

## Appendix 2

### CBH Ring-fencing Arrangements and Policy

#### **1 Organizational structure**

- 1.1 Under Grain Express, the storage and handling business operated by CBH will remain operationally and legally distinct from the grain marketing business conducted by GPPL.
- 1.2 The legal entity CBH relevantly comprises:
  - (i) CEO and Board;
  - (ii) Support Services, includes the finance, accounting and legal functions, which provide backup services to all of the entities in the CBH group; and
  - (iii) CBH Operations, which manages the operation of CBH storage and handling business.
- 1.3 GPPL is a distinct legal entity, with its own Board and management structure.
- 1.4 The General Managers of GPPL and CBH Operations each report directly to the CEO and board of CBH.
- 1.5 The functions and responsibilities of CBH Operations include:
  - (i) planning, maintenance and operations of upcountry receipt and storage facilities;
  - (ii) management of road and rail freight contracts and arrangements;
  - (iii) gathering and managing information on grain quality, quantity and grade;
  - (iv) negotiation and management of storage and handling agreements with marketers;
  - (v) management and operation of the Metro Grain Centre;
  - (vi) management and operation of port storage and ship loading facilities;
  - (vii) provision of crop forecasting and information services to growers.

#### **2 Physical separation**

- 2.1 As of June 2008, GPPL will be physically separated from operations and will occupy a different floor of the CBH building in Delhi Street, West Perth.
- 2.2 CBH plans to move GPPL to a separate building, which is under construction and due for completion in 2009.

### **3 Accounting separation**

- 3.1 As a cooperative, CBH has the benefit of tax exempt status for the operation of its storage and handling business. That tax exempt status does not extend to GPPL.
- 3.2 Accordingly, CBH and GPPL maintain separate accounts.
- 3.3 Accounting separation is required to ensure that CBH and GPPL do not engage in transfers that would cause CBH to shift cost to GPPL in order to increase the proportion of its non-taxable revenue.
- 3.4 CBH's accounts are audited by the company auditor, Ernst and Young, to ensure that costs are appropriately apportioned between the taxable and non taxable business activities in the group.
- 3.5 For this reason, additional provision for auditing of accounting separation is unnecessary while CBH retains its tax exempt status.

### **4 Information flows**

- 4.1 This aspect of ring-fencing arrangements provides for the management of flows of confidential information between CBH Operations, CBH Senior Management and GPPL.
- 4.2 Where appropriate, the principles stated in this document may be the subject of more detailed processes and procedures to promote and encourage compliance.

#### *Confidential Information*

- 4.3 **"Third Party"** means a person other than CBH, who enters into, or proposes to enter into an agreement for the supply of storage and handling services with CBH.
- 4.4 **"Confidential information"** means information exchanged between CBH and a Third Party or their nominated representative, in relation to the business of that Third Party that:
  - (i) is by its nature confidential;
  - (ii) relates to a Third Party's entitlement or interest in any grain delivered to, or held in the custody of CBH, unless authorised to be disclosed by a relevant person;
  - (iii) relates to the origin, grade, quality, quantity, location or attributes of grain owned by a particular Third Party;
  - (iv) relates to intellectual property rights owned by the Third Party or CBH;
  - (v) is specified to be confidential by the person who supplied it; or
  - (vi) is known, or ought to be known, by a person using or supplying it to be confidential or commercially valuable;but excludes information that:

- (vii) is comprised solely of the name, address and contact details of a person; or
- (viii) was in the public domain at the time when it was supplied; or
- (ix) subsequently becomes available other than through a breach of confidence or breach of this provision; or
- (x) was in lawful possession of CBH prior to being provided by the Third Party or gathered by CBH in the course of providing services to the Third Party; or
- (xi) ceases to be confidential in nature by any other lawful means.

*Prohibited information flows*

4.5 Subject to clause 4.6 of this document, CBH shall not:

- (i) disclose Confidential Information to other entities, including its own related bodies corporate, their agents or employees;
- (ii) access or use Confidential Information in violation of this policy for the purpose of substantially damaging a competitor or conferring upon its related bodies corporate any unfair competitive advantage over any Third Party in the marketing of grain; or
- (iii) allow other entities, including its own related bodies corporate, their agents or employees to have access to Confidential Information in CBH's possession.

*Permitted information flows*

4.6 CBH may disclose:

- (i) to a Third Party any Confidential Information that solely relates to the grain owned by that Third Party;
- (ii) to any person, information concerning the grade, quality, quantity, location or attributes of grain received by CBH, provided that information is aggregated to such an extent that a recipient of that information would not be capable of identifying information specific to any particular Third Party.

*Restricted information flows*

4.7 CBH shall restrict or limit access to its databases (which contain Confidential Information) by:

- (i) only allowing full access to CBH officers and employees;
- (ii) providing access to non-confidential information on databases to other persons in accordance with this policy (**Partial Access**).

4.8 CBH shall maintain a register of all persons who use its stock management database and shall ensure that access is modified in order to comply with the above-mentioned clauses if they transfer from CBH to GPPL or vice versa.

- 4.9 Allowing access to GPPL employees and officers only to the extent that they may view non-confidential information, including information concerning:
- (i) GPPL's own stocks of grain in CBH's custody; and
  - (ii) grain movements and related freight data for GPPL cargo accumulation.
- 4.10 For the avoidance of doubt, Marketers other than GPPL will have access to equivalent information to that provided to GPPL. That information will be provided in the form of reports rather than direct database access.

## **5 Decision making**

- 5.1 CBH Operations will comply with the following decision making principles in dealing with Growers and Marketers in relation to the provision of storage and handling services:
- (i) decisions in relation to the terms and conditions of storage, handling and associated services by CBH will be made by identified senior management of CBH Operations;
  - (ii) decisions and the reasons for those decisions will be documented by CBH Operations.
  - (iii) decisions made by CBH Operations will be made in a consistent manner that does not unfairly or unreasonably discriminate between the acquirers of those services. In particular:
    - (A) CBH will apply the attached Accumulation Policy;
    - (B) CBH will publish standard terms and conditions for:
      - (1) the provision of services to Growers;
      - (2) the provision of services to Marketers;
    - (C) CBH will contract with its related marketing entities on an arms-length commercial basis; and
    - (D) to the extent that the terms and conditions (including price) for storage, handling and associated services differ between the acquirers of those services, such differences will proportionally reflect objectively verifiable commercial factors including, but not limited to:
      - (1) differences in the cost of providing services;
      - (2) differences in volume and type of grain entitlements; and
      - (3) geographic and seasonal variations;
      - (4) available port capacity;
      - (5) protecting the port terminal provider against liability; and

- (6) the ability to commingle grain.

## **6 Compliance**

6.1 CBH Group employees should:

- (i) be aware that a failure to comply with ring-fencing obligations may constitute a disciplinary offence and expose both the individual and the CBH Group to penalties for a breach of the TPA;
- (ii) contact the legal department if they have any concerns in relation to this Policy, adherence to its objects by staff or its application to any particular conduct.

6.2 The CBH Group will provide training to individuals in high risk areas to ensure that they understand their obligations.

## **7 Complaints handling**

7.1 If a Grower or a Marketer considers that CBH has not complied with these ring-fencing arrangements, they may lodge a complaint in writing with the CBH Group CEO.

7.2 That complaint must be referred to:

- (i) the General Manager of CBH Operations;
- (ii) CBH's General Counsel; and/or
- (iii) CBH's Compliance Officer.

7.3 CBH operations must conduct an internal investigation of the complaint, as to whether there has been a compliance failure by CBH Operations.

7.4 If that investigation concludes that CBH has not acted in accordance with these ring-fencing arrangements, CBH must:

- (i) inform the complainant of that finding;
- (ii) appoint an appropriately qualified external auditor to conduct an audit of CBH's compliance with its obligations under this policy;

7.5 The auditor will compile an audit report identifying:

- (i) whether CBH has complied with its obligations under this policy;
- (ii) if the auditor determines that CBH has not complied with its obligations, state the particulars of the non-compliance; and
- (iii) state the process adopted for the audit; and
- (iv) provide recommendations for appropriately addressing the compliance failure.