

# **Forests (S.E.A.S. Sapfor Ltd Agreement) Bill**

**No.**

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### **S.E.A.S. Sapfor Limited Agreement**



# LEGISLATIVE ASSEMBLY

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Read 1° 21 April 1993

*(Brought in by Mr Coleman and Mr Gude)*

## A BILL

to ratify an agreement with S.E.A.S. Sapfor Ltd and for other purposes.

### **Forests (S.E.A.S. Sapfor Ltd Agreement) Act 1993**

#### **Preamble**

The Treasurer, the Minister for Natural Resources, the Secretary to the Department of Conservation and Natural Resources and S.E.A.S. Sapfor Ltd have agreed to certain arrangements for the supply of softwood for certain operations by S.E.A.S. Sapfor Ltd and it is expedient to ratify the Agreement:

**The Parliament of Victoria therefore enacts as follows:**

#### ***1. Purpose***

The purpose of this Act is to ratify an agreement with S.E.A.S. Sapfor Ltd for the supply of softwood sawlogs from the State Softwood Plantations in the Portland Softwood Management Area.

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Section headings appear in bold italics and are not part of the Act.  
(See **Interpretation of Legislation Act 1984.**)

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

**3. Definition**

In this Act, “**Agreement**” means the agreement a copy of which is set out in the Schedule. 5

**4. Act to bind the Crown**

This Act binds the Crown.

**5. Ratification of Agreement**

- (1) The Agreement is ratified and takes effect as if its provisions had been expressly enacted in this Act. 10
- (2) The Secretary to the Department of Conservation and Natural Resources is empowered to carry out the Agreement, or the Agreement as amended from time to time. 15

**6. Amendment or termination of Agreement**

If the Agreement is amended or terminated in accordance with its provisions, the Minister must cause a report giving details of the amendment or termination to be laid before each House of the Parliament before the expiration of the 14th sitting day of that House after the Agreement is amended or terminated. 20

**SCHEDULE**

Section 3

**S.E.A.S. Sapfor Limited Agreement**

This Agreement is made on 14 April 1993 between:

The Treasurer, State of Victoria, of the first part

and:

The Minister for Natural Resources of the second part

and:

The Secretary to the Department of Conservation and Natural Resources, a body corporate established by the provisions of the *Conservation, Forests and Lands Act 1987* of the State of Victoria of the third part

and:

S.E.A.S. Sapfor Limited A.C.N. 004 289 730 a Company incorporated in Victoria and having its registered office at Penola Road, Tarpeena, SA 5277 of the fourth part.

**WHEREAS:**

- I. The Government of the State of Victoria desires to provide a means by which the Company can be assured of its long term supply of softwood sawlog and which also ensures that the public of Victoria receives an adequate return on its investment in softwood plantations and certain forest production activities.
- II. The Company desires to be satisfied that sufficient softwood sawlog will be available to it over a period of time which will enable it to establish a sawmill complex capable of sawing and value adding a minimum of 180,000 cubic metre per annum of softwood sawlog.
- III. On the basis of invited Expression of Interest submitted to the Secretary, 28 March 1988 and subsequent entering into of a *Memorandum-of-Understanding* on 3 May 1990 which includes reference to the Expression of Interest and the Preliminary Design and Financial Statement a significant quantity of softwood sawlog is to be made available till 30 June 2030.
- IV. This Agreement is conditional upon the establishment in the Portland Softwood Management Area of a new sawmilling complex capable of sawing and processing into value-added products a minimum of 180,000 cubic metre of softwood

SCHEDULE—*continued*

sawlog each year at the mill and the processing of softwood sawlog made available by this Agreement at the mill.

- V. The development of the sawmilling complex is to proceed only on the basis that it is viable and sustainable in its own right without the need for recourse to any form of government financial assistance subsidies or concessions.
- VI. The parties hereto desire to enter into this Agreement so that upon an enabling Act being passed by Parliament and coming into operation the provisions hereinafter appearing shall have full force and effect.

Now it is hereby agreed as follows:

**PART I— PRELIMINARY**

1. In this Agreement unless inconsistent with the context or subject matter—

**“the Act”** means the enabling Act of the Parliament of Victoria to be passed to give effect to this Agreement;

**“this Agreement”** includes this Agreement as from time to time amended, supplemented or novated and includes Schedules hereto and conditions which the Secretary shall from time to time determine to apply pursuant to Clause 10.(2) and 21;

**“CDOB”** means centre diameter over bark;

**“CDUB”** means centre diameter under bark;

**“commencement date”** means the latest of the date of this Agreement, the day of Royal Assent to the Act and (if any) the day the Act comes into operation as provided in the Act;

**“Company”** means S.E.A.S Sapfor Limited and upon each assignment to any other Company in accordance with sub-Clause (1) of Clause 4 means that assignee company;

**“Conditions”** means the additional covenants terms and conditions from time to time imposed on the company pursuant to Clause 10.(2);

**“cubic metre”** means cubic metre gross volume under bark;

SCHEDULE—*continued*

**“forest officer”** means a person appointed as an authorised officer under the *Conservation, Forests and Lands Act* 1987 for the purposes of the *Forests Act* 1958;

**“forest produce”** has the same meaning as in the *Forests Act* 1958;

**“the industry”** means the manufacture by the Company of sawn timber, dressed timber, and further processed products from softwood sawlog;

**“minimum annual supply”** means that set out in Clause 12;

**“Minister”** means Minister responsible from time to time for State forests and forest management;

**“month”** means calendar month;

**“person”** and **“persons”** include a body corporate and any association of persons whether or not incorporated as a company or other body corporate;

**“Portland Plantations”** means the State Softwood Plantations existing from time to time within the present Portland Softwood Management Area as classified by the Secretary;

**“production charge”** means that set out in Clause 14. (1) (b)

**“roading charge”** means the charge determined by the Secretary which is levied from time to time on all forest produce extracted from forests to cover the cost of maintenance improvement and construction of forest logging roads;

**“Royalty”** means all charges and levies on softwood sawlog;

**“Royalty Equation System”** means the system used by the Secretary for fixing royalty rates for softwood sawlog from time to time;

**“Secretary”** means the body corporate established by the *Conservation, Forests and Lands Act* 1987;

**“SEDUB”** means small end diameter under bark;

**“softwood sawlog”** means sawlog timber (as defined in the *Forests Act* 1958) of *Pinus radiata* or other coniferous species meeting with specifications as determined from time to time by the Secretary provided that such

SCHEDULE—*continued*

specifications are consistent with Clause 13 of this Agreement;

“State forest” has the same meaning as in the *Forests Act* 1958;

“year” means a period of twelve months commencing on 1 July and includes the period between the commencement date and the 30 June 1993.

Act References and Assignment

2. (1) In this Agreement unless inconsistent with the context or subject matter references to any Act shall include all amendments and re-enactments thereof for the time being in force and all supplemental legislation for the time being in force whether by regulation rule proclamation or order made or continuing under that Act or any amendment or re-enactment thereof and references to sections in any Act shall be deemed to include corresponding sections in any amending or re-enacting Act.

(2) The headings and side notes shall not affect the interpretation of this Agreement.

(3) A reference to a “Schedule” shall be a reference to a Schedule to this Agreement. A reference to a “Division” shall be a reference to a Division of this Agreement.

3. (1) This Agreement shall not be of any force or effect until the Act has been passed by the Parliament of Victoria and has come into operation and the passing of the Act and its coming into operation are both conditions precedent to this Agreement having any force validity or effect.

(2) Upon and after the commencement date this Agreement shall supersede the *Memorandum of Understanding*.

4. (1) The Company shall be at liberty at any time to assign its rights under this Agreement—

(a) to any company with which pursuant to the *Corporations Law* it is deemed to be related but notwithstanding any such assignment the Company shall remain responsible to the Secretary for the performance of all the obligations and conditions imposed upon the Company by this Agreement;  
or

(b) with the prior consent of the Secretary to any company, such consent not to be unreasonably withheld, and thereupon the Company (whether or not there has been any previous



**SCHEDULE—*continued***

assignment) shall be released totally and forever from all obligations and conditions imposed on the Company by this Agreement which are not up to the time of the assignment required to have been fulfilled.

(2) Upon each such assignment the assignee company shall by virtue of the Act be subject to all the obligations and conditions imposed upon the Company by this Agreement so far as they remain in force and are capable of taking effect and, save to the extent the contrary may be agreed, which are not required to have been performed by the Company prior to such assignment.

**PART II— OPERATION OF INDUSTRY**

**Division A—Duration of Agreement**

5. (1) This Agreement shall remain in force until 30 June 2030 or, until sooner determination in accordance with the provisions of this Agreement.

(2) The expiration or determination of this Agreement shall not affect the enforcement of any right obligation or liability which was acquired accrued or incurred prior to expiration or determination.

**Division B—Investment Programme**

6. (1) In consideration for the Secretary entering this Agreement the Company agrees to carry out the investment programmes referred to in the First Schedule hereto.

(2) This Agreement is conditional upon the establishment completion and commissioning of the sawmilling complex referred to in paragraph (a) of Clause (1) of the First Schedule by 31 July 1994.

(3) Until the condition specified in Clause 6. (2) is satisfied Division C will have no effect and the Secretary's rights pursuant to the *Forests Act 1958* or any other Act shall not be limited in any way by Division C.

(4) If the investment programme referred to in paragraph (b) of Clause (1) of the First Schedule is not completed by 31 January 2000 this Agreement may be terminated by the Secretary pursuant to Clause 28. (3).

SCHEDULE—*continued*

**Division C—Softwood Sawlog Rights**

7. Nothing in the Agreement shall affect the rights powers and privileges acquired by any person under or pursuant to the *Forests Act* 1958 or any other Act prior to the commencement date.

8. Without limiting the Secretary's obligations under Clauses 11 (1) and 12 hereof to make available to the Company certain supply of softwood sawlog, nothing in this Agreement shall restrict the Secretary's rights pursuant to the *Forests Act* 1958, to sell or grant licences and permits to obtain forest produce not detrimental to the Company's rights under this Agreement.

9. (1) Not later than the 31st day of March each year the Secretary in consultation with the Company shall draw up and deliver to the Company a plan of utilisation for the supply of softwood sawlog for the following year and a provisional plan for supply of softwood sawlog for the further two following years.

(2) The Company within 30 days after delivery of the plan of utilisation under Clause 9. (1) may request modification of the plan of utilisation with respect to supply for the immediate following year and provided that such proposed modification can be shown to be to the commercial benefit of the Company and the Secretary and consistent with the principles of proper forest management, the Secretary will not unreasonably refuse such modification and in the event that the Company considers the Secretary has unreasonably refused to consent to such modification, the modification may be referred to arbitration in accordance with Clause 27 hereof and the Arbitrators shall determine whether the Secretary has unreasonably withheld consent.

(3) The plan of utilisation shall set out the locations from which softwood sawlog may be obtained during the relevant period and shall specify the specific location area in hectares and the respective species, quantities and qualities of softwood sawlog which the Secretary estimates will be obtainable in each area, as well as the location and standard of road to be provided by the Secretary.

(4) The Secretary and the Company may during the currency of any plan of utilisation agree to a modification of the plan.

(5) The Company shall conform with each plan or modified plan of utilisation.

10. (1) The Company shall comply with the provisions of the *Forests Act* 1958, with all regulations for the time being in force under the *Forests Act* as if the rights granted by this Agreement had been

SCHEDULE—*continued*

granted by licence under the Forests Act and with the Code of Forest Practices for Timber Production and any other relevant Code of Practice for the time being in force under the *Conservation, Forests and Lands Act 1987*.

(2) The Secretary may impose additional covenants terms and conditions (called the "Conditions") which are not inconsistent with the provisions of this Agreement as if this Agreement were a licence issued under Section 52 of the *Forests Act 1958*. Initially, such Conditions shall be those set out in the Second Schedule excepting where inconsistent with specific provisions of this Agreement. Within one month of the commencement date and within thirty-days prior to the first day of July in each year of this Agreement the Secretary may deliver to the Company in written form changed (including additional) Conditions as if on each first day of July the Company was being granted a further or renewed licence under the said Section 52 but such changed Conditions shall be no more onerous on the Company than those the Secretary applies generally throughout the State of Victoria in corresponding circumstances of forest management to those being so imposed. Any Conditions (whether initially or from time to time changed) shall remain imposed until replaced or deleted.

11. (1) Subject to the provisions of this Agreement, the Company shall have the right to take softwood sawlog by its servants agents or contractors as provided in Clause 12 hereof.

(2) The Company may be required to obtain softwood sawlog suitable from which to satisfy the provisions of this Agreement from;

- (a) standing trees indicated by a forest officer;
- (b) softwood sawlog produced in conjunction with a logging operation conducted by a person or persons other than the Company; or
- (c) softwood sawlog felled or felled and removed by or on behalf of the Secretary.

(3) The Secretary may in its discretion if so requested by the Company modify the Company's obligation to take softwood sawlog felled or felled and removed by or on behalf of the Secretary which has been included in the plan of utilisation for that year but any of such softwood sawlog not taken by the Company shall for the purpose of Clause 12 hereof be softwood sawlog made available to the Company by the Secretary.

SCHEDULE—*continued*Minimum Annual Supply

12. (1) Subject to the provisions of Clauses 23 and 25 hereof and to the payment of the annual licence fee as provided in Clause 17 hereof the Secretary, subject always to the existing entitlement of other persons to softwood in the Portland Plantations, shall make available to the Company a minimum annual supply of softwood sawlog with Radiata Pine as the major species which unless increased pursuant to the provisions of sub-clause (4) hereof shall be—

- (i) for period year 1994/95—60,000 cubic metre;
- (ii) for the period year 1995/96 to year 1999/2000—142,000 cubic metre each year;
- (iii) for the period year 2000/01 to year 2029/30—180,000 cubic metre each year.

(2) (i) Should the Company take less than the minimum annual supply of softwood sawlog in any one year commencing after 30 June 1994 and concluding 30 June 1999, it has the right to carry forward the deficiency to 30 June 2000 and the Secretary shall make the deficiency available in addition to the minimum annual supply provided that the total volume taken does not exceed 770,000 cubic metre for period years 1994/95—1999/2000.

(ii) Should the Company take less than the minimum annual supply of softwood sawlog in any one year commencing after 30 June 1999, it has the right to carry forward the deficiency to any of the three years next following so that such as is carried forward will be used in addition to the minimum annual supply in the year of utilisation.

(3) The Secretary may in its discretion offer the Company in any year a quantity of softwood sawlog additional to the minimum annual supply.

(4) The Secretary may by written agreement with the Company increase, for any period commencing from the first day of July next following the date of such agreement, the minimum annual supply referred to in sub-clause (1) hereof for the period and any minimum annual supply so agreed upon may likewise be further increased.

(5) The Secretary shall ensure that the softwood sawlog of each standard and grade made available to the Company is as good in species, size, and quality in any year as that which is made available by the Secretary to any other person or persons in that year from the Portland Plantations.

SCHEDULE—*continued*

13. (1) In each year the volume of softwood sawlog equal to or greater than 20 cm CDUB shall be at least 95% of the minimum annual supply.

(2) The Company shall not be bound to accept—

(a) any sawlog which not being sound, clean and free from rot, doze, blue stain, hail damage and the result of Sirex wasp infestation beyond the tolerances provided in the Code of Practice Measuring And Allowing For Defect Softwood Sawlog which is set out in the Third Schedule or such other code as from time to time may be adopted by the Secretary in lieu thereof but should any sawlog be accepted by the Company which is not sound, clean and free from rot, doze, blue stain, hail damage and the results of Sirex wasp infestation, then that sawlog shall only be accepted when measured and allowed for defect in accordance with that code of practice;

(b) any sawlog which is below the following specification—

(i) 15 centimetre SEDUB;

(ii) log length of 3.0 metre and sweep equal to or more than 20% of CDOB for a 3.0 metre log length.

(3) Except to the extent that they are inconsistent with Clause 13.

(2) the produce specifications which apply generally to purchasers licensees or other persons acquiring softwood sawlogs from the Secretary shall apply with respect to this Agreement.

(4) The softwood sawlog made available to the Company by this Agreement shall be processed at the sawmilling complex referred to in the First Schedule except that with the prior consent of the Secretary and such consent not to be unreasonably withheld the Company may process up to 20 per cent of the minimum annual supply in any one year at a sawmilling complex other than that described in the First Schedule provided that the Company processes in that year at the sawmilling complex described in the First Schedule an equivalent volume of softwood sawlog that has not been made available to the Company by this Agreement. Records of the annual volume of softwood sawlog that is processed by the sawmilling complex described in the First Schedule shall be maintained by the Company and made available from time to time in a form and manner acceptable to the Secretary.

14. (1) For all softwood sawlog obtained by it under this Agreement the Company shall pay—

SCHEDULE—*continued*

- (a) as to softwood sawlog which the Company by its servants agents contractors or otherwise removes or fells and removes the royalty and roading charge as provided for in Clauses 16 and 18 of this Agreement;
- (b) as to softwood sawlog either felled or felled and removed by or on behalf of the Secretary the royalty and roading charge as aforesaid and a production charge to be agreed upon from time to time between the Secretary and the Company for;
  - (i) the cost to the Secretary of felling or felling and removal of softwood sawlog in or from the particular area;
  - (ii) the overhead expenses of the Secretary in connection therewith;
  - (iii) a profit component expressed as a percentage of the aggregate of the amounts referred to in sub paragraphs (i) and (ii).

(2) Failing agreement within fourteen days on the production charge referred to in paragraph (b) of sub-clause (1) hereof the production charge shall be determined by the Secretary but so that the production charge for the cost of felling or felling and removal of softwood sawlog in or from any area shall be comparable to the production charge generally incurred by the Company for felling and felling and removal (as the case may be) of softwood sawlog at that time in similar form in or from areas which are similar with respect to yield of softwood sawlog physical circumstances of extraction and situation in regard to means of transport.

15. (1) Subject to the provisions of Clauses 25 and 26 hereof the Company shall be bound in each year from 1 July 1994 in which the minimum annual supply of softwood sawlog to which it is entitled in that year is available to it either—

- (a) to take not less than 90% of softwood sawlog required to be made available in the plan of utilisation; or
- (b) if it takes less than the quantities set out in the preceding paragraph (a) hereof to pay royalty and roading charge to the Secretary on the deficiency at a rate equal to the royalty and roading charge rate payable in that year under Clause 18 hereof.

(2) If the Company during any of the three years next following any year in which there is a deficiency obtains a quantity of softwood sawlog in excess of the minimum annual supply the royalty and

SCHEDULE—*continued*

roading charge payable on such excess shall be reduced by the amount of royalty and roading charge paid in respect of the deficiency.

16. Notwithstanding any contrary provisions contained in the Conditions the following provision shall apply with respect to royalty, roading charge, and production charge payable under this Agreement:

- (a) Royalty, roading charge, and production charge shall be payable at such times and in such manner and on such terms as the Secretary from time to time determines and until otherwise determined shall be payable at such times and in such manner and on such terms as are specified in the Conditions after the amounts have been ascertained in accordance with this Agreement.
- (b) If any account remains overdue for more than 14 days the Secretary may without limiting the obligations of the Company under Clause 15 hereof by notice in writing to the Company suspend its right to obtain softwood sawlog under this Agreement until payment is made in full.
- (c) If the Company disputes the amount of any payment demanded by the Secretary it shall make the payment under protest and thereafter shall be entitled to take proceedings for recovery of, and recover, any amount in excess of the amount it was liable to pay.

17. (1) In addition to royalty, roading charge, and production charge payable in accordance with Clause 14 hereof an annual licence fee shall be paid by the Company to the Secretary with respect to the acquisition by the Company of the right to take softwood sawlog as provided in Clause 11 (1) hereof.

(2) The annual licence fee will be due and payable in each year on the 30th day of June with respect to the minimum annual supply of softwood sawlog required to be made available in the following year. The Secretary may in his discretion determine that the annual fee may be paid in six monthly instalments.

(3) The annual licence fee will be determined annually by multiplying the minimum annual supply by the base rate which is to be determined by adjusting the preceding base rate by the same proportion by which royalty was adjusted in the year that the preceding base rate was the applicable base rate provided that—

- (a) with respect to the 30 June 1992 the base rate shall be deemed to be \$3.37 per cubic metre;

SCHEDULE—*continued*

- (b) with respect to determining the annual licence fee payable on 30 June 2000 and thereafter, at five yearly intervals sub-clause (4) of this Clause shall apply.
- (4) The amount of the annual licence fee will be reviewed between 1 April 2000 and 30 June 2000 and thereafter between the 1st day of April and the 30th day of June at five yearly intervals from 1 April 2000 and in the following manner:
  - (a) A review is to be conducted by the Secretary and the Company jointly;
  - (b) The review will establish if a new base rate shall apply;
  - (c) The review will take account of—
    - (i) changes in the average domestic market price of sawn timber;
    - (ii) changes in the landed price of imported sawn timber and related products, relative to economy wide indices of capital and labour costs;
    - (iii) the benefit of the special rights granted to the Company under this Agreement;
    - (iv) the premium offered in the Expression of Interest to acquire the right to take softwood sawlog as provide by Clause 11. (1).
  - (d) The review will last no longer than the 30th day of June in the year in which it commenced. In the event that agreement is not reached between the Secretary and the Company, on or before that date the matter will be referred to arbitration as provided by Clause 27 hereof.
  - (e) Any new base rate so determined will be adjusted in each of the subsequent four years, similarly as set out in sub-clause (3) hereof.
- (5) In the event of any dispute that can touch upon the calculation of the annual licence fee is referred to arbitration the annual licence fee shall be paid on the 30th day of June as if no such dispute had existed; but if the resolution of the dispute (whether by agreement between the parties or arbitration) causes a different annual licence fee to become applicable the Company shall pay to the Secretary or the Secretary shall pay to the Company forthwith as the case requires an amount being the difference between the amount of the annual licence fee so paid and the amount which would have been payable had the resolution of the dispute been achieved on that 30th day of June.



SCHEDULE—*continued*

18. (1) The royalty payable from time to time for softwood sawlog shall be at the rate as determined in accordance with the Royalty Equation System and consistent with general softwood sawlog pricing from State forest in the State of Victoria.

(2) The roading charge payable on all softwood sawlog removed under this Agreement shall be determined by the Secretary from time to time and will take account of projected expenditure on timber extraction roads accessing Portland Plantations and the advice of the Softwood Management Area Roading Advisory Committee on which the Company may at its option be represented.

19. The Company shall not construct within State forest any road track or passage or any chute without the prior written consent of a forest officer and shall not construct within State forest any tramway flume or building or erect any haulage or conversion unit without the prior written consent of the Secretary, such consent in each case not to be unreasonably withheld.

20. (1) The quantity of softwood sawlog upon which royalty, roading charge, and production charge is payable under this Agreement shall be determined in such manner and at such place as may be agreed upon by the Secretary and the Company or failing agreement within thirty days from negotiations commencing as the Secretary may direct.

(2) If the royalty, roading charge, and production charge so payable is to be determined by mass—

- (a) the Company shall provide at its plant a weighbridge of a pattern which meets the requirements of the *Weights and Measures Act 1958* and shall while this Agreement remains in force have the weighbridge maintained and periodically verified and stamped in accordance with the provisions of that Act and shall operate the weighbridge in accordance with the reasonable requirements of the Secretary;
- (b) at all times while the weighbridge is in accurate working order the quantity of softwood sawlog upon which royalty, roading charge, and production charge is payable under this Agreement shall be determined by weighing it on the weighbridge;
- (c) at all times while the weighbridge is not in accurate working order the quantity of softwood sawlog upon which the royalty, roading charge, and production charge is payable under this Agreement shall be determined in such manner as may be agreed upon by the Secretary and the Company or

SCHEDULE—*continued*

failing agreement within fourteen days as the Secretary may reasonably direct.

21. The Secretary may from time to time give to the Company written notice of reasonable conditions not inconsistent with the provisions and intent of this Agreement which conditions are, having regard to the overall provisions of this Agreement, of a minor nature and which further are of a temporary or passing nature and which shall apply in the areas from which the Company is obtaining softwood sawlog under this Agreement. The Company shall comply with any such conditions.

22. (1) The Company shall inform the Secretary in writing once a year of the names of its servants agents contractors or otherwise who are engaged in obtaining softwood sawlog under this Agreement.

(2) The Company shall supply to each person who is engaged from time to time in obtaining softwood sawlog under this Agreement whether as servant agent contractor or otherwise for production when required by a forest officer evidence in a form satisfactory to the Secretary that such person is engaged in obtaining softwood sawlog under this Agreement and the Company shall forthwith inform the Secretary in writing whenever any such person ceases to be so engaged.

(3) (a) The Company shall include in every contract entered by it with a contractor for obtaining softwood sawlog under this Agreement provisions requiring the contractor to comply with the *Forests Act* 1958 the regulations made under the *Forests Act* 1958, the conditions referred to in Clause 21 hereof which are applicable to that contractor, the conditions referred to in Clause 10 (2) hereof which are applicable to that contractor, and with the Code of Forest Practices for Timber Production, and any other relevant Codes of Practices for the time being in force under the *Conservation, Forests and Lands Act* 1987.

(b) The Company shall upon making any such contract forthwith give to the Secretary written notice of the contract specifying the name of the contractor, the duration of the contract and the quantity of and location from which softwood sawlog are to be obtained thereunder.

**Division D—Miscellaneous**

23. (1) If any of the Portland Plantations upon which supply is dependent are damaged or destroyed by fire disease or other cause beyond the control of the Secretary to such an extent that it is impracticable for the Secretary to comply with the provisions of Clause

SCHEDULE—*continued*

12 hereof or if by reason of any other cause whatsoever beyond the control of the Secretary it is unable to comply with those provisions—

- (a) the Company shall have no claim against the Secretary for the non-fulfilment of its obligations under those provisions as far as non-fulfilment is due to any such cause; and
- (b) the Secretary shall use its best endeavours to provide a supply of softwood sawlog to the Company having regard on the one hand to the obligation of the Secretary under this Agreement to make available to the Company certain supplies of softwood sawlog and on the other hand the duty of the Secretary to protect State forests and control and manage State forests throughout the State of Victoria in a manner which is not unduly damaging financially to the Secretary or to the revenues of the State of Victoria and the obligations of the Secretary under other agreements and licences to other persons.

24. If, in the opinion of the Secretary, extensive damage occurs to State forest softwood plantations within 250 kilometres road distance from the Portland Softwood Management Area, softwood sawlog salvaged from these plantations may be offered to the Company as part of the minimum annual supply and at a royalty, roading charge, and production charge as determined by the Secretary.

25. If—

- (a) any of the softwood plantations upon which supply is dependent are damaged or destroyed by fire disease or other cause to such an extent that it is impracticable for the Secretary to comply with the provisions of Clause 12 hereof or if by reason of any other cause beyond the control of the Secretary it is prevented from complying with those provisions;
- (b) the Company's sawmill complex referred to in First Schedule is substantially damaged or destroyed by fire or other calamity in such circumstances as the Company is not reasonably (as to amount and risk) indemnified under a policy of insurance;
- (c) by reason of war riot civil commotion strike lockout or action in the nature of a strike or lockout ban or limitation on work or restraint of labour act or restraint of any Government or semi-government or other public or statutory authority the Company is substantially impeded

SCHEDULE—*continued*

from obtaining softwood sawlog or carrying on the industry at the sawmill complex referred to in the First Schedule;

then in any of those events—

- (i) the Company may apply to the Secretary for termination, suspension or a reasonable modification of the extent or operation of its obligations under this Agreement or for an extension of time for the performance or observance thereof;
- (ii) the Secretary upon any such application by the Company shall decide to grant or refuse termination, a suspension of the said obligations or a reasonable modification of their extent or operation or an extension of time for their performance or observance;
- (iii) if the Company is dissatisfied with the decision of the Secretary upon any such application—
  - A. arising out of the provisions of the preceding paragraphs (a) and/or (b) and/or (c);
  - B. with the delay (not being less than ten working days from the date of application) in making the decision arising out of the provisions of the preceding paragraphs (a) and/or (b) and/or (c);

then the matter shall if the Company so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness and may grant a suspension modification or extension of time on such terms and conditions as the arbitrator so determines but such suspension modification or extension of time shall be subject to review in accordance with Clause 26. In no event shall a suspension modification or extension be for an unlimited period of time.

26. If this Agreement has been suspended or modified or an extension of time has been granted in accordance with Clause 25 and if afterwards the carrying on by the Company of the industry or the continued performance by the Company of its obligations under Clauses 14, 15 and 17 hereof are considered by the Secretary to be practicable then—

- (i) the Secretary may apply to the Company for a further reasonable modification of the extent or operation of the Company's obligations under this Agreement but not so as to exceed the obligations of the Company initially imposed by this Agreement;

SCHEDULE—*continued*

- (ii) the Company upon any such application by the Secretary shall decide to grant or refuse a further reasonable modification of this extent;
- (iii) if the Secretary is dissatisfied with the delay (not being less than thirty days) in making the decision the matter shall if the Secretary so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness;
- (iv) if the Secretary is dissatisfied with the decision of the Company upon any such application the Secretary shall suggest to the Company that the Secretary and the Company should negotiate in good faith to reach a decision acceptable to the Secretary and the Company but if the Secretary and the Company after negotiating in good faith cannot within a reasonable time (and in any event not less than fifteen weeks) reach a decision acceptable to the Secretary and the Company the matter shall if the Secretary so elects be determined by arbitration and the arbitrators may determine the matter with reference to considerations of general justice and fairness but the arbitrators shall not make any award by which the obligations of the Company shall exceed those obligations initially imposed by this Agreement nor any award which has an effect prior to the date of the Secretary's application made under the preceding paragraph (i) which is referred to arbitration.

27. Wherever it is provided that any matter shall or may be determined by arbitration—

- (a) the matter shall be referred to two arbitrators one to be appointed by the Company and one by the Secretary;
- (b) the provisions of the *Commercial Arbitration Act* 1984 shall apply to the reference;
- (c) the arbitrators or umpire or some other person appointed on their behalf may investigate the Company's or Secretary's affairs and accounts so far as may be necessary to assist them to determine any matter referred to them and the Company and the Secretary each shall give them full access to all accounts and papers necessary for that purpose and shall afford them full information and assistance.
- (d) the parties agree that the purpose of the provision of information or accounts of either party to the other party or to the arbitrators, umpire or their appointee is for the sole

SCHEDULE—*continued*

purpose of the conduct of the arbitration and such information or accounts is not to be used or disclosed in any manner or for any purpose not connected with the arbitration proceedings in the course of which it was provided.

28. (1) If the Company contravenes or fails to comply with the provisions of this Agreement in circumstances where the failure represents a breach capable of remedy, the following shall apply:

- (a) The Secretary shall give notice in writing to the Company specifying with reasonable detail the contravention or failure complained of together with details of the date and form in which the Secretary became aware of the same;
- (b) If the Company fails to remedy the contravention or fails to cease the contravention or failure (as the case may be) within ninety days of receipt of the notice referred to in the preceding paragraph (a), then with the approval of the Minister the Secretary by notice in writing under its common seal to the Company may determine this Agreement.

(2) If the Company contravenes or fails to comply with the provisions of this Agreement in circumstances where in the reasonable opinion of the Secretary such breach is not capable of being remedied, the following shall apply:

- (a) The Secretary shall give notice to the Company specifying with reasonable details the contravention or failure complained of together with details of the date and form in which the Secretary became aware of the same and requiring it forthwith to desist from repeating the contravention or failure;
- (b) If within a period of two years from the service of the aforesaid notice the Company has repeated the breach complained of, then with the approval of the Minister the Secretary by notice in writing under its common seal may determine this Agreement.

(3) Notwithstanding sub-clauses (1) and (2) of this Clause 28 if the Company—

- (a) fails to complete any of the investment programmes as contained in the First Schedule of the Agreement within the times specified therein or within any extension of time granted to the Company by the Secretary;

SCHEDULE—*continued*

- (b) is the subject of an order made or a resolution passed or a petition presented or an application made for the winding up or dissolution without winding up of the Company (except for the purpose of reconstruction or amalgamation with the consent in writing of the Secretary first had and obtained) or if any person enters into possession of the property of the Company or any part thereof or if a receiver or receiver and manager of the Company's undertaking or assets or income or any part thereof shall be appointed by any person;
- (c) enters into any scheme or arrangement for the benefit of its creditors generally or any of them or any class of them which has not been satisfied in full within sixty days or if an application is made to any court for an order summoning a meeting of the creditors of the Company pursuant to the *Corporations Law*;
- (d) ceases to carry on the industry at the sawmilling complex referred to in the First Schedule;

then with the approval of the Minister the Secretary by notice in writing under its common seal may in its absolute discretion determine this Agreement.

29. (1) The Secretary and the Company may from time to time by agreement in writing amend this Agreement by such additions deletions and variations of matters of details as may be necessary or desirable to facilitate the carrying on of the industry.

(2) The Secretary and the Company may with the approval of the Minister determine this Agreement upon such terms as they deem fit.

30. Notwithstanding anything in the *Forests Act* and the *Conservation, Forests and Lands Act* the Company shall not be required to obtain any lease licence permit or authority beyond this Agreement to take softwood sawlog as provided in Clause 12 hereof.

31. (1) In the last three years of this Agreement the Secretary shall if the Company seeks a further Agreement to assure to it supply of softwood sawlog for the continuance and/or expansion of the industry investigate the development of the industry and if satisfied that the Company needs to have supplies of softwood sawlog assured to it by a further Agreement and taking into account the performance of the Company under the Agreement and the Company not being at the time in breach of any of its obligations under the Agreement enter into negotiations with the Company for that purpose.

SCHEDULE—*continued*

(2) If a further Agreement has been agreed upon and executed the Secretary shall (if necessary) recommend to the Minister that a Bill be introduced into the Parliament of Victoria as soon as possible to ratify validate approve and otherwise give effect to it.

32. The Minister approves this Agreement.

Sign and Seal

In witness whereof the parties hereto have executed as a deed this Agreement the day and year first before written.

Signed and sealed and delivered by the Honourable, the  
Treasurer in the presence of:

PETER COATMAN                      ALAN STOCKDALE      L.S.

Signed and sealed and delivered by the Honourable, the  
Minister for Natural Resources in the presence of:

RAY PAGE                              GEOFF COLEMAN      L.S.

The common seal of Secretary to the Department of  
Conservation and Natural Resources was hereunto affixed  
in the presence of:

K. J. WAREING                      ALAN THOMPSON      L.S.

The common seal of S.E.A.S Sapfor Limited was hereto  
affixed in accordance with the Articles of Association of the  
Company in the presence of:

A. de BRUIN, Director    L.S.  
D. S. KERR, Secretary

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**FIRST SCHEDULE**

**INVESTMENT PROGRAMMES TO BE UNDERTAKEN BY S.E.A.S.  
SAPFOR LIMITED**

(1) The Company undertakes covenants and agrees to:

- (a) establish complete and commission by 31 July 1994 within the Portland Softwood Management Area, State of Victoria a new softwood sawmilling complex capable of processing a minimum of 180,000 cubic metre of softwood sawlog per annum; and
- (b) to install and commission in the complex by 31 January 2000 ancillary equipment and technology to further value add the sawn product for either the domestic or export market.



**SCHEDULE—*continued***

(2) The sawmilling complex is to be developed substantially in accordance with the information provided in the Expression of Interest, as modified in the document dated 1 August 1989 titled “Preliminary Design and Financial Statement” and further information provided to the Secretary for final approval.

(3) The information provided by the Company and accepted by the Secretary as adequate shall take effect to amend supplement and vary the Expression of Interest and Preliminary Design and Financial Statement, and together with the Expression of Interest and Preliminary Design Statement shall constitute the final proposal (“the Proposal”) for the development of the sawmilling complex.

(4) The development of the sawmilling complex undertaken by the Company must be in substantial accordance with the Proposal provided that the Company may submit amendments to the Proposal to the Secretary for approval by the Secretary, which approval may be granted or withheld in the sole discretion of the Secretary.

(5) The security referred to in the *Memorandum of Understanding* shall be returned to the Company on the day that the Act of Parliament which ratifies the Agreement receives the Royal Assent.

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**SECOND SCHEDULE**

**SOFTWOOD SAWLOG LICENCE**

*Allocation*

1. (a) In its operations the licensee shall follow each plan of utilisation or modified plan, and shall ensure forest operations are confined to the area of supply and are conducted in accordance with specifications operational procedures and prescriptions as directed by the Secretary.

(b) From time to time during this licence, the Secretary or a forest officer shall specify whether timber to be taken by the licensee shall be taken from trees to be felled by the licensee or shall be taken from timber produced or to be produced by the Secretary or others. Any timber produced by the licensee from trees felled by or on behalf of the licensee may be directed by the Secretary for supply to others.

(c) The Secretary or a forest officer may also specify any or all of—

- (i) what trees shall be felled by the licensee;
- (ii) the kinds of timber which may be taken by the licensee;
- (iii) from what places the licensee shall take timber produced or to be produced by the Secretary or others.

*Operational*

2. (a) The licensee shall comply with any lawful directions given by a forest officer for the purposes of this licence.

(b) The licensee shall carry out, at the cost of the licensee such post logging rehabilitation works during and on completion of a forest operation as directed by a forest officer. Where two or more licensees undertake joint logging operations the Secretary may require those licensees to lodge joint security to provide for reasonable

SCHEDULE—*continued*

costs of post logging rehabilitation should the contractor(s) engaged by those licensees fail to undertake post logging rehabilitation works as directed by a forest officer. Work performed as directed by a forest officer in addition to that specified in any applicable code of practice or licence conditions shall be reimbursed to the licensee by the Secretary.

(c) The Secretary will establish and maintain a network of major extraction roads within State forest to facilitate logging during typical seasonal conditions. The licensee may be required to construct and maintain such major extraction roads as may be agreed upon between the licensee and the Secretary. Reasonable costs of such work shall be reimbursed to the licensee by the Secretary.

3. (a) All persons employed by the licensee to obtain forest produce under the authority of this licence shall be licensed by the Secretary to operate in State forests.

(b) The licensee shall ensure that each person employed by the licensee in cutting trees and taking timber under this licence is—

- (i) licensed for the particular operation or operations for which the person is employed or engaged under an approved training scheme;
- (ii) properly equipped with all requisite safety equipment; and
- (iii) properly supervised to ensure compliance with proper operational procedures.

*Royalty, Roading Charge, and Production Charge*

4. Royalty, roading charge, and production charge shall be determined by the Secretary from time to time and paid by the licensee to Secretary pursuant to the licence. The Secretary shall advise the licensee in writing of such royalty, roading charge, production charge no less than 14 days prior to the application of such rates and charges in accounts issued under the provisions of Condition 8 hereof.

5. Royalty, roading charge, and production charge payments shall be calculated on the kind and quantity of timber taken. Measurement of the quantity of timber shall be made in such a manner as is determined by the Secretary and at such locations as are indicated by the Secretary. If the licensee considers that the defect allowances, measurements or log grades recorded in respect of any particular log are incorrect, the log concerned may be set aside for inspection by a forest officer, whose decision shall be final. No additional allowance shall be given if sawing operations have been commenced on that log.

6. Royalty, roading charge, and production charge shall be charged on all timber taken under this licence. Where in the opinion of a forest officer, timber which the licensee is authorised to take under this licence remains in any tree felled by or on behalf of the licensee, royalty, roading charge, and production charge may be charged on such timber at rates applicable to the kind or kinds of the timber not removed and the quantity of timber equivalent to that remaining in the trees shall be included in the quantity taken pursuant to this licence.

7. Royalty, roading charge, and production charge shall be subject to variation at any time:

- (a) Variation in individual rates may be made on account of a change in any of the factors used in the determination of that rate;
- (b) A general review shall take place annually, and shall reflect—

**SCHEDULE—continued**

- (i) changes in the costs of production as reflected in commercial accounting systems developed by the Secretary;
- (ii) utilisation standard for various species and grades of timber;
- (iii) market prices for timber products; and
- (iv) the findings of timber pricing studies.

8. (a) Account for royalty, roading charge, and production charge shall be issued monthly.

(b) An account issued for royalty, roading charge, and production charge is due for payment immediately it is rendered and becomes overdue if not paid by thirty (30) days from the date the account is rendered.

(c) If royalty, roading charge, and production charge is not paid after becoming overdue the licensee shall pay interest on the sum due but unpaid, from the date that sum became overdue at the rate for the time being applicable under Section 30 of the *Conservation, Forests and Lands Act 1987*.

(d) If an account remains overdue for more than 14 days then the Secretary may direct by notice in writing to the licensee that no further timber shall be taken on credit by the licensee under this licence until the outstanding amount has been paid in full.

**Fire**

9. For the purpose of ensuring, so far as possible, the availability of timber which is permitted to be taken by the licensee, the licensee shall—

- (a) take all reasonably practicable action to avoid the occurrence of any fire which may occur within the area of supply or adjacent to the area of supply and for the purpose of suppressing any fire which may occur;
- (b) if called upon by the Secretary or any forest officer the licensee shall make available all assistance in the form of personnel, plant and equipment, to the Secretary for the purpose of suppressing any fire which may occur in the area of supply or adjacent to the area of supply;
- (c) the licensee shall free any contractor and any or all of the personnel, plant or equipment of such contractor engaged by the licensee from all contractual obligations towards the licensee for use by the Secretary for the purpose of fire suppression;
- (d) except as hereinafter provided, the Secretary shall reimburse the licensee for reasonable costs in making any personnel, plant or equipment available to the Secretary for the purposes of fire suppression. The rate of reimbursement to be paid by the Secretary shall be based upon a schedule of rates which shall be revised annually by the Secretary;
- (e) the Secretary shall indemnify the licensee for loss incurred with respect to any personnel, plant or equipment while engaged in fire suppression including associated travelling. Without affecting the generality of the foregoing, such loss shall include—
  - (i) any claim for compensation or damage to equipment by employees or contractors made available by the licensee due to accident resulting from such fire suppression activities;
  - (ii) any insurance premium increase which results from claims made due to loss or damage suffered during such fire suppression activities,

**SCHEDULE—*continued***

provided such increase is clearly related to a particular such activity and that alone;

- (f) the Secretary shall not be liable to pay compensation to the licensee for any loss of production or profit occasioned by the licensee making available its employees, plant or equipment for fire suppression;
- (g) no compensation or reimbursement shall be made by the Secretary to the licensee with respect to a fire when in the opinion of the Secretary there was sufficient evidence to establish beyond reasonable doubt that the fire was knowingly or negligently lit, caused or maintained by the licensee or any of its employees or contractors in the course of their employment or contractual obligations;
- (h) no compensation or reimbursement shall be made by the Secretary to the licensee for any loss or damage caused by any fire which breaks out within 800 metres of its logging operations or sawmill within the Fire Protected Area unless the Secretary is satisfied that the licensee or any of its employees on being informed or on becoming aware of the fire took prompt and effective steps to engage in fighting the fire;
- (i) reimbursement made to the licensee by the Secretary under sub-section (d) hereof shall be made within 30 days of the last day of the month of supply of the service.

*Other Contracts*

10. The licensee shall include in every contract made by it with a contractor for cutting trees and/or taking away of timber for the purposes of this licence, Clauses which incorporate similar obligations to those referred to in Clauses 1 (a), 2 (a), 2 (b), 3 (a), 3 (b), and 9 as if the contractor were the licensee.

*Securities for Monies Outstanding*

11. The Company shall lodge with the Secretary each year a security as prescribed by the Secretary but such prescription shall be no more onerous on the Company than those the Secretary has applied to others throughout the State of Victoria in corresponding circumstances.

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**THIRD SCHEDULE**

**CODE OF PRACTICE**

**MEASURING AND ALLOWING FOR DEFECT SOFTWOOD SAWLOG**

**PORTLAND SOFTWOOD MANAGEMENT AREA**

This code is intended to cover—

- (a) tree lengths, trimmed and headed off but not crosscut to long lengths;
- (b) logs cut to length for cartage.

In reference to (b) above, it is assumed that some of the defects present in tree lengths will be docked out by judicious crosscutting into log lengths for cartage.

SCHEDULE—*continued*

1. Measurement and preparation of softwood sawlog shall be made at such locations as determined by the Secretary and shall be made in such a manner as determined by the Secretary.

2. All measurements shall be taken under bark unless specified otherwise or inconsistent with the Agreement hereto.

3. An allowance of 10 cm for all recorded lengths shall be given for cross cutting.

4. Diameters shall be recorded to the backward whole centimetre.

5. In determining the inclusion of defect, or supervising the docking out of defect, it should be assumed that a wide range of log lengths is acceptable to the sawmiller irrespective of the log lengths actually cut. "Wide range" in this context means 3.0 metre and up but may also include lengths shorter than 3.0 metre in every case where it is the normal practice of the particular Licensee to cut short lengths for any purpose.

6. Allowance shall not be given for falling or snagging damage except where in any particular case the forest officer is satisfied that such damage was completely unavoidable.

7. Allowance for *blue stain, fire damage, hail damage, sirex treatment* etc., shall only be made on specified approval from the Director General.

8. Where a *fork* occurs the section of the tree affected by twin heart and bends in the limbs at their junctions with the trunk shall be allowed for. The limbs (if merchantable) of the tree above and the bole below the defective section shall be measured as if they were separate trees.

9. *Knots* exceeding 75mm in diameter, measured across the shorter axis, shall be subject to allowance. The allowance to be given shall be determined by multiplying the length of log affected (angular projection of the knot into the log) by the proportion of the cross-section of the log affected and expressing the result as a length allowance to the nearer 0.1 metre.

10. An allowance of the full length affected shall be given where two or more whorls of *cone holes* occur within any 0.9m length of log.

For the purpose of this Clause whorl of cone holes means three or more cone holes within 0.1m length of log.

11. Miscellaneous defects subject to allowance are:

- (i) Twisted stem and break resulting them stem. The allowance shall be the length of log visibly affected.
- (ii) Rot, dry side, fire scar and previous mechanical damage. The allowances shall be determined by multiplying the length of log affected by the average cross sectional area of the log affected and expressing the result as a length allowance to the nearer 0.1 metre.

