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International Monetary Agreements Amendment Bill 2009

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International Monetary Agreements Amendment Bill 2009

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Links: The relevant links to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at http://www.aph.gov.au/bills/. When Bills have been passed they can be found at ComLaw, which is at http://www.comlaw.gov.au/.

Purpose

The Bill proposes to amend the *International Monetary Agreements Act 1947* (IMA Act) to simplify the way Australia accepts agreed amendments to the Articles of Agreement of the International Monetary Fund (the IMF) and the International Bank for Reconstruction and Development (the IBRD, which is also commonly known as the World Bank).[1] For the purposes of the IMA Act, the IMF Agreement is known as the 'Fund Agreement' and the IBRD Agreement is known as the 'Bank Agreement'. The Bill alters the definition of both of these Agreements in the IMA Act to include any amendments of the relevant Articles of Agreement that enter into force for Australia without the need for further changes to the IMA Act.

Background

The IMF and the IBRD are the two organisations that were conceived during the United Nations Monetary and Financial Conference (also known as the Bretton Woods Conference) held in Bretton Woods, New Hampshire, USA during July 1944. The Fund Agreement and the Bank Agreement came into force in December 1945 and govern the operation of the two organisations. Both organisations continue to exist today, albeit with modified roles to those initially envisaged at the Bretton Woods conference.[2] Originally

1. The organisations that comprise the World Bank are: the International Bank for Reconstruction and Development (IBRD), International Development Association (IDA), the International Finance Corporation (IFC), the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).

2. For a detailed chronology of the IMF, see: http://www.imf.org/external/np/exr/chron/chron.asp, viewed 4 May 2009. For a detailed chronology of the IBRD, see:

the IMF was set up to manage a system of fixed exchange rates (that prevailed until the early 1970s) which was seen to be necessary to facilitate world trade in the aftermath of the Great Depression and World War II. After the Bretton Woods exchange rate regime collapsed and countries began to set their own exchange rate policies, the focus of the IMF shifted to assisting countries in dealing with Balance of Payments crises. Likewise, the IBRD was originally conceived to fund post-war reconstruction and development in Europe predominantly. With a number of African states declaring independence in the 1960s and 1970s and the collapse of communism in Eastern Europe and the former Soviet Union in the late 1980s and early 1990s, the IBRD shifted its focus to funding development and poverty reduction activities in these regions.

A country must ratify the Articles of Agreement to gain membership of these organisations. Australia became a member of the IMF and IBRD in 1947. Both Agreements are schedules to the IMA Act, which was enacted 'to approve of Australia becoming a Member of [the IMF] and of [the IBRD] and to make such provisions as are necessary or expedient in relation to Australia's membership of the Fund and Bank, or in relation to Australia's support of the Fund and its programs'.[3]

How are the Articles of Agreement amended?

Proposed amendments to either the Fund Agreement or the Bank Agreement require a motion to be put to the Board of Governors (the highest decision-making body in each organisation)[4] and then must be accepted by three-fifths of the members having 85 per cent of the total voting power.[5] Once this has occurred (and a formal communication to that effect has been issued by the relevant organisation to its members), the amendment enters into force and all members are bound by that amendment (unless they withdraw their membership of the IMF and/or IBRD). For the IMF, this is contained in Article XXVIII of the Fund Agreement:

> *a*) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a Governor, or the Executive Board, shall be communicated to the

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http://siteresources.worldbank.org/EXTARCHIVES/Resources/WB_Historical_Chronology_1944_2005.pdf, viewed 4 May 2009.

3. IMA Act, long title.

4. In most cases Governors are Finance Ministers or Treasurers. Member States usually also appoint an 'Alternate Governor', who attends meetings if a Governor is not available to attend. Alternate Governors are usually the head of a nation's Central Bank (although in Australia's case, the current Alternate Governor is Dr Ken Henry, Secretary to the Commonwealth Department of the Treasury).

5. For a list of quotas and voting shares in the IMF see: http://www.imf.org/external/np/sec/memdir/members.htm, and for the IBRD see: http://siteresources.worldbank.org/BODINT/Resources/278027-1215524804501/IBRDCountryVotingTable.pdf, both viewed 5 May 2009.

chairman of the Board of Governors who shall bring the proposal before the Board of Governors. If the proposed amendment is approved by the Board of Governors, the Fund shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent of the total voting power, have accepted the proposed amendment, the Fund shall certify the fact by a formal communication addressed to all members.

(*b*) Notwithstanding (*a*) above, acceptance by all members is required in the case of any amendment modifying:

(i) the right to withdraw from the Fund (Article XXVI, Section 1);

(ii) the provision that no change in a member's quota shall be made without its consent (Article III, Section 2(*d*)); and

(iii) the provision that no change may be made in the par value of a member's currency except on the proposal of that member (Schedule C, paragraph 6).

(*c*) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram. [6]

For the IBRD, the relevant Article is Article VIII of the Bank Agreement, which provides:

(a) Any proposal to introduce modifications in this Agreement, whether emanating from a member, a governor or the Executive Directors, shall be communicated to the Chairman of the Board of Governors who shall bring the proposal before the Board. If the proposed amendment is approved by the Board the Bank shall, by circular letter or telegram, ask all members whether they accept the proposed amendment. When three-fifths of the members, having eighty-five percent (1) of the total voting power, have accepted the proposed amendments, the Bank shall certify the fact by formal communication addressed to all members.

(b) Notwithstanding (a) above, acceptance by all members is required in the case of any amendment modifying:

(i) the right to withdraw from the Bank provided in Article VI, Section 1;

(ii) the right secured by Article U, Section 3 (c);

(iii) the limitation on liability provided in Article II, Section 6.

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6. For a full listing of the IMF Articles of Agreement, see: http://www.imf.org/external/pubs/ft/aa/index.htm, viewed 5 May 2009. Article XXVIII of the Fund Agreement appears in Schedule 1 to the IMA Act and is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/imaa1947360/sch1.html, viewed 7 May 2009.

(c) Amendments shall enter into force for all members three months after the date of the formal communication unless a shorter period is specified in the circular letter or telegram.[7]

Committee consideration

At the time of writing, the Bill has not been referred to any committee for consideration.

Financial implications

This Bill does not have any direct financial implications.

Key issues

Under the terms of the both Fund Agreement and the Bank Agreement, if amendments are adopted to either Agreement (according to the 3/5^{ths}, 85 per cent voting rule mentioned above), Australia will be bound under international law to conform to the amendments to whatever extent they, or subsequent decisions made under them, place obligations on member countries. In some cases, Australia's ability to discharge such obligations may depend on the Government's legal powers under the IMA Act, and these powers may depend on *both* the main body of the Act (sections 1–11) and the text of the Agreements contained in the Schedules to the IMA Act.

As the IMA Act currently stands, unless the Act is itself amended, a mere amendment to either Agreement will not alter the Government's domestic legal powers. Therefore a failure to keep 'up to date' the versions of the Agreements that are contained in the Schedules to the IMA Act could theoretically mean that the Government could face difficulty in upholding its international obligations. From this perspective, the policy intent of the Bill to ensure that the Agreements contained in the Schedules are in effect 'automatically' updated without the need to amend the IMA Act is understandable.

Cons

It is, however, arguable that the Bill will reduce parliamentary scrutiny of proposed amendments to the Agreements. It is true that such amendments (being an amendment to an international treaty) are tabled in Parliament and receive consideration by the Joint

7. For a full listing of the IBRD Articles of Agreement, see: http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf, accessed on 5 May 2009. Article XXVIII of the Fund Agreement appears in Schedule 2 to the IMA Act and is available electronically at http://www.austlii.edu.au/au/legis/cth/consol_act/imaa1947360/sch1.html, viewed 7 May 2009.

Standing Committee on Treaties (JSCOT) before Australia formally accepts the amendment. Where JSCOT recommends against acceptance of the amendment, or heavily qualifies its recommendation for acceptance, it may be that Parliament might engage in a substantial debate about the proposed amendments. Nonetheless, the current situation, whereby the versions of the Agreements in the Schedules to the IMA Act can only to be updated to incorporate proposed amendments via an amendment to the Act itself, does allow Parliament the opportunity to debate the amendments fully, and indeed Australia's role in influencing IMF and IBRD policy on any matter.

Another difficulty with the solution proposed in the current Bill to the problem of needing to amend the IMA Act every time the Agreements are amended is that it contains no mechanism for updating the Agreements that currently appear as schedules to the IMA Act. If either Agreement is amended by the IMF or the IRBD (following a 3/5ths, 85 per cent minimum vote by member states), the changes will not readily be reflected in the copies of the Agreements that currently appear as Schedules 1 and 2 to the IMA Act. The current method of amending the IMA Act every time the Agreements are themselves amended has the advantage of forcing the Australian Parliament and government/legal publishers to keep our statute books up to date. Under the current method, the IMA Act clearly sets out the current terms of the Agreement(s) to which Australia is a party, and it is easy to trace the legislative history of the Act to see when and how the Agreements have been amended over time. While the text of the Agreements can be accessed via the websites of the World Bank and related organisations, it may be better to maintain our own records in a neat and coherent way that is readily available to the Australian Government and public.

An alternative solution to the current problem

The singular key issue with this Bill is that, if passed, it will enable what is largely an administrative task to be completed automatically, rather than tying up the Parliament.

However, the fact remains that as trivial as passing an amendment to the IMA Act to reflect any change to the Agreements contained in Schedules 1 and 2 may seem, it remains a legislative activity, not an administrative activity. It may thus be appropriate for the Parliament as a whole to retain greater oversight over any amendment to the Agreements. Instead of the current situation whereby each amendment to the Agreements must result in an amendment to the IMA Act, it may be possible to require the amended Agreements to take the form of a legislative instrument. If the amendments (or more precisely, the whole Agreement as amended) were to appear as a legislative instrument, the Agreement would then (unless otherwise excepted) attract the disallowance procedures set out in the *Legislative Instruments Act 2003*, particularly Part 5 of that Act. Any motion to disallow the relevant legislative instrument could be used as an opportunity to debate the relevant amendment, in much the same way as a debate regarding a Bill amending the IMA Act would.

The writers do not prefer one solution to another, but simply raise this alternative option for the consideration of Parliament.

Main provisions

Schedule 1 to the Bill contains 3 items. **Item 1** amends the definition of 'Bank Agreement' in subsection 3(1) of the IMA Act, and **item 2** amends the definition of 'Fund Agreement' in the same provision. Both items expand the current definitions so that any reference to the terms includes amendments to the Agreements that have entered into force for Australia.

Concluding comments

The passage of this Bill would enable what is predominantly an administrative task to be greatly simplified, specifically, by removing the requirement for the Parliament to pass an International Monetary Agreements Amendment Bill every time an amendment to the Fund Agreement or Bank Agreement is made. The IMF in particular has recently debated and adopted amendments to their Articles of Agreement (and there are likely to be more amendments in the future, in both the short- and long-term) and any successful amendments become binding on all member states. This would typically result in further Bills before the Parliament.

Nonetheless, Parliament may wish to consider whether the measures in the Bill are adequate, or indeed represent the best solution to the problem of frequent and ongoing amendments to the Agreements. It also remains to consider how (or if) Parliament intends to keep the schedules to the IMA Act updated, given that they contain the current text of the Agreements. If the schedules are not regularly updated, there may be some confusion as to what Australia's obligations under the Agreements are, particularly if someone is relying on the text of the Agreements as they appear as schedules to the IMA Act, as opposed to rely on the text of the Agreements as they are actually in force.

Therefore, if Parliament is minded to pass the Bill in its current form, it may also wish to consider repealing existing Schedules 1 and 2 to the IMA Act, to avoid any confusion that may arise in the future about what the current text of the Agreements are. It may also wish to consider including a reference in the IMA Act to an authoritative source for the Agreements.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2455 (Scott Kompo-Harms) or (02) 6277 2795 (Morag Donaldson).