Date introduced: 19 February 1986
House: House of Representatives
Presented by: Hon. Chris Hurford, M.P.,
Minister Assisting the Treasurer

DIGEST OF BILL

Purpose

To remove the requirement to notify the Treasurer of the acquisition of mineral exploration rights; to increase the threshold below which offshore takeovers need not be notified; and to make a number of formal amendments to the Foreign Takeovers Act 1975 (the Principal Act).

Background

The Principal Act regulates the acquisition of shares in Australian companies by foreign persons and corporations, the acquisition of businesses by such bodies through the purchase of assets and agreements or arrangements that would allow foreign interests to participate in the control, management or profits of an Australian business. Proposals which fall within these categories generally must be notified to the Treasurer who may refuse permission to proceed if the end result would be contrary to the national interest. There are a number of threshold levels relating to various types of foreign takeovers below which there is no requirement to notify the Treasurer of the transaction.

The Foreign Investment Review Board (FIRB) was established in April 1976 to examine and make recommendations on proposals for foreign investment in Australia. However, the FIRB's powers are advisory only, the responsibility for making decision on proposals rests with the Treasurer. In 1983-84 1262 foreign investment proposals were decided (compared with 1170 in 1982-83 and 1256 in 1981-82).[1] Approximately four per cent of proposals were rejected in 1983-84 (compared with rejection rates of five per cent in 1982-83, four per cent in 1981-82
and an average of about one per cent over the preceding five years).[2] The following table shows the destination of foreign investment, by industry, in the years 1980-81 to 1983-84.

Industry. Per Cent of Foreign Investment in Enterprises in Australia

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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Mining</td>
<td>21.9</td>
<td>16.7</td>
<td>31.5</td>
<td>2.8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>24.7</td>
<td>30.0</td>
<td>13.4</td>
<td>16.9</td>
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<tr>
<td>Electricity, gas and water</td>
<td>5.0</td>
<td>11.2</td>
<td>23.5</td>
<td>14.1</td>
</tr>
<tr>
<td>Wholesale and retail trade</td>
<td>22.3</td>
<td>11.9</td>
<td>6.3</td>
<td>21.2</td>
</tr>
<tr>
<td>Transport and storage</td>
<td>1.5</td>
<td>5.9</td>
<td>3.9</td>
<td>1.4</td>
</tr>
<tr>
<td>Finance, property and business(a)</td>
<td>20.4</td>
<td>20.6</td>
<td>17.4</td>
<td>37.6</td>
</tr>
<tr>
<td>Other</td>
<td>4.3</td>
<td>3.6</td>
<td>4.0</td>
<td>6.1</td>
</tr>
<tr>
<td>Total(b)</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

(a) The amounts shown for this industry group include relatively minor amounts of equity and borrowings which are invested through small nominee companies and which cannot be classified to industry.

(b) Totals may not add due to rounding.


The total value of foreign investment in enterprises in Australia has been estimated by the FIRB to have been $8700 million in 1983-84, compared with $8500 million in 1982-83 and $9400 million in 1981-82.[3]

On 29 October 1985 the Government announced its decision to alter the rules regulating foreign investment in Australia. In a press release dated 29 October 1985 the then Acting-Treasurer, the Hon. Chris Hurford, stated that the 'reforms will streamline the existing processes, facilitate certain types of investment proposals and contribute to the Government's wider aim of reducing the burden on business of Government regulation'.[4]
A number of these reforms have been instituted without the need for legislation, however other measures require amendments to the Principal Act. One of these amendments relates to 'offshore takeovers'. The term offshore takeovers refers to the situation where both the company or person proposing the takeover and the target of the takeover are located outside Australia but assets in Australia will be effected by the proposed takeover.

Main Provisions

Clause 2 will amend section 5 of the Principal Act to exclude the right to prospect or explore for minerals from the definition of mineral rights. As a result, the acquisition of a right to prospect or explore for minerals will be excluded from review under the Principal Act.

The threshold limit before offshore takeovers become subject to review under the Principal Act is to be increased from $3 million to $20 million (clause 4 which amends section 13 of the Principal Act). For a definition of offshore takeover, refer to the end of the background.

For further information, if required, contact the Economics and Commerce Group.

10 April 1986

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

References

2. Ibid., p.7.

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