FOREIGN DIRECT INVESTMENT POLICY

Institutional framework

Australia welcomes foreign direct investment and maintains a foreign investment screening process to ensure that foreign investments in Australia are not contrary to the national interest.

Australia's foreign investment policy framework encompasses the *Foreign Acquisitions and Takeovers Act 1975*, regulations made under that Act, and other requirements set down by way of Ministerial statement. Particular restrictions, including limits on equity participation, are maintained in a few sensitive areas where foreign investment generates community concern. The sensitive sectors are real estate, the media, civil aviation, airports and shipping. In regard to non-sensitive sectors, smaller proposals do not require screening and larger proposals are generally approved unless judged contrary to the national interest.

The Treasurer is responsible for Australia's foreign investment policy and is assisted in the administration of the policy by the Foreign Investment Review Board (FIRB). The Government established the FIRB as a non-statutory advisory body, whose functions include fostering an awareness, both in Australia and abroad, of the Government's foreign investment policy and providing guidance, where necessary, to foreign investors so that their proposals conform with the policy.

Since Australia first introduced foreign investment screening procedures in the early 1970s, Australia has gradually relaxed, and is continuing to relax, its foreign investment policy in response to the increasing depth and breadth of the economy and the implementation of other supportive policy measures (e.g. the resource rent tax and stronger environment protection measures).

Transparency

The Government's approach to transparency concerning the national interest test is to publish information about the operation of the policy, to provide guidance to investors and, in the case of major proposals, to publish reasons for rejection of applications. Although the existence

of a national interest test may appear to be non-transparent, it is a negative test rather than a prescriptive test to a list of criteria. The onus is on the Australian authorities to have reason to reject a proposal, rather than on the investor to show benefits to Australia, and the reasons for rejection are always made known to the investor.

Australia makes available to the public information about its foreign investment policy through the Treasury's web site (www.treasury.gov.au) and on request. FIRB publishes annual reports to the Parliament, which give results of the screening process, including reasons proposals are rejected. Reasons for rejecting substantial commercial cases are made public, at the time of rejection, in press releases of the Treasurer.

The 1996-97 FIRB Annual Report noted that some 105 (ie 2.5 per cent) of the 4,200 foreign investment proposals received in that year were rejected. All but 7 of these were for real estate. A list of reasons such real estate rejections occurred was published in the same report.

Disclosure Standard: Organisation for Economic Co-operation and Development (OECD) Code of Liberalisation of Capital Movements and the National Treatment Instrument for Foreign Controlled Enterprises.

The OECD has agreed standards for disclosure in relation to member governments' measures that impact on international capital flows and foreign direct investment. These standards are set out as provisions in the *Code of Liberalisation of Capital Movements* and the *National Treatment Instrument for Foreign Controlled Enterprises*. As a member of the OECD, Australia has agreed to these standards which cover such matters as notification and transparency (notably these two provisions are binding); national treatment; consultation and complaints; non-discrimination between member countries; convertibility of currencies and transfers of funds. The OECD codes include provisions for member country representatives to review compliance with the standards by individual countries. These peer review processes play a crucial role in countries' awareness of their obligations to meet the provisions. They also provide an opportunity for an OECD member to measure its level of adherence to the codes against that of other members where there has been a general trend toward liberalisation of relevant policies over an extended period.

Australia observes the notification and transparency provisions of the OECD codes. Where Australia is unable to comply with a provision of the codes, the departure is notified to the relevant OECD committee and is reported in the publications of the OECD codes. (Details of key provisions and comments on Australia's adherence to them are shown in Attachment C.) Australia participates in the peer review processes of the OECD. It was, for example, subject to a periodic country review under the *Code of Liberalisation of Capital Movements* in 1991. In 1997 Australia participated in an ad hoc review with regard to the admission of foreign securities on domestic capital markets of all OECD member countries.