PS 132.17]–[PS 132.19].

Better plans also include:

- An overview about the plan, its scope, aim and where it sits in the Responsible Entity's (RE's) compliance and risk management framework.
- A section to explain “how to use” the plan, eg in some plans you need to read some sections first before you can understand how other sections need to be applied. A how to use guide is helpful and assists the many users of the compliance plan.

State who must do what by when

Better plans focus on the tasks staff must do. Staff will see them as “documents for our lawyers” if plans do not tell them this. With better plans staff can easily find out:

- who is responsible for a certain task and when, or how often, that task must be done;
- how they can meet these obligations; and
- how their work will be monitored.

However, better plans also give staff enough information about the legal concepts and requirements so that they can quickly apply that knowledge in their day-to-day tasks. Plans that state clear timeframes are more easily audited and complied with. For example, words such as “regularly”, “periodically”, “as required” should be avoided, as they do not provide a standard that can be monitored and audited.

Plans that state who or what position is responsible for certain tasks create a sense of ownership of tasks. This also makes it easier to monitor such plans.

Describes monitoring and reviewing activities

Better plans state when reporting on compliance must take place. They state specific dates or use such terms as “no less than monthly”. (“Regular” is meaningless when describing the frequency of reporting.)

When detailed procedures are described in another document, the better plans state how compliance with those procedures is monitored and how the procedures are reviewed. However, only high level procedures are described in the plan document. Individual tasks that are part of their procedures are better contained in other documents in order that they can be easily changed.

Better plans clearly outline:

- how breaches are reported and who is responsible for rectifying them, and
- what action needs to be taken if the plan is breached.

Better plans state “how and when” the plan will be reviewed so that it continues to comply with the Corporations Act and the Constitution. These plans are better equipped to ensure that the plan complies with the Corporations Act by continuing to be adequate.

There are no limitation or exclusion clauses in the better plans. Nor do they delegate the obligations of the compliance committee.

Monitoring compliance

Generally we found that the better compliance plans had been prepared or extensively reviewed by the business. We found they were more likely to reflect:

- an analysis of the risks of the business that might impact on the investors or the scheme;
- the actual business processes in place to minimise risk and ensure compliance (rather than generic processes); and
- the measures used by the business to monitor and accurately report on compliance and the monitoring of breaches.

We note that the better plans clearly address the structure of the RE, in particular the outsourcing risks of special purpose REs (or REs for hire).

There was a great deal of variation in the level of detail in the plans. Not surprisingly, plans for smaller entities contained more detailed procedures that reflected their flatter and smaller structures. Larger entities referred to detailed procedures in internal documents.

Some plans did not contain enough detail to be audited. Often we saw plans that were so vague that the organisation would not know whether the plan had been breached.

The better plans were clear about:

- what the obligation was;
- what the risk of non compliance with the obligation was;
- what procedures were in place to meet that obligation;
- how those procedures were monitored; and
- who was responsible for monitoring compliance with that procedure.

The better plans, when referring to documents that contained procedures, detailed how the procedures are monitored and updated.

Compliance with procedures

In our review undertaken in 2003 it was noted that a large number of qualified compliance plan audit reports are being lodged with us due to inadequate monitoring of compliance plan procedures, or due to non-compliance with procedures. It is vital that compliance plans include adequate procedures for monitoring compliance with the compliance plan and adequate resources are devoted to this role. The key findings in this area were:

- Qualification of audit reports due to breaches of the financial conditions of a RE's licence and the failure to lodge scheme financial statements or compliance plan audit reports with ASIC within the required time period.
- Plans that included detailed compliance procedures in attachments, after the main body of the plan, had more instances of non-compliance with procedures.
- Plans that required one person to monitor a number of the procedures had more compliance plan audit qualifications for non-compliance. This highlights the need to ensure that only persons with adequate time and experience are assigned to monitor compliance with procedures.
- Persons nominated for compliance monitoring also having other significant and possibly conflicting duties, eg being the compliance officer and the managing director of the responsible entity. In these circumstances, there is a greater chance of non-compliance with the procedures in the plan. When drafting the plan care should be taken that those assigned to compliance plan roles do not have conflicting duties.
- The most common reason why compliance plan audit reports were qualified was the failure of the RE to comply with compliance plan requirements for the financial conditions of the dealers licence.
- Breaches of plans also occurred because distributions of income to investors were not paid on time, were not paid at all or incorrect payments were made. This was due to plans not dealing adequately with the requirements for calculation of distributions or because plans included inadequate procedures for the monitoring of distributions.

Adequacy of procedures

Based on our review in 2003, we have set out below a summary of the major issues that caused plans to be inadequate, which would apply to any type of compliance plan. We recommend the consideration of these issues when preparing a plan.

- Plans which were a standard or model plan (“Off the Shelf Plan”) or primarily based on an Off the Shelf Plan were found to result in a larger number of qualified audit reports and breach notifications to ASIC relating to inadequate plan procedures and/or non-compliance with procedures in a plan. This emphasises the importance of plans being prepared that are specifically written for the type of scheme and the individual business to be operated.
- Plans in which the compliance procedures were set out in a narrative style as opposed to a table format were found to result in more breaches of compliance plan procedures and more inadequate plans. We do not necessarily recommend any particular style of plan, however, it should be simple to monitor and audit compliance.
- Compliance procedures for ensuring financial conditions were complied with were sometimes inadequate. They were not detailed enough to cover all the requirements of the financial conditions set out in the licence; in particular there was often was no procedure to check compliance with all the licence conditions.
- The failure to report breaches of the plan to the board of directors of the RE and/or compliance committee was a common matter reported as a breach of plans by auditors. Plans need to include procedures for checking that breaches of plans are reported by the RE.
- We also noted that we are issuing an increasing number of interim and final stop orders on Product Disclosure Statements (PDSs). It was apparent that due diligence being carried out on PDSs and procedures in plans for review of PDSs needs to be improved. In particular forecasts were included in PDS for which there was no reasonable basis and where the disclosure of fees and expenses was inadequate.

Specific issues identified from the review which relate to agricultural schemes include:

- The failure to ensure that leases are registered on title to protect investor’s interest. The need for procedures in the plan for this are clearly set out below at section 3.2.
- The inclusion of forecasts in PDSs for which there is no reasonable basis. Plans need to include more specific compliance procedures to ensure that forecasts have a reasonable basis.

Use of references for advice

Better plans:

- refer to Australian Standard® AS 3806–1998: *Compliance programs*, and
- reflect other compliance plans they have, for example, plans for trade practices, life insurance and superannuation requirements.

1 Commentary on fundamentals of the structure of plans

1.0 Contents page

Our staff found that compliance plans containing a contents page at the beginning of the document were much easier to review.

We also anticipate that as compliance plans are a working document and are expected to be used on a frequent basis by numerous parties, a well-planned contents page will:

- reduce time spent locating relevant clauses; and
- provide an overview of the scope of the compliance plan.

We found that in better plans, the contents page was not too detailed, and was only one to two pages in length.

The best plans highlighted areas users are most likely to regularly look for, eg operational matters such as valuation of scheme property.

Example of a contents page

	<i>Page</i>
1 Information about this plan	
1.1 Purpose of this plan.....	
1.2 How to read this plan.....	
1.3 Description of the scheme	
2 Framework	
2.1 Compliance framework.....	
2.2 Role of the compliance committee.....	
2.3 Role of the compliance officer.....	
2.4 Role of audit.....	
2.5 Reviewing and amending the compliance plan.....	
2.6 Summary of compliance procedures	
3 Operational procedures	
3.1 Valuation	
3.2 Income.....	
3.3 Fees and expenses.....	
3.4 Unit pricing	
3.5 Applications, redemptions and distributions.....	
3.6 Trades, churning and investment restrictions.....	
3.7 Safe keeping and segregation of scheme property	
3.8 Record keeping and disclosure	
3.9 Capital, liquidity and insurance.....	
3.10 External service providers.....	
3.11 Training and recruitment	
3.12 Promotion of scheme.....	
3.13 Monitoring Australian financial services licence and authorised representatives	
3.14 Related party issues.....	
3.15 Market manipulation	
3.16 Complaints.....	
3.17 Reporting breaches	
3.18 Risk Management.....	
Appendices	
A1 Glossary	
A2 Organisation structure chart.....	
A3 Compliance committee charter	
A4 Pro forma compliance committee meeting agenda.....	
A5 Pro forma compliance report by responsible officer	
A6 Pro forma breach report.....	

1.1 Purpose of plan

We found that good plans contained contextual information to assist the users of a compliance plan. Many users are unlikely to have been involved in drafting the document or have a compliance background. These plans contained a brief explanation of:

- the scope of the compliance plan;
- the aim of the compliance plan; and
- how the compliance plan fits into the RE's compliance and other management reporting framework.

This information is likely to be very helpful to the auditor as well as to us in understanding the RE's approach to compliance.

Plans that did not contain this type of contextual information were more difficult to understand and in our view reflected a lack of thought about the role of the plan and a lack of commitment to it working in practice.

Example

1.1 Purpose of this plan

Set out main objective of plan, eg:

This compliance plan sets out the key processes, systems and measures the RE will apply to ensure compliance with the:

- Corporations Act;
- scheme constitution;
- Australian financial services (AFS) licence;
- industry practice standards relevant to the scheme; and
- internal organisational standards and culture.

Comment on how the plan sets out to achieve this, eg:

This plan is a "how to" document, providing sufficient detail on:

- the obligations which must be met by the RE;
- the risk of non-compliance with these obligations;
- what measures or procedures are in place to comply with these obligations; and;
- how compliance with those measures and procedures will be monitored.

This plan also details the risks of not complying with these obligations, and how breaches are to be reported and addressed.

The description of measures in place allows RE staff with compliance responsibilities, to identify what procedures they are responsible for monitoring and how often they have to report on compliance or otherwise with those measures.

This plan must be integrated into the operations of the business and its use is not optional.

A statement of the organisation's compliance commitment is not often seen in compliance plans. However we feel that the better plans reflected a higher level of ownership when they clearly outlined the organisation's level of commitment to compliance, eg:

The organisation wants to achieve a compliance culture where each staff member owns compliance, and immediately reports and addresses breaches as far as practicable.

We want our staff to not only do the right thing, but also know how to do it. Failure to report a breach is treated seriously and as such, the organisation adopts a no blame policy in relation to breaches but not so in relation to failure to report.

1.2 How to read this plan

It was not easily apparent in many plans how various parts of the plan linked or affected other parts. Indeed on occasions when applicants were asked to explain how the plan worked they had difficulty answering. The better plans focused users to read the sections that describe the scheme and where they as responsible officers fit into the compliance framework.

Most compliance plans reviewed are targeted at ASIC whereas the best ones targeted the many users. For this reason very few REs addressed this important point.

Example

1.2 How to read this plan

It is vital that users of this plan understand their role in its effective implementation. The operational compliance measures noted in section 3 do not provide enough information on their own and there are several sections of the plan that must be read by all users of this document in order to fully understand their responsibilities.

Sections that are considered essential reading in addition to comments on procedural areas specific to the user are:

- 1.1 Purpose of the plan
- 1.3 Description of the scheme
- 2.1 Compliance framework
- 2.2 Role of the compliance committee
- 2.3 Role of the compliance officer
- A1 Glossary
- A2 Organisational structure chart
- A6 Pro forma breach report.

The plan is structured in such a way that it clearly identifies the legal responsibility that must be complied with and the risk of non compliance with that obligation. The procedures described are the part of processes used by the RE to meet that obligation. The plan identifies what part of the business is responsible for carrying out those procedures, how compliance with those procedures will be monitored and who is responsible for monitoring compliance. That person is also responsible for reporting compliance and non-compliance with those procedures to the Compliance Officer. The frequency of reporting is also stated.

1.3 Description of the scheme

In many instances it was not readily apparent what type of scheme the compliance plan related to. Some better plans reflected the understanding that a number of users of compliance plans will not be involved in the operation of the scheme and may need to review the compliance plan in isolation. These plans contained a brief description of the structure and purpose of the scheme for users so they could understand the risks facing the scheme and, hence why certain compliance procedures have been included or omitted. Its purpose was also to enable users to assess if the plan is adequately focussed on the most important risk areas. An example is the increased importance of compliance with investment restrictions for an ethical fund compared to funds with broader investment restrictions.

Unfortunately, many plans reviewed failed to comment on the particular risks faced by the RE in operating the scheme and ultimately the risks to investors. Indeed, for a number of plans, it was difficult to even identify the type of asset managed by the scheme. Some plans contained a brief description of the main risks facing the scheme early in the plan or described the scheme later in the compliance plan with the compliance procedure addressing that risk.

ASIC certainly found a brief description early in the plan helpful in terms of review, particularly for unusual or stand alone plans.

Example

1.3 Description of the scheme

The Scheme invests in a silviculture venture growing Tasmanian Blue Gums, or other suitable trees, for sale as saw milling timber and/or woodchips. Plantation land will be leased from the management company.

The RE manages the afforestation business under a lease and management agreement. Each unit held by investors represents 1.33 hectares of leased plantation land. The plantation is expected to be harvested and income distributed to investors approximately 11 years after planting.

The plantation management and custody functions are outsourced, however all investor relations are dealt with by the RE.

2 Compliance frameworks described in plans

2.1 Compliance framework/structure

A clear description of the RE's compliance framework or structure was a clear feature of the better plans. Entities included this in the plan to:

- aid in understanding the RE's overall approach to addressing compliance;
- provide background to the RE's compliance reporting structure; and
- provide staff with a clear statement on where the compliance plan sat in the framework.

Better plans reflected the understanding that the procedures and measures in the plan needed to be supported by a sound and workable compliance structure. Even though the structure is described in the RE's licence application, better plans also provided an overview in the compliance plan. In reviewing plans, we are mindful that the compliance structure is the framework in which the compliance plan sits and, if the fundamental framework does not work, it is unlikely that the compliance plan will achieve the desired outcome.

Australian Standard® 3806

For more information on compliance frameworks and structures we refer you to the Australian Standard® AS 3806–1998: *Compliance programs*.

Flowcharts

The better plans contained flowcharts of the compliance reporting structure to provide a clear picture of the compliance process and allow RE staff to quickly ascertain where they fit into the overall framework. They also helped us assess the adequacy of the RE's compliance structure, eg the level of access the compliance manager had to the compliance committee or Board. These are best left as position titles, rather than names of individuals so that the compliance plan does not need to be updated when organisational changes occur.

Monitoring compliance

Not all plans described how compliance with procedures will be monitored. For example:

- will the compliance officer visit the area concerned and talk to staff?
or
- is it a self assessment process which is periodically reviewed by internal or external auditors?

Again this area has been the focus of many requisitions by ASIC officers.

Transparent structure

The best plans showed the compliance reporting process in enough detail to enable the Compliance Committee to determine how the reports on compliance with procedures are put together. It was not clear in some plans who was responsible for producing reports for the compliance manager.

Truth in reporting

Few plans described the methodology by which compliance reports would be put together to ensure that the report reflected the correct position on compliance. Surveillances reveal that sanitisation of reports is a real risk area for an entity, as well as guess work at the basic reporting level.

2.2 Role of compliance committee

There was a variety in the level of detail about the function and responsibility of the Compliance Committee. The better compliance plans clearly explained the Committee Members' duties and emphasised the importance of fulfilling their obligations. As a result of our review in 2003 we would place particular emphasis on their obligation for reporting breaches to ASIC.

A number of REs included a Compliance Committee Charter describing the rules and guidelines to be followed by the Committee as an appendix to the compliance plan. See appendix A3: Compliance committee charter.

Some plans also included the process by which a Compliance Committee member is appointed. Other plans referred to documents outlining this process. It was not always clear how this process was going to be monitored.

Example

2.2 Role of the compliance committee

Compliance committee membership

Included details of minimum number of members, minimum qualifications and appointment process.

Responsibilities

Referred to duties per s601JC, stressing that the Committee must ensure the compliance plan meets the requirements of the Corporations Act on an ongoing basis. Many compliance plans also explained the Committee's procedure for:

- *dealing with breaches, including following up on action taken by the RE following recommendations made by the Committee, and reporting to ASIC if the RE has not taken or does not propose to take action to deal with a reported breach;*
- *ensuring they are made aware of all significant transactions involving scheme assets;*
- *ensuring the scheme is not trading while insolvent, or is not expected to be. This will include reviewing and approving any additional funding requirements of the scheme; and*
- *assessing if the RE's actions are in accordance with the Product Disclosure Statement, constitution, Corporations Act and in the investors' best interest.*

Meetings and reporting

This area included frequency of meetings, quorum and the requirement to take minutes for distribution to the Board. The better plans included a standard agenda as an appendix. See appendix A4: Pro forma compliance committee meeting agenda. This provides the Compliance Officer with a guide to the matters that need to be reported to the Committee at each meeting. Many plans disclosed the right of the Committee to access information, reports, resources, audit and experts as necessary. Better plans also contain details of when the Committee will report to ASIC and the regular consideration of whether any matters require reporting. We have noted from our review of breach notifications that very few breaches are reported to ASIC by Compliance Committees.

We have noted cases where a Compliance Committee has made no report to ASIC even when a scheme RE has gone into external administration or is likely to go into external administration and as a result is unable to be able to carry out its duties as a RE.

2.3 Role of compliance officer

The compliance officer features prominently in many plans in relation to reporting and monitoring on some obligations. The better plans explained the compliance officers pivotal roll in the compliance framework and responsibility for liaising between the compliance committee and the officers responsible for implementing and monitoring compliance procedures. The best plans stressed the importance of this role and explained the duties clearly.

Several REs achieved this by including in the compliance plan, as an appendix, a job description for the compliance officer position and a pro forma report to the compliance committee covering matters that need to be reported on a regular basis.

In some plans the compliance officer has been given too much responsibility and has been made responsible for carrying out most of the compliance monitoring. This may not be appropriate if it means that the compliance officer does not have time to carry out their duties effectively, particularly when they have other duties.

Better plans emphasised that the compliance officer had direct access to the board of directors or the compliance committee to ensure the officer had the appropriate seniority or “clout”.

Example

2.3 Role of the compliance officer

Overview of the role

The compliance officer will ensure adequate internal systems and controls have been implemented to ensure compliance with the Corporations Act, the scheme’s constitution, the entity’s AFS licence and internal and industry standards. These duties include promoting the compliance culture within the organisation and to external service providers.

The compliance officer is primarily responsible for reviewing compliance on an ongoing basis, reporting on compliance matters, including breaches, to the Committee and acting on recommendations of the committee. Matters can be escalated to the board or ASIC if necessary.

Qualifications, reporting line, frequency and format of reporting

The compliance officer must have a minimum of five years experience in the industry and report directly to the compliance committee monthly or more frequently as required. The format of reporting is as per the pro forma report in Appendix A5.

Some plans included other matters such as delegating, use of experts, access to external and internal audit, ensuring committee recommendations are implemented within a set time-frame, records, maintaining knowledge of best practice, ensuring staff have adequate access to procedures manuals, monitoring compliance of the Committee with the Compliance Committee Charter, ranking by significance the matters to be reported to the Committee, etc as applicable.

2.4 Role of audit

It was disappointing that most compliance plans make no mention of the role of internal audit. This included plans prepared by REs who are large financial institutions, with an internal audit service available, who presumably contribute in a particular way to the compliance framework.

The best plans explained the role of both the internal and external auditor in the compliance framework. As noted in section 2.1: Compliance framework/structure, many plans rely on audit to periodically review compliance frameworks that are based on a self-assessment process. It is more workable if a reader of such a compliance plan understands audit's role in order to understand the RE's approach to compliance.

These plans also explained who is responsible for addressing issues raised by internal and external audit, and who follows up any recommendations made and ensures they are implemented in a timely manner.

Some plans included provisions that require the compliance plan auditor to be responsible for checking compliance with specific matters. This is not the role of the external auditor, who should not be responsible for day-to-day compliance monitoring.

Example

2.4 Role of audit

The internal audit team is part of the financial management division and reports directly to the board audit committee, who monitor and direct the team's work. The team's role is to confirm that the policies and procedures are operating as expected. The board audit committee, following consultation with the compliance committee, approves internal audit's terms of reference in respect of this plan.

The team will conduct a risk-based review of compliance with this plan, focusing on areas considered to be of greatest or emerging risk. All operational aspects of the plan will be reviewed at least every two years. Areas considered high risk will be reviewed at least every six months.

A key objective of the team is to assess the adequacy of the compliance framework and to ensure major issues are promptly identified and addressed.

Copies of all internal audit reports relating to this compliance plan are sent to the board audit committee, compliance committee and external auditor.

The role of the external auditor is to annually:

- examine the plan;
- carry out an audit of compliance with the plan; and
- submit a report to the RE providing an opinion as to if the RE has complied with the plan throughout the period and if the plan continues to comply with the requirements of the Corporations Act.

2.5 Reviewing and amending the compliance plan

In spite of the obligation for the plan to “continuously comply”, most plans reviewed failed to mention that any periodic review of the compliance plan was required. This was surprising when the environment in which the RE operates is likely to change frequently due to new regulations, new products, restructuring, etc. Quality plans outlined the obligation of the RE to carry out a review of the adequacy of the plan at least annually and after any significant event that they are aware would impact the plan. This sometimes included consideration of reasons for any breaches and the impact on the compliance plan of any issues raised.

Example

2.5 Reviewing and amending the compliance plan

To ensure the compliance plan continues to provide an adequate compliance framework for protection of investors, the RE will report to the Compliance Committee at least annually on the continued adequacy of the plan.

So that the Committee is informed of all internal developments, all staff, including internal audit, are instructed to report all proposed changes in operating structure and procedures to the Compliance Officer. These reports are included in the Compliance Officer’s monthly report to the Compliance Committee.

Part of the Compliance Officer’s role is to remain up to date with all regulatory and industry standard changes. Any such changes that impact the plan are reported to the Committee in the Compliance Officer’s monthly report to the Committee.

Subject to the Corporations Act the Board or the Compliance Committee can amend this plan. The Committee notifies all amendments to the Chairman of the Compliance Committee prior to the approval of the amended plan.

The Compliance Officer is responsible for submitting amended plans to ASIC and ensuring all staff responsible for compliance matters receive notification of the change and an updated copy of the plan.

2.6 Summary of compliance procedures

ASIC found it easier to review plans that clearly separated the different measures used to achieve compliance. The best plans clearly identified the following:

- legal or constitutional obligation;
- procedures in place to satisfy that obligation;
- who was responsible for reporting on whether or not the procedures had been followed;
- how compliance with procedures were monitored;
- who carried out that monitoring; and
- when reporting/monitoring took place.

Some plans were also useful in that they contained a summary of the types of procedures to be employed, identified the officer responsible for monitoring compliance with those procedures, and also indicated the frequency with which the officer must report as to such compliance. The compliance officer and the Compliance Committee could then use the summary as a checklist.

The “responsible officer” is usually the person who is responsible for ensuring a particular procedure is followed and reporting to the Compliance Officer on whether there were any breaches in following the procedure.

Example

2.6 Summary of compliance procedures

Function	Responsible officer	Reporting frequency	Details of procedure (reference)
Agricultural business management	Project Manager	Monthly for first six months of project then quarterly	3.1
Selection and leasing of project land	Project Manager	Monthly until settlement completed	3.2
External service providers	Project Manager	No less than quarterly	3.3
Income	Project Manager	No less than quarterly	3.4
Training and recruitment	Project Manager	No less than quarterly	3.5
Valuation	Project Manager	Annually	3.6
Fees and expenses	Financial Controller	Monthly for first six months of project then quarterly	3.7
Safe keeping and segregation of scheme property	Financial Controller	Annually	3.8
Record keeping and disclosure	Financial Controller	No less than quarterly	3.9
Insurance	Financial Controller	Annually	3.10
Applications, and distributions	Financial Controller	Monthly until offer closed. Report at meeting prior to and following each distribution.	3.11
Promotion of scheme	Compliance Officer	Monthly until offer closes	3.12
Monitoring AFS licence and authorised representatives	Compliance Officer	Monthly until offer closes	3.13
Related party issues	Compliance Officer	No less than quarterly	3.14
Complaints	Compliance Officer	No less than quarterly	3.15
Reporting breaches	Compliance Officer	No less than quarterly	3.16

3 Operational compliance measures

The format REs chose to present details of procedures varied considerably. The clearest format incorporated tables including details of the function, the risks of non-compliance, the relevant policies and the compliance procedures. Some REs also grouped together tables covering compliance procedures overseen by the same officer, allowing RE staff to quickly locate information on all areas of compliance they are responsible for.

The best plans showed sufficient detail to allow the responsible officer to know what the responsibilities of the role are, what procedures are required to be performed to fulfil those responsibilities, how they were monitored and reviewed, who to report to and whether compliance checks are automated or manual.

Many plans reviewed refer to procedures manuals and detail contained in agreements rather than including lengthy descriptions of procedures within the compliance plan. This improves clarity and allows procedures to be updated without having to amend the compliance plan. What is often missing though are the measures used to ensure that the procedures contained in the manuals and agreements are followed, working and updated.

An area that was covered poorly in many compliance plans is reporting of breaches. Industry best practice requires all breaches be reported even if they have been rectified during the period. This enables the Compliance Committee to have a full picture of the level of breaches that are taking place. Many entities rated breaches as to significance, in order that the Compliance Committee may focus on the higher risk breaches that will impact on investors or the RE. The better plans also ensured the committee were aware of systemic breaches and the source of breaches.

Recent surveillances have revealed that often the operational procedures quoted are not the ones actually carried out. Obviously it is important to ensure that the plan actually reflects business practice.

Examples

These are not meant to be procedural best practice, rather they are illustrations of the better examples noted from our review. Content would need to be tailored to the specific scheme and entity operations as well as any further relevant points considered.

3.1 Agricultural business management

Example 1

Responsible Officer: Project Manager (PM)

Frequency of Reporting: Monthly for first six months of project then quarterly

Function	Risks	Procedures	Monitoring of procedure
All plantation management related functions including planting, maintenance, harvesting, sale of produce and monitoring and forecasting cash flows.	Lack of water, wrong variety of trees, maintenance of trees is inadequate, no market for produce, insufficient funds to pay expenses.	<p>Water permits are obtained. Access to a drought-proof water supply is maintained.</p> <p>Sale agreements will be entered into with timber mills when planting commences. Sale agreements will cover 75% of forecast production.</p> <p>The Financial Controller in consultation with the PM produces a cash flow forecast for the following twelve months and updates it quarterly. Actual cash flows are compared to budget and submitted to the Compliance Officer (CO) monthly for review.</p> <p>Plantation is managed in accordance with the agricultural management plan (AMP).</p> <p>The AMP is reviewed by the PM annually and after any relevant change to industry practice to ensure procedures are still adequate.</p>	<p>The CO maintains a register of all reviews and updates of the AMP.</p> <p>All members of the Compliance Committee visit the plantation at least once a year.</p> <p>All sale agreements require Board approval.</p> <p>An independent agricultural consultant, with a minimum of three year's relevant experience, is appointed not less than annually to inspect the project, review the AMP and prepare a report for the committee on the findings and recommendations. The same consultant cannot be appointed more than three years in a row.</p>

Example 2

Objective	Procedure
<p>To ensure that the RE complies with its obligations under the Lease and Management Agreement.</p> <p>Primary provisions</p> <p>Lease and Management Agreement CL13.1, 14, 15, 20 Schedule 2.</p>	<p><u>Compliance with obligations under Lease and management agreements</u></p> <p>As part of the Initial Services and the Annual Services listed in Schedule 2 of the Lease and Management Agreement, a Management Plan is prepared for the Plantation Areas on each property using methodology that will deliver the Initial Services and the Annual Services as described in the Lease and Management Agreement.</p> <p>The Initial Services and the Annual Services will be provided by ABC pursuant to a Contracting Agreement. The Contracting Agreement provides for the following reporting to the RE:</p> <ul style="list-style-type: none"> • a quarterly report describing the operations undertaken on each property; • a quarterly certificate that the provisions of the Lease and Management have been complied with and that there have been no breaches of the Lease and Management Agreement. <p>On a quarterly basis ABC as Lessor under the Lease and Management Agreements will provide a certificate that all conditions of the head lease agreements have been complied with and that there have been no breaches of the head leases. The responsible officer (Officer) will provide this certificate to the Committee together with observations of any breaches of which he may have become aware during the performance of his duties. In particular, the Officer will confirm to the Committee that ABC has paid all head lease rentals for the quarter in respect of leases involving Growers in the Scheme and its predecessors.</p> <p><u>Review by an independent forester</u></p> <p>The Independent Forester prepares an annual report on the general condition of plantations managed by the RE, noting any departures from the management plans or standards considered by the Independent Forester to be appropriate for the protection of tree crops and Grower's interests. A copy of this report is provided to members of the Committee.</p> <p>The Independent Forester is required be available to attend meetings at the request of the Committee to respond to questions concerning the adequacy of forestry practices followed by the RE and/or ABC.</p> <p><u>Protection against tree crop business/market risks</u></p> <p>In addition to procuring the report and attendance of the Independent Forester, the RE will procure a report from ABC setting out its conclusions arising from work on issues of importance to Growers in controlling silvicultural and market risks such as (but not limited to):</p> <ul style="list-style-type: none"> • arranging for insurance against loss by fire for the crop, at the Grower's cost; • monitoring and reporting the outcome when industry trends and development of alternative products could affect the economic return from the crop; • monitoring and reporting the outcome of significant research and development relevant to the silviculture industry and economic return from the crop; • monitoring markets for plantation grown timber; • liaising with processors and operators of port facilities as to access to markets; and • liaising with adjoining landowners in respect of disputes or common issues that may arise from time to time. <p>The RE advises the committee of its procedures to minimise the occurrence of risks set out in the Product Disclosure Statement. This will include the steps taken by the RE in hiring agents to perform duties and in monitoring their work.</p>

To ensure that the RE manages the investment risks as specified in the Product Disclosure Statement.

Primary provisions

Relevant Product Disclosure Statement

Risks set out in the Product Disclosure Statement relate generally to factors beyond the control of the RE such as weather conditions, changes in the market, currency fluctuations, legislative factors including, for example, taxation native title.

The RE monitors these factors on a continuing basis to identify any factors that will impact on the Project and the interests of Growers by maintaining an active presence in the industry, keeping abreast of developments from relevant industry and general publications, and liaising with relevant industry bodies. As set out above, the Independent Forester will also monitor these types of risks.

If the RE becomes aware of the occurrence of any material risks, it reports those risks to the Committee, and if necessary to Growers through its ongoing reporting obligations.

Other risks to Growers that are within the control of the RE, such as compliance with its contractual obligations, and ensuring that plantations are managed efficiently and properly by agents are dealt with elsewhere in this plan.

In negotiating any agreements that relate to a Project, the RE will place any applicable risks on the party with which it is contracting, where this can be achieved and is in the interests of the Growers.

3.2 Selection and leasing of project land

Example 1

Responsible Officer: Project Manager (PM)

Frequency of Reporting: Monthly until settlement completed

Function	Risks	Procedures	Monitoring of procedure
Select land suitable for the scheme and secure adequate title over that land for the life of the Scheme.	<p>Land is not suitable for the project resulting in poor yields.</p> <p>Land area is too small to accommodate the project.</p> <p>Title to the land is lost resulting in a loss of the crop/plantation on that land.</p> <p>Terms of lease are less favourable than those disclosed in the Product Disclosure Statement.</p>	<p>The PM is responsible for assessing suitable sites, ie those with the required soil type, topography, water supply, etc.</p> <p>An independent agricultural consultant is employed to review the potential sites located by the PM and report to the Board.</p> <p>The PM's and the consultant's reports with their recommendations are submitted to the Board for approval of a site to be used for the project.</p> <p>Prior to committing to leasing the land upon which the Scheme is to be conducted the Board is required to be satisfied that:</p> <ul style="list-style-type: none"> • the RE has registered a caveat over the land to protect the leasehold interests of investors; • the lessor is entitled to be the registered holder of the land; • any mortgagee, chargee or encumbrance of the land have agreed in writing that the investors' interest in the leased area takes priority and until expiry of the lease and management agreement they will not do anything that would be detrimental to the investors' interest in the leased land; • the lessor shall not sell, assign, mortgage or encumber the land; and • there are no council zoning restrictions detrimental to the Scheme. 	The Board's selection, their reasons and the relevant supporting reports and legal advice are reviewed by the compliance committee prior to signing of lease.

Example 2

The RE considers that the principal major risk to a Grower in the Scheme is the loss by a Grower of his or her right to use and occupy the leased area for the purposes of growing olive trees, and the consequential loss of the Olive Produce derived from the leased area for the duration of the Scheme.

The following steps have been incorporated in the structure of the Scheme and its Constitution to reduce the risk identified above:

- prior to payment over of subscription funds to the RE, the Compliance Committee is required to be satisfied that the RE has registered a caveat over the land, upon which the Scheme is to be conducted, to protect the leasehold interests of Growers in the Scheme;
- prior to payment over of subscription funds to the RE, the Compliance Committee is required to be satisfied that the Lessor is or is entitled to be the registered holder of the land upon which the Scheme is to be conducted;
- prior to payment over subscription funds to the RE, the Compliance Committee must be satisfied that any mortgagee, chargee or encumbrancee of the land upon which the Scheme is to be conducted have agreed in writing that:
 - the Grower’s interest in the leased areas take priority; and
 - until expiry of the lease and management agreements, they will not do any act or thing to detrimentally affect the Grower’s interest in the leased areas;
- the Lessor shall not sell, assign, mortgage or encumber the Land upon which the Scheme is to be conducted:
 - otherwise and to any greater extent than disclosed in the Scheme’s Product Disclosure Statement; and
 - unless the mortgagee, chargee, purchaser or assignee has agreed in writing that the interest of Growers in the leased areas take priority; and
- prior to the release of subscription funds to the RE, the Compliance Committee shall satisfy itself that the above provisions have been complied with.

3.3 Use of the land

Example

The RE must ensure or cause to ensure the Land:

- is properly identified and disclosed in the Product Disclosure Statement (PDS);
- is appropriate for the use to which it will be put;
- has access to water for irrigation purposes;
- is not affected by any encumbrances which will adversely affect the Project or Growers; and
- will not be subject to any consents or approvals which the RE cannot satisfy by the date of commencement of the Project.

The RE will fulfil its obligations noted above by carrying out the following:

- obtaining or having a solicitor obtain a title search of the Land and including the real property description in the PDS. Additionally, the RE must ensure the description of the nature and type of the Land referred to in the PDS is in accordance with physical inspections of the Land carried out by the RE;
- prior to the purchase of any Land to be used for the Project ensure a due diligence inspection is carried out by a horticultural expert who is able to assess the suitability of the Land for the use proposed by the Project;
- obtain a report from that horticultural expert for inclusion in the PDS;
- obtain confirmation from the appropriate government department that water rights are attached to the Land and the amount available for pumping; and
- undertake any other relevant searches and liaise with representatives of the local authority within which the Land is located.

The RE must carry out the above obligations prior to the issue of the PDS.

If the RE cannot satisfy the requirements above, then the RE must find alternative land for the purposes of the Project, provided the procedure set out in the Constitution for obtaining an expert's report on such land is followed.

The RE must also ensure that throughout the term of the Project:

- all outgoings and charges on the Land are paid; and
- the Land Owner does not grant rights or interests to any party which are inconsistent with Growers' Interests.

The objective of this clause is to ensure that both the viability of the Project and Growers' Interests are not jeopardised by inferior land quality.

The person with primary responsibility for performance of these duties is the compliance officer in conjunction with the RE's responsible officer with horticultural expertise and experience.

3.4 External service providers

Example 1

Responsible Officer: Project Manager (PM)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Carry out adequate due diligence when appointing external service providers.</p> <p>Monitor service providers to ensure they comply with contractual obligations and service level agreements.</p>	<p>Yields may suffer due to poor service from external providers resulting in loss to the RE and investors.</p> <p>The most cost effective service provider may not be selected.</p>	<p>Due diligence procedures and approvals are performed in accordance with the Agricultural Management Plan (AMP).</p> <p>Contracts with service providers are reviewed and approved by the Board.</p> <p>Legal advice is obtained if the Board considers it necessary.</p> <p>The PM assesses performance of external service providers during and on completion of each segment of work they perform.</p> <p>In accordance with the AMP an Independent Agricultural Consultant (IAC) reviews the performance of external service providers as part of an annual review of operations.</p> <p>The AMP is reviewed by the PM annually and after any relevant change to industry practice to ensure procedures are still adequate.</p>	<p>The Compliance Committee reviews all due diligence documentation prior to accepting any nominated service provider.</p> <p>The IAC’s report on service providers is submitted directly to the Compliance Committee.</p> <p>The Compliance Officer maintains a register of all reviews and updates of procedures manuals.</p>

Example 2

Objective	Procedure
<p>To ensure that the use of third parties will be appropriately evaluated</p> <p>Primary provisions</p> <p>Act: s601FC(1)(b) and (c), s601FB(2) and (3)</p>	<p>When services are required by the RE, the Managing Director determines whether they can be provided internally without the need for external providers. If they cannot be provided internally, and if the value of the services exceeds an amount specified by the directors, the Managing Director makes a recommendation to the directors that an external service provider for the services is obtained.</p> <p>If the value of the services exceeds an amount specified by the directors (which may differ from the previously mentioned amount), the Managing Director calls for tenders by potential service providers.</p> <p>Tenders are assessed on an objective basis and awarded fairly by the directors. In awarding tenders, the directors consider the reputation of the tenderers as well as the quoted costs.</p> <p>The amounts specified by the directors are considered, and adjusted (if necessary) from time to time.</p> <p>These provisions do not apply to the appointment of related parties, which is covered in section 15 of this plan.</p>
<p>To ensure that external service providers are meeting the terms of the contractual arrangements.</p> <p>Primary provisions</p> <p>Constitution: cl12.4(b)</p>	<p>The Officer, or an appropriate staff member delegated by the Officer, monitors each contract with an external service provider to ensure compliance with the contractual obligations.</p> <p>Any material breach or potential breach of the obligations is notified by the Officer to the directors, who will consider the suitable action to be taken in respect of the breach.</p> <p>Records of material breaches or potential breaches and action taken are made available to the Committee.</p>
<p>To ensure that the contract with external service providers is appropriate.</p>	<p>The appropriateness of service contracts are determined through the tender process described above.</p> <p>In relation to contracts to which the tender process does not apply, the senior management negotiate the contract, and will, if necessary, seek independent advice.</p>
<p>To ensure that any external custodian used meets ASIC standards.</p> <p>Primary provisions</p> <p>Act: ASIC Policy Statement 133 <i>Managed investments: Scheme property arrangements</i> [PS 133].</p>	<p>At present, the RE does not anticipate using a custodian to hold Scheme assets.</p> <p>Should this intention change, each company or person the RE considers to use a custodian will be required to provide independently verifiable evidence of its financial suitability for the position of custodian. A custodian will only be appointed on the basis that it provides ongoing evidence of its financial suitability at any time the RE requests such evidence. The RE will endeavour to make it a term of the appointment agreement that failure to provide such evidence will be a breach of the agreement that will entitle the RE to terminate the agreement or replace the custodian.</p>
<p>To set up procedures to monitor the activities of external service providers to ensure that the service provider is complying with the Constitution and the Corporations Act.</p> <p>Primary Provisions</p> <p>Constitution: cl12.4(b)</p>	<p>The relevant staff member ensures that at the time of contracting, each service provider is made aware of any relevant clauses in the Constitution and provisions of the Corporations Act that will have a bearing on the services to be provided. The Officer also notifies the service provider of changes to any relevant clauses or provisions.</p> <p>The Officer or the relevant staff member monitors compliance with the Constitution and the Corporations Act as part of the ongoing process of evaluating the use of third parties and checking that they are complying with their contractual obligations as described above.</p>

Example 3

Selection

The RE will need to appoint contractors and consultants (in this clause called “contractors”) to provide services to the Project (*eg a horticulturist to propagate the seedlings*).

If the RE needs to appoint any contractors then the RE will:

- ensure the contractors are properly skilled and experienced to provide their services (*eg by making enquiries as to their qualifications and experience*);
- ensure contractors providing professional services (*eg lawyers, auditors*) hold professional indemnity insurance of at least \$1,000,000 per claim and contractors providing operational services (*eg providers of irrigation plant and equipment*) hold public risk insurance for at least \$5,000,000 per claim; and
- ensure the contractors are lawfully able to provide the services (*eg hold any required licence*).

Proper review

The RE will:

- review the terms of any agreement to be entered with a contractor to ensure the terms are appropriate for the desired outcome, having regard to the nature of the Project and the importance to the Project of the contractual service being offered; and
- if the pending appointment of the contractors was known by the RE leading up to the issue of the Product Disclosure Statement (PDS), then ensure the terms of the appointment are consistent with those disclosed in the PDS and are in writing.

Monitoring

The RE will monitor the performance of any contractors at least six monthly by visiting contractors’ premises or the site of the work being performed to ensure they are meeting the requirements of:

- their agreements (by verifying the work performed equates to the contractual terms);
- the Corporations Act; and
- ASIC policy about the ongoing performance of agents’ contractors.

Enforcement

If the RE is of the opinion a contractor is not performing its contractual obligations then the RE must take necessary rectification action within 30 days after forming the opinion having regard to the nature of the action, including:

- serving a default notice on the contractor;
- terminating the agreement with the contractor in accordance with the termination provisions of the agreement;
- taking enforcement action if the contractor's default has resulted in economic loss to the Project or the RE;
- notifying the external Directors of any anticipated or actual breach of contract by the contractor within 14 days of the anticipated or actual breach; and
- calling for tenders for a replacement contractor.

Objective and person responsible

- The objective of this clause is to ensure the Project is not jeopardised or adversely affected by unskilled or under qualified service providers.
- The people with primary responsibility for performance of the duties under this clause are:
 - the RE's responsible officer with horticultural experience for all horticultural-type work; and
 - the Managing Director for all other work.

3.5 Fees and expenses

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Monthly for first six months of project then quarterly

Function	Risks	Procedures	Monitoring of procedure
Payment of Scheme related expenses and fees payable to the RE.	Expenses and management fees paid are not valid or are overpaid.	<p>All invoices received are reviewed by the Project Manager (PM) to ensure services or goods were received and related to the project.</p> <p>FC arranges payment following approval by the PM.</p> <p>Two directors signatures are required on each cheque.</p> <p>The FC calculates the management fee monthly in accordance with details per the Product Disclosure Statement.</p> <p>FC prepares a list of expenses paid in the month and submits this list with a copy of the month end bank reconciliation to the Compliance Officer (CO).</p>	<p>The CO reviews the FC's report and bank rec and includes them in CO's report for review by the Compliance Committee.</p> <p>The CO reviews the management fee calculation monthly.</p> <p>External audit review expenses paid during the year and recalculate management fees as part of the annual audit.</p>

Example 2

RE's fees and expenses

- The fees and expenses due to the RE will be recorded separately in the Project accounts.
- Any such fees and expenses, not paid directly out of Growers' own funds, must be calculated by the group accountant and delivered to a Director for verification no more than seven days prior to the date such fees and expenses are due to be paid. If that Director discovers a discrepancy, then the Director must meet with the group accountant to resolve the discrepancy. If necessary, then the group accountant can seek advice from the auditor for the Project to resolve any discrepancy.
- The auditor of the Project accounts will be instructed to check the amount deducted on account of fees and expenses does not exceed the amount payable under the terms of the Constitution and any disclosures made in the PDS. The auditor will make this check at least annually at the same time as the Project annual accounts are being audited.
- If the report from the auditor shows the amount paid exceeded the maximum amount payable then the RE must make good by depositing the amount for the overpayment in the Proceeds Fund immediately.
- The objective of this clause is to ensure the correct fees and expenses are paid to the RE at the correct time.
- The person with primary responsibility for performance of the duties in this clause is the group accountant.

Payment of other expenses of the project

- The RE is required to make payments from the Proceeds Fund in the course of managing the Project. In making the payments the RE must ensure the Custodian is given a written requisition for payment so the Custodian has sufficient time to make the payments from the Proceeds Fund.
- The requisition sent to the Custodian must note the authority as to why the amount should be so paid.
- All requisitions for payments sent to the custodian must be signed by at least two Directors. If two Directors are not available then one Director together with another person authorised in writing by a Director to sign the requisitions is sufficient.
- The RE must keep a copy of all requisitions as part of the Project records.

- If the RE has made a payment for the Project out of its own funds then the RE may forward a requisition to the Custodian for reimbursement of the payment, but only where the RE has first included in the Project records evidence the amount was paid.
- The objective of this clause is to ensure proper expenses of the Project are paid for the correct amounts and on time.
- The person with primary responsibility for performance of the duties under this clause is the group accountant.

3.6 Safe keeping and segregation of scheme property

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Ensure scheme property is:</p> <ul style="list-style-type: none"> clearly identified as scheme property; and held separately from property of the RE and property of any other scheme. 	<p>Scheme property is mixed with that of the RE or other schemes and cannot be separately identified.</p>	<p>Scheme funds from application monies and received as income is checked at least on a monthly basis to ensure it is all paid intact into a scheme account and is held in schemes name.</p> <p>Cash held with the custodian is reconciled monthly to Scheme records by the FC. Exceptions are followed up with the custodian as soon as they are detected.</p> <p>An independent investigation by the external auditor is required for unreconciled amounts exceeding \$10,000.</p> <p>Lease documents and water permits are held in safe custody by the custodian.</p> <p>Due diligence is performed by the FC and Board approval obtained before appointing an external custodian (refer to "External Service Providers"). Procedures include ensuring terms of the custodian agreement address ASIC Policy Statement 133 <i>Managed investments: Scheme property arrangements</i> [PS 133] and the Scheme's constitution.</p> <p>Trees belonging to the Scheme are identified by reference to the land area per the lease document. Harvested trees are marked as Scheme trees and are delivered to the mill separately from other plantation trees.</p> <p>At harvest, the net proceeds from the plantation as a whole are pooled for distribution to the investors in proportion to their holding in the Scheme.</p>	<p>External audit annually confirm existence of assets and documents held at third party custodian.</p> <p>FC submits bank reconciliation to the Compliance Committee monthly.</p> <p>FC confirms monthly to RE that all scheme monies have been banked into a scheme account and all scheme monies and scheme assets are held in scheme's name.</p> <p>Custodian confirms annually to the RE that they:</p> <ul style="list-style-type: none"> continue to comply with the requirements of [PS 133] at [PS 133.2]. have no conflict of interest with the Scheme. <p>The independent agricultural consultant, following planting, confirms to the Board that all trees planted are within the boundary of the Scheme's leased area.</p>

Example 2

Business unit	Function	Risks/Priority	Policy	Compliance measures
Custody	Appointment of third party custodian	Low risk Non compliance with Corporations Act [PS 133 at [PS 133.2].	<p>Custodian has been appointed.</p> <p>Written agreement with Custodian to regulate actions, which addresses the following:</p> <ul style="list-style-type: none"> • custodian will inform RE immediately if it no longer meets custodial standards • custodian will annually provide third party confirmation that assets of the scheme are held and managed in accordance with Corporations Act requirements (capability statement) • Custodian will annually provide third party confirmation that its procedures, systems and structures satisfy the requirements in relation to project property • custodian will provide annual statement that no conflict of interest exists. 	<ul style="list-style-type: none"> • Inspect annual accounts of custodian. • On an annual basis, obtain written confirmations from Custodian RE: <ul style="list-style-type: none"> – capability statement [PS 133] at [PS 133.2] – compliance structure and internal controls – conflict of interest
	Safekeeping and segregation of scheme property	Low risk Scheme assets are not appropriately identified and segregated	<p>Policy is that procedures and controls be in place to ensure:</p> <ul style="list-style-type: none"> • Monitoring of movements and safeguarding of cash resources including application fund and proceeds fund • Safeguarding of land title • Collection of trade debtors <p>Appropriate action taken when irregularities occur</p>	<p>Bank accounts held separate from other schemes by Custodian.</p> <p>Cash held by custodian and released to RE at least monthly based on payment schedule. Cheque signing powers require the signature of a representative of the Custodian.</p> <p>Monthly bank reconciliation of all cash resources by RE and provided to Custodian.</p> <p>Annual confirmation from custodian that title are held in safe custody and free of encumbrances.</p> <p>Follow up of outstanding debts with legal action when required (at least annually)</p> <p>Immediate reporting to board if contravention of con-situation or Corporations Act.</p> <p>Independence investigation by auditors if bank reconciliations do not reconcile by amount exceeding \$10,000.</p>

	Low Risk Assets are fraudulently misappropriated	Moveable assets controlled by asset register with bi-annual counts.	Agricultural management plan includes control procedures
Replacing Custodian	Low risk Custodian does not meet legal or other requirements	Policy is to identify suitable replacement custodian and facilitate an orderly transfer of "ownership" and documentation.	Compliance Officer to ensure compliance if required.

3.7 Insurance

Example 1

Responsible Officer: Financial Controller (FC)

Frequency of Reporting: Annually

Function	Risks	Procedures	Monitoring of compliance procedures
Minimise risk of loss to investors through insurance policies, where reasonable to do so.	Scheme is exposed to unreasonable level of risk.	<p>The FC will obtain a minimum of three quotes for an agricultural all risks policy with a reputable insurer and make a recommendation to the Board.</p> <p>The FC, after consulting with the Project Manager, will review adequacy of insurance policies annually and report to the Compliance Officer (CO).</p> <p>FC reports any breaches or potential breaches of insurance policies immediately to the CO.</p> <p>All notifiable events are reported to the CO immediately.</p> <p>Insurance policies will cover as a minimum:</p> <ul style="list-style-type: none"> • crop, buildings and equipment against fire, storm, tempest or earthquake (cover to be sufficient to meet the cost of the project to date); • public liability insurance including claims from owners of adjacent land; and • professional indemnity insurance for directors. 	<p>The Compliance Officer reviews annually the adequacy of cover provided by insurance policies and reports findings to the Compliance Committee.</p> <p>External audit review file of notifiable events as part of the annual audit.</p>

Example 2

- Adequate insurance will be maintained for the term of the Project by or at the direction of the RE for:
 - professional indemnity and fraud in respect of the acts or omissions of the RE according to the requirements of the relevant ASIC policy document;
 - public risk for an amount not less than \$5 million against all claims and actions in respect of injury, loss or damage to any person or property arising out of the use of the Land;
 - property damage against fire and other natural disasters to cover all improvements on the Land used for the Project; and
 - all insurable Investments.
- The insurance under this clause must be taken out in the names of the RE, the Custodian, the Growers, and the Land Owner (where relevant).
- The insurance policies will be reviewed at least annually to ensure the cover is adequate.
- The objective of this clause is protection of Project Property and the resources of the RE and Growers.
- The person with primary responsibility for performance of the duties under this clause is the compliance officer.

3.8 Promotion of scheme

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: monthly until offer closes then six monthly

Function	Risks	Procedures	Monitoring of compliance procedures
<p>Issue Product Disclosure Statement (PDS) that complies with the Corporations Act and which provides the RE with the maximum due diligence protection and defences.</p> <p>Ensure all non-PDS marketing and promotional material is complete, accurate and in accordance with the Corporations Act.</p>	<p>PDS or advertising material is misleading to investors.</p> <p>Action by investors to recover losses.</p> <p>Product Disclosure Statement is subject to an ASIC stop order.</p> <p>Forecasts in Product Disclosure Statements do not have a reasonable basis (refer ASIC Policy Statement 170 <i>Prospective financial information</i> [PS 170] which deals with forecasts in PDSs).</p>	<p>External legal counsel review and sign off on all new and supplementary PDSs.</p> <p>Relevant external expert sign off is obtained for all PDSs.</p> <p>Performance information is authorised by the Project Manager prior to release for promotional purposes.</p> <p>All marketing material must be approved by at least two directors prior to release.</p>	<p>Board approves all PDS and promotional material before release for use.</p> <p>CO checks appropriate sign-offs have been obtained prior to release of PDS.</p> <p>CO reviews marketing file every 6 months to check appropriate director approval was obtained.</p>

Example 2

Product Disclosure Statement preparation

- All statements made in the Product Disclosure Statement (PDS) must be known to the person responsible for the issue of the PDS.
- Prior to the PDS being completed and dated, at least two people from the RE's organisation or its firm of solicitors (or one from each) must read the PDS and confirm the PDS meets the general disclosure test in s1013D of the Corporations Act. If possible, the two people who read the PDS should not have been substantially involved in the preparation of the PDS.
- The people who read the PDS must report to the person who drafted the PDS in order to advise whether, in their opinion, the general disclosure test has been met. Those people and the drafter must then discuss any necessary amendment to the PDS to ensure it will meet the general disclosure test. The drafter must make the amendments and re-submit the PDS to the same people to read. The process above and this can then continue until the readers are satisfied the PDS meets the general disclosure test.
- After the PDS is dated, a solicitor must read the PDS to ensure all of the statutory requirements for a PDS are included.
- The RE must keep a copy of the PDS for a period of seven years from the date of the PDS.
- The RE must prepare and lodge with ASIC notice of a supplementary PDS if, during the period applications for interests can lawfully be accepted, the RE becomes aware the PDS is deficient in that:
 - the PDS contains misleading or deceptive statement;
 - there is a material omission from the PDS;
 - there has been a significant change affecting information in the PDS;
 - or
 - a significant new matter has arisen which the Corporations Act would have required information about to be included in the PDS if the matter had arisen when the PDS was being prepared.
- The objective of this clause is to ensure the PDS complies with the Corporations Act and in particular to ensure Applicants (and their advisers) are provided with such information they reasonably require and would reasonably expect to find in the PDS for the purpose of making an informed investment decision in respect of the Project.

- The person with primary responsibility for performance of the duties in this clause is the company secretary.

No false and misleading advertising

- All advertising in respect of the sale of Growers' Interests must be prepared or checked by the compliance officer.
- The compliance officer must arrange for a solicitor to review a pro forma sample of advertising with instructions for that solicitor to advise whether the advertising:
 - is false and misleading having regard to the content of the PDS;
 - contains any material information which was not included in the PDS;
 - or
 - does not otherwise comply with the Corporations Act.
- If the solicitor advises any advertising is false or misleading, contains information which was not included in the PDS or otherwise does not comply with the Corporations Act, then the compliance officer must ensure that advice is acted on and the advertising is not released until amended in accordance with the advice.
- The compliance officer will deliver to a solicitor any amended pro forma samples of advertising as soon as practicable following the amendments so the solicitor can provide the same advice pursuant to this clause.
- The RE must not release any advertising that does not follow the approved pro forma unless reviewed by a solicitor in accordance with the process in the previous paragraphs of this clause.

No unauthorised or unlawful advertising

- All advertising must receive the prior approval of at least two Directors prior to being made. If two Directors are not available then one Director together with a person appointed in writing by another Director for the purpose is sufficient.
- No advertising will be scheduled for release to the public unless the PDS is available.
- Any other advertising or promotional material being distributed pursuant to a provision of the Corporations Act must be noted with the provision of the Corporations Act that permits the advertising.
- The RE must review all advertising on a quarterly basis to ensure it is accurate and up to date.
- In this clause "advertising" includes letters and any other inducement displayed or sent inviting people to become Growers. "Displayed" includes in newspapers, magazines and Internet websites.

- The objective of the previous clause and this clause is to ensure advertising of the Project is not false or misleading and otherwise complies with the Corporations Act.
- The person with primary responsibility is the compliance officer.

No issue without a Product Disclosure Statement

The RE must not invite subscriptions for Interests unless the RE has issued and there is then a current PDS in respect of the Project. The person with the primary responsibility to ensure this does not occur is the compliance officer.

3.9 Related party issues

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly

Function	Risks	Procedures	Monitoring of compliance procedures
To ensure financial benefit is not given to the RE or a related party unless approved by the Board and disclosed to investors.	Investors suffer loss. Detrimental to the reputation of the RE and the Scheme.	<p>A register of related parties is held by the CO. A copy of this register is provided to all staff.</p> <p>All RE staff are trained in related party transaction procedures when they commence employment.</p> <p>All transactions are subject to approval by the Project Manager and two directors prior to payment. Authorisation is only given if the transaction is considered in the best interest of the investor. External legal advice is obtained if best interest cannot be determined.</p> <p>All contracts with external service providers require approval by the Board.</p>	<p>All related party transactions are reported to the Compliance Committee monthly by the CO.</p> <p>The Compliance Committee reviews all due diligence documentation prior to accepting any nominated external service provider.</p>

Example 2

Disclosure in Product Disclosure Statement

The Product Disclosure Statement (PDS) must disclose all transactions with related parties of the RE contemplated at the time of preparing the PDS whether or not the transactions are on normal commercial terms. The disclosure must include a summary of the terms of the transaction so the reader can form a view as to whether or not the proposed transaction is on normal commercial terms.

Compliance with related party provisions of the Corporations Act

- If any other transactions with a related party (as that term is defined in the Corporations Act) are proposed to be entered into in respect of the Project then the RE must ascertain the terms of the transaction and provide details of this to the external Directors.
- If there is any doubt as to whether a transaction requires member approval or not, pursuant to the test in s601LC, the RE must:
 - obtain an estimate of the fees for the same task to be performed on the same terms by a person which is not a related party;
 - obtain an opinion by an independent person appropriately qualified and skilled that the proposed related party transaction is on normal commercial terms having regard to the type of task to be performed and the terms on which the related party will perform the task; or
 - ensure the fees for which the related party will do the work are according to a scale of professional fees and charges generally accepted by the relevant profession.

Agreement to be in writing and reviewed

- Any transaction entered with a related party must be reflected in a written agreement between the RE and the related party.
- The terms of that agreement must be reviewed by the RE at least every six months to determine whether the related party has performed its obligations. Where there has been non-performance then the RE must take appropriate action having regard to the terms of the agreement, (eg notice to remedy default clauses must be followed).

Register

The RE must keep, as part of the Project records, a separate register of related party transactions entered into in terms of this clause. The register must be available for inspection by any Grower and the auditors of this Compliance Plan and the Project.

Objective and person responsible

- The objective of this clause is to ensure adherence to the related party provisions of the Corporations Act, particularly proper disclosure to Growers in respect of any related party transactions.
- The person with primary responsibility for performance of the duties in this clause is the compliance officer.

3.10 Reporting breaches

Example 1

Responsible Officer: Compliance Officer (CO)

Frequency of Reporting: Quarterly or following each significant breach

Function	Risks	Procedures	Monitoring of compliance procedures
Breach of the Corporations Act, Scheme constitution, agricultural management plan or this compliance plan are identified, reported and rectified.	Refer to risks of non-compliance referred to in sections 3.1 to 3.15.	<p>At each month end all responsible officers are required to report verbally to the CO whether any breaches or potential breaches have occurred that month. Written reports are sent to the CO at the reporting frequencies noted in section 3: Summary of Compliance Procedures.</p> <p>Significant breaches are reported to the CO immediately.</p> <p>A sequentially numbered breach report is prepared for each reported breach, detailing its nature, its significance, whether it is systemic or an isolated event and any remedial action taken. Refer to appendix A6: Pro forma breach report.</p> <p>All breach reports are presented to the Compliance Committee.</p> <p>Breach reports remain open until the chairman of the Compliance Committee has signed the report as closed.</p>	<p>A list is maintained of all responsible officers who have reported to the CO each month. Any missing reports are followed up.</p> <p>Breach report files are reviewed each quarter by the CO to ensure sequential numbering is complete and that all reports closed in the previous quarter have been signed by the Chairman of the Compliance Committee.</p> <p>A file of all open breach reports is reviewed by the Compliance Committee at each meeting.</p>

Example 2

Notification and rectification of breaches

- An internal review of the following will be undertaken by the Directors at least every three months with a view to ensuring no breaches have occurred:
 - Compliance plan;
 - Constitution;
 - AFS licence; and
 - Corporations Act (in so far as it related to the management of the Project).
- One Director will be designated as being responsible to receive initial notifications of breaches (in this clause called the “designated Director”). The Managing Director will be the initial designated Director.
- If there is any breach found during a review, then each external Director must be given notice by the designated Director as soon as is reasonably practicable, but in any event no later than 14 days after the review.
- If the breach is minor or trivial and cannot be rectified, (*eg because the time has passed*) then the designated Director will record the breach in the Project records and do nothing further. A minor or trivial breach is one that does not have a materially adverse effect on the interests of Growers.
- If the breach is one which is not minor or trivial, or can be rectified, then the designated Director will record the breach in the Project records and
 - within two months take steps to have the breach rectified having regard to the nature of the breach, or
 - if the breach is one which is serious then bring the matter to the attention of the full board of Directors at the next monthly board meeting who will take appropriate steps within two months to rectify the breach.
- Additionally, if a breach occurs (other than a minor or trivial breach) then an analysis of how the breach occurred will be undertaken within three months with a view to preventing the recurrence of the breach. Appropriate action must be taken if deemed necessary following that analysis to achieve the outcome of prevention of a similar breach. In addition, an internal audit on the area within the Project or the RE’s organisation where the breach occurs will be conducted by the designated Director within six months of the preventative action being taken to determine whether the action has been successful. If not, the process in this clause will continue until the internal audit is satisfactory.

- The designated Director will report any breaches to ASIC if the RE is required to do so by the Corporations Act.
- Additionally, the RE has, and will continue to have on annual retainer a firm of solicitors experienced in practising in managed investments to advise the RE on any changes to the Corporations Act or ASIC policy which will affect the Project or the RE's obligations.
- The person with primary responsibility for performance of the duties in this clause is this Managing Director.

Systemic breaches

- The designated Director must review the breaches of compliance noted in the Project records under the above clause. This review must be carried out quarterly.
- The objective of the quarterly review is to identify any systemic breaches within the Project or the RE's organisation.
- If any systemic breaches are identified, then the designated Director must ensure the RE takes appropriate rectification action within two months of identification to prevent a recurrence including:
 - carrying out or undertaking an analysis of how the breaches have occurred;
 - initiating appropriate and relevant training for the personnel of the RE's organisation responsible for, or working in, the area within which the systemic breach has occurred;
 - notifying the external Directors of the systemic breach and the nature of the training initiated to prevent a recurrence;
 - carrying out, or undertaking, an internal audit on the area within the Project or the RE's organisation where the breach has occurred within three months of the training, referred to above, to determine whether the training has been successful in preventing further recurrences of the breach;
 - notifying the external Directors of the outcome of the audit undertaken in accordance with the above;
 - continuing the process set out in this clause if the designated Director or the external Directors are not satisfied with the result of the auditor; and
 - if the designated Director or the external Directors deem it necessary having regard to the nature of the systemic breach and the rectification action taken, then notifying ASIC of the breach and the rectification action undertaken.

Appendices in a plan

A1 Glossary

Some plans were very helpful in that they included a glossary. If the plan includes technical or organisation specific terms, or if the users are unlikely to have a financial or legal background, then a glossary can be a helpful tool for users.

Example (refers to this document)

A1 Glossary

Compliance committee

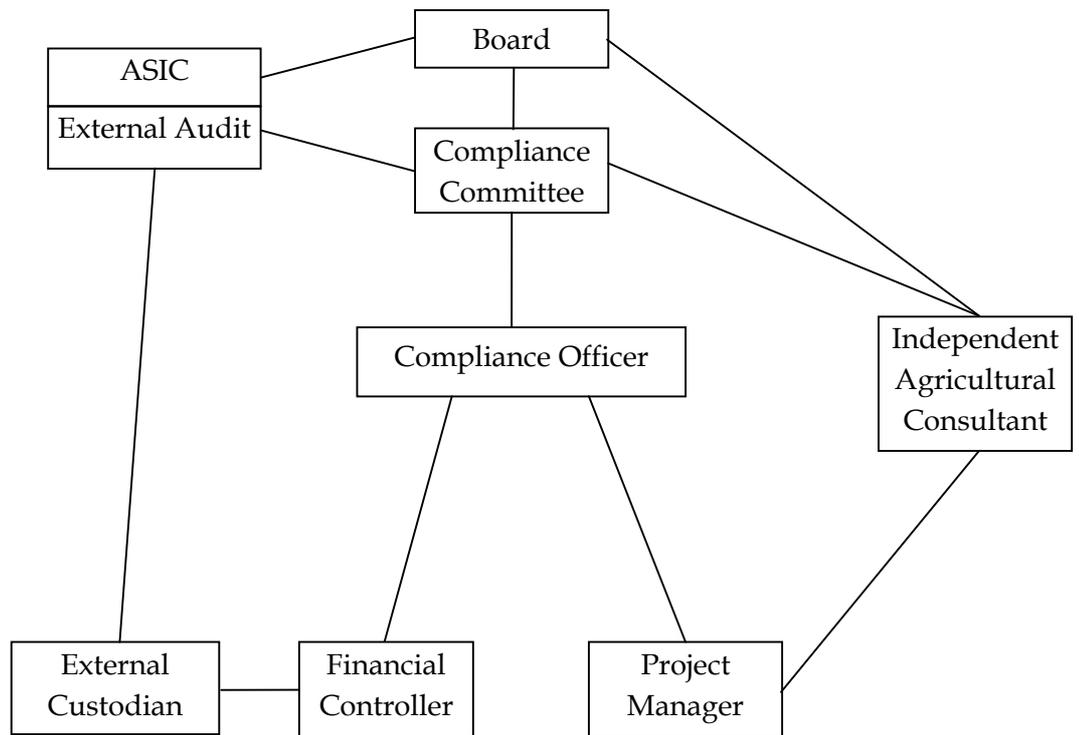
When a Compliance Committee is not required per the Corporations Act, any reference to the Compliance Committee in this document applies equally to the Board of Directors. Refer to section 2.2 for details of the role of the Compliance Committee.

A2 Organisational structure chart

Some plans contained more than one organisational chart, eg one for compliance reporting, business reporting as well as a wider chart illustrating outsourced activities.

Example

A2 Organisation compliance reporting chart



A3 Compliance committee charter

A number of compliance plans included Compliance Committee Charters. Developing a Compliance Committee Charter that sets out the goals of the Committee may aid in providing clarity of roles and increasing level of commitment in organisation, as well as makes the Committee more accountable.

Many Charters aimed to be a practical document describing the rules and guidelines that should be followed by the Committee to fulfil their obligations.

The Compliance Officer's role was sometimes expanded to periodically assess if the Committee is complying with the Charter, and whether the Charter reflects any changes to the scheme or the RE's procedures.

In ASIC's view, a Charter can assist the RE to ensure the compliance committee will achieve the role legislation has given it. Assistance to the committee on how the Entity perceives the committee's role is helpful. Indeed, the difficult question of the line between compliance monitoring and business management could be addressed in the charter.

It would also be helpful if the Charter addressed the importance of "minutes" of meetings. ASIC will review minutes on its surveillance visits. Some minutes reviewed during surveillance failed to reflect the committee as pro-active and asking the hard questions, particularly about the cause of breaches and whether this indicates any potential causes of further breaches or indicates other problems within the organisation. For example, some technical breaches may in fact indicate poor training, accounts backlog, poor record keeping or fraud.

A4 Pro forma compliance committee meeting agenda

A standard agenda for Committee meetings is seen as useful by some entities for the Compliance Officer as a guide to what is required to be prepared for each meeting, and as a reminder to Committee members of the issues that need to be addressed at each meeting.

To ensure the Committee focuses on the most important issues, some entities prioritise points on the agenda.

Example

A4 Pro forma compliance committee meeting agenda

- (a) Compliance Officer's summary;
- (b) Breach reports;
- (c) Complaints and other correspondence with investors;
- (d) Minutes from previous meeting;
- (e) Proposed amendments to the compliance plan, procedures or agreements
- (f) Any matters which require reporting to ASIC;
- (g) Proposed amendments to Corporations Act, industry or internal standards; and
- (h) Other matters.

A5 Pro forma compliance report by responsible officer

Very few plans reviewed addressed the issue of the format of reporting by responsible officers. Compilation of responsible officer compliance reports for reporting to the compliance committee can be simplified if standard format reports are used. Use of a standardised format also ensures that all the areas considered essential by the Compliance Officer are reported on by all responsible officers.

Example

A5 Pro forma compliance report by responsible officer

Name

Position

Compliance Plan Section Reference

Period

I confirm that the requirements of the above compliance plan section have been complied with throughout the period. In particular:

- (a) all procedures stated in the compliance plan section have been complied with;
- (b) all breaches of procedures have been reported to the Compliance Officer;
- (c) all breaches of licence conditions have been reported to the Compliance Officer;
- (d) I am not aware of any potential breaches of procedures that have not already been reported to the Compliance Officer;
- (e) all changes to procedures have been reported to the Compliance Officer and approved by the Compliance Committee;
- (f) I am not aware of any matter that may need to be disclosed to investors or which may cause investors to be disadvantaged; and
- (g) records exist to demonstrate compliance with the above.

[Signature]

[Date]

Evidence to support any exceptions to the above statements should be attached to this report.

A6 Pro forma breach report

Example

A6 Pro forma breach report

Compliance Plan Breach Report No: X/x

Reference number is the compliance plan section number followed by the sequential number for breaches reported relating to that section, eg for the second breach reported for agricultural business management (compliance plan section 1) the Breach Report Number would be 1/2

Report Date:

Name of Responsible Officer:

Position:

Date breach was detected:

Compliance plan section or licence condition relevant to breach:

Significance of breach:

Rate breach as very significant, significant or minor

Is the breach considered an isolated event or systematic?

Details of circumstances giving rise to the breach:

Attach supporting documentation, if required, to fully explain effects of the breach and why the breach occurred.

Details of remedial action taken or recommendations to minimise effects of the breach:

[Signature of Responsible Officer]

Comments by Compliance Committee:

Action required:

Officer responsible for ensuring action is carried out:

Date for completing implementation of the Committee's recommendations:

[Signature of the Chairman of the Compliance Committee]

To be signed by the Chairman when satisfied all issues raised have been resolved.