

Appendix C

Chronology of policy measures

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November 2006

Following a review flowing from a commitment made by Australia under the Australia-United States Free Trade Agreement, the reforms listed below have been made to Australia's foreign investment screening arrangements.

1. As of 2 December 2006 the FATA's general asset value threshold was raised from \$50 million to \$100 million.¹ A \$100 million threshold now applies to the sensitive sectors for US investors.
2. As of 2 December 2006 the threshold for offshore takeovers was raised from \$50 million to \$200 million.¹ This threshold applies where the target is a foreign corporation whose Australian assets account for less than 50 per cent of its total assets.
3. As of 18 November 2006 foreign custodians are exempt from the FATA where they acquire interests in shares in relevant corporations and interests in Australian urban land when only acting at the direction of clients. In relation to such holdings, foreign beneficiaries (clients) remain subject to the FATA and foreign custodians remain subject to the FATA where they are not acting at the direction of their clients.

13 July 2006

The Government announced that it is proposing to remove elements of the Government's foreign investment policy that impose foreign ownership restrictions on both regional/suburban and metropolitan newspapers. The changes announced by the Government are expected to come into effect upon proclamation of the applicable amending legislation in 2007.

1 January 2005

US investor specific thresholds agreed under the Australia-United States Free Trade Agreement came into effect. The initial thresholds of \$800 million and \$50 million are indexed annually. The latter threshold has been affected by the reforms announced in November 2006. For current US investor thresholds, see Appendix A.

May 2004

The Australia-United States Free Trade Agreement was signed in May 2004 and came into effect on 1 January 2005. A number of changes were made to Australia's foreign

1 Different thresholds apply to US investors (see Appendix A).

investment policy as it applies to US investors only through amendments to the FATA and the *Foreign Acquisitions and Takeovers Regulations 1989* (see 1 January 2005).

30 March 2004

The Foreign Acquisitions and Takeovers Regulations 2004 (No. 1) provided a mechanism to exempt from the FATA acquisitions of interests in shares in Australian companies held by foreign custodians on behalf of Australian investors. The custodian must apply in writing to the Treasurer for an exemption and must meet the requirements specified in the Regulation. This has been superseded by the exemption for foreign custodians introduced in November 2006.

3 May 2000

The Aviation Legislation Amendment Act (No. 1) 2000 increased the maximum percentage of equity permitted by a foreign airline in an Australian international carrier (other than Qantas) to 49 per cent. Previously a foreign airline was permitted to own up to 25 per cent.

Note: In the case of Qantas, total foreign ownership is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate ownership by foreign airlines limited to 35 per cent. In addition, a number of national interest criteria must be satisfied, relating to the nationality of Board members and operational location of the enterprise.

29 October 1999

The Government amended the policy concerning domestic civil aviation to allow foreign persons, including foreign airlines, to acquire up to 100 per cent of the equity of an Australian domestic airline, unless the acquisition is contrary to the national interest. Previously, foreign airlines flying to Australia were permitted to own up to 25 per cent of the equity in a domestic carrier individually or up to 40 per cent in aggregate.

10 September 1999

Numerous changes were made to the Regulations. These included changes to the thresholds that:

- increased the threshold for foreign investment in existing businesses from \$5 million (\$3 million for rural businesses) to \$50 million (superseded by a \$100 million threshold as of 1 December 2006);
- increased the threshold from \$20 million to \$50 million for the Australian assets of an offshore company where it is to be acquired by another offshore company (superseded by a \$200 million threshold as of 1 December 2006); and

- increased the threshold applying to the acquisition of developed non-residential commercial real estate (including certain lease arrangements) from \$5 million to \$50 million except where such properties are subject to heritage listing (in that case the threshold remains at \$5 million). For US investors, this threshold was superseded as of 1 January 2005.

Other amendments to regulations specify:

- an exemption so that Australian citizens and their foreign spouses purchasing as joint tenants are no longer required to seek approval for purchases of residential real estate in Australia;
- an exemption to remove foreign investment approval requirements for individuals who hold, or are entitled to hold, a special category visa, or who hold a permanent visa and invest in Australian residential real estate through Australian companies and trusts;
- an exemption for the acquisition of interests in Australian urban land by foreign owned responsible entities of managed investment funds (under section 601EB of the *Corporations Act 2001*) provided such investment is primarily for the benefit of scheme members ordinarily resident in Australia;
- rules to permit the acquisition by foreign interests of strata-titled hotel rooms in designated hotels where each room is subject to a long-term (10 years or more) hotel management agreement and where management retains ownership of the common property;
- rules to limit the exemption provided by newly designated Integrated Tourist Resorts so that the exemption from the normal foreign investment restrictions only applies to foreign purchasers of developed property which is subject to a long term lease to the resort/hotel operator making it available for tourist accommodation when not occupied by the owner; and
- rules to clarify the scope of a certificate of exemption issued by the Treasurer for foreign interests acquiring real estate off-the-plan, as provided in the existing regulation 3(e).

1 April 1999

The policy relating to applications by developers seeking advanced approval to sell up to 50 per cent of a development to foreign investors was altered so that only developers with ten or more (previously four or more) dwellings could apply for advanced approval (in special circumstances, advance approval may be given for developments consisting of between four and ten dwellings). The other change affecting this category was that the reporting requirements were relaxed so that developers are required to report all sales (that is, Australian and foreign) to the Board

every twelve months (previously every six months) until all the dwellings in the development have been sold or occupied.

14 August 1997

The Treasurer announced the removal of foreign ownership restrictions that were specific to Optus and Vodafone. From 14 August 1997, all proposals by foreign interests to invest in Optus and Vodafone are subject only to the generally applicable provisions of foreign investment policy. These general provisions also apply to new entrants to the telecommunications sector or investment in existing businesses in that sector. The announcement did not affect in any way the ownership restrictions in relation to Telstra.

9 April 1997

In releasing the Final Report of the Financial System Inquiry, the Treasurer announced the removal of the blanket prohibition on a foreign takeover of any of the major banks and that any proposed foreign takeover or acquisition will need to be assessed, like any other proposed foreign takeover or acquisition, on the basis of its merits in accordance with the FATA. In making these assessments, however, the Government will apply the principle (as concluded by the Inquiry) that any large scale transfer of Australian ownership of the financial system to foreign hands would be contrary to the national interest.

19 December 1996

The *Telstra (Dilution of Public Ownership) Act 1996* was assented to. The Act places limits on foreign ownership. Aggregate foreign ownership is to be restricted to 35 per cent of the one third equity to be sold, and individual foreign investors will be allowed to acquire a holding of no more than 5 per cent of that one third equity.

19 November 1996

The Treasurer announced the Government's decision that foreign investment policy in relation to the uranium sector will be the policy that currently applies to the mining sector generally. This means that foreign investment above the thresholds in the uranium sector, such as the establishment of a new mine, will be subjected to the well established 'contrary to the national interest' test and that no specific investment restrictions will apply.

9 October 1996

The *Airports Act 1996* was assented to on 9 October 1996. This Act limits foreign ownership of airport operator companies to 49 per cent.

18 September 1996

The Treasurer announced the Government's decision to lift to 5 per cent, with immediate effect, the threshold that applies to portfolio investments by foreign interests in the media sector. This change rationalised the thresholds for the media sector so that all portfolio investments, not only in John Fairfax Holdings Ltd, are subject to the same 5 per cent threshold.

26 September 1995

The Treasurer announced that the limit on foreign ownership of provincial and suburban newspapers had been increased from 30 per cent to less than 50 per cent for non-portfolio shareholdings.

20 April 1993

The Treasurer announced the Government's decision to increase the maximum permitted aggregate foreign interest direct investment (that is, non-portfolio) involvement in national and metropolitan newspapers to 30 per cent with any single foreign shareholder limited to a maximum of 25 per cent (and in that instance unrelated foreign interests would be allowed to have aggregate (non-portfolio) shareholdings of a further 5 per cent).

1 April 1993

The Treasurer announced two changes to foreign investment policy:

- 'off-the-plan' acquisitions to include acquisitions that are part of extensively refurbished buildings subject to the building's use changing from non-residential to residential and the costs of refurbishment to be at least 50 per cent of total acquisition costs; and
- proposals by foreign interests to acquire developed non-residential commercial real estate were no longer required to have 50 per cent Australian equity. Prior to this change, acquisitions by foreign interests of developed non-residential commercial real estate were normally approved, unless judged contrary to the national interest, on the condition that the acquisition was being made with 50 per cent Australian equity participation. Where it could be demonstrated that 50 per cent Australian equity was not available on reasonable terms and conditions, proposals providing up to 100 per cent were approved.

26 February 1992

As part of the Government's *One Nation* Economic Statement, further policy liberalisations were announced, namely:

- the Government would register, but normally raise no objections to proposals above the thresholds where the relevant total assets/total investment falls below \$50 million. Thresholds are \$3 million for purchases of rural properties, \$5 million

for acquisitions of substantial interests in other existing businesses, \$10 million for the establishment of new businesses and \$20 million for offshore takeovers (see 10 September 1999 and November 2006 for announcements that affect some of these thresholds);

- the 50 per cent Australian equity and control guideline for participation in new mining projects, and the economic benefits test for takeovers of existing mining businesses, were abolished; and
- that new banking authorities would be issued to foreign owned banks where the Reserve Bank is satisfied the bank and its home supervisor are of sufficient standing, and where the bank agrees to comply with Reserve Bank prudential supervision and arrangements. Moreover, foreign owned banks will be allowed to bid for the smaller banks (if available for sale), that is, for banks other than the four majors.

25 July 1991

The Government decided that foreign investors may acquire any residential real estate (vacant land for development, units off-the-plan, or established properties) within a designated Integrated Tourism Resort (ITR) without the need to seek approval under the FATA. The ITR exemption would only apply to residential real estate within resorts that have applied for and been designated exempt by the Treasurer.

6 July 1989

The Treasurer announced the proclamation, on 1 August 1989, of the *Foreign Takeovers Amendment Act 1975* and the gazettal of the Foreign Acquisitions and Takeovers Regulations. The amended legislation, to be known as the *Foreign Acquisitions and Takeovers Act 1975*, gave legislative effect to the changes to residential real estate policy announced in September 1987.

20 January 1988

The Government announced that the Australian participation guidelines for foreign investment in respect of new mining projects over \$10 million would no longer apply to new oil and gas developments which could now be approved with 100 per cent foreign equity, provided they were not considered contrary to the national interest.

29 September 1987

The Government decided to restrict substantially foreign acquisitions of developed residential real estate and to introduce legislation to require compliance with the amended policy. The \$600,000 threshold was abolished and approvals of developed residential real estate were to be restricted to Australian citizens resident abroad, intending migrants and foreign companies buying for their senior executives resident in Australia.

30 April 1987

The Treasurer announced a number of further liberalisations including:

- passing amendments to the *Foreign Takeovers Act 1975* providing for the exemption from notification of takeovers below \$5 million (\$3 million for rural businesses);
- extending the national interest based test (applied to manufacturing, tourism and non-bank finance sectors since July 1986) to other sectors namely resource processing, services, insurance, stockbroking and rural properties; and
- improvements to the benefits associated with naturalised or naturalising status, namely, that all takeovers or new businesses involving naturalised or naturalising companies (including new mines where at least 50 per cent is owned by the naturalised or naturalising company) would be approved unless contrary to the national interest.

The Government also announced that it would introduce legislation to replace the thin capitalisation and corporate restructuring conditions of approval that had been imposed on foreign investors under foreign investment policy.

28 July 1986

The Treasurer announced a number of significant relaxations to policy including:

- the net economic benefits test and Australian equity requirements for takeovers and new businesses in the manufacturing, tourism and non-bank finance sectors were suspended and proposals were to be automatically approved unless contrary to the national interest;
- the minimum Australian equity requirements for real estate for development (both for retention or resale), and service industry real estate (hotels and motels, tourism resorts) were abolished;
- acquisitions of developed commercial real estate were to be allowed provided there was 50 per cent Australian equity (previously there was a virtual prohibition); and
- the policy test on rural property acquisitions over \$3 million was relaxed such that approval would now be granted where it could be demonstrated by the intending investor that proposed on-farm development expenditure would be at least one third of the acquisition price.

15 April 1986

As part of the Government's Economic and Rural Policy Statement, it announced the relaxation of the rules applying to foreign investment in rural land such that only proposals over \$3 million (previously \$1 million) would be subject to the stricter test of

providing effective Australian participation or benefits of national or regional significance to gain approval.

29 October 1985

The Acting Treasurer announced a number of modifications to policy aimed at streamlining existing procedures, the most significant of which were:

- the practice of requiring the demonstration of specific opportunities for Australians to purchase interests available for sale (the 'opportunities test') was discontinued;
- the administrative threshold below which takeovers were normally approved, in the absence of special circumstances, was increased from \$2 million to \$5 million;
- the notification threshold for new businesses (except in the media or civil aviation) was increased from \$5 million to \$10 million;
- the notification threshold for foreign investment in real estate was increased from \$350,000 to \$600,000;
- the liberalised stance in relation to merchant banks was extended to other non-bank financial intermediaries;
- the need for 50 per cent Australian equity for land bought for development and subsequent resale was to be applied only to developments costing \$10 million or more; and
- the exemption threshold for offshore takeovers was increased from \$3 million to \$20 million.

22 May 1985

The *Banks (Shareholdings) Act 1972* (which limits the size of shareholdings in banks authorised under the *Banking Act 1959*) was amended in order to facilitate the establishment of new banks in Australia. The major amendments were an increase in the size of individual shareholdings in a bank which might be held without the Governor-General's approval from 10 to 15 per cent, and allowing the Governor-General to grant exemptions from the new higher limit in the national interest.

27 February 1985

The Treasurer announced that the Government had selected 16 new banks which would be invited to establish operations in Australia. Each would be required to proceed with discussions with the Reserve Bank and the Treasury with a view to developing their proposals.

18 December 1984

The Treasurer announced the Government's decision to increase to 50 per cent the maximum permitted shareholding in Australian stockbroking businesses that might be held by foreign interests. This revised the previous limitations announced on 18 April 1984.

10 September 1984

The Government invited applications from domestic or foreign interests for a limited number of banking authorities and decided to initiate proceedings to enable the Bank of China to open a branch in Australia.

The Treasurer also announced the temporary waiving (for one year) of some sections of its foreign investment policy relating to the merchant banking sector. The 'Australian opportunities test' (that is, the requirement that Australians be given the opportunity to bid on market terms for interests available for sale) and the 'substantial economic benefits' test of foreign investment policy were to be set aside for a period of 12 months in respect of merchant bank restructuring proposals.

18 April 1984

Following a Trade Practices Commission (TPC) ruling that allowed stockbroking firms to incorporate, the Treasurer announced the results of a review of foreign investment policy as applied to the stockbroking industry (prior to the TPC ruling, non-residents were precluded from having an interest in unincorporated stockbroking firms). Under the revised policy, proposals by foreign interests to acquire shareholdings in stockbroking businesses would only be allowed to proceed, where they involved the acquisition of less than 15 per cent of shares by a single foreign interest or of less than 40 per cent by two or more foreign interests.

