BANKS (SHAREHOLDINGS) AMENDMENT BILL 1985

Date Introduced: 17 April 1985
House: House of Representatives
Presented by: Hon. P.J. Keating, M.P., Treasurer

Short Digest of Bill

Purpose

To amend the Banks (Shareholdings) Act 1972 (the Principal Act) to increase the limit on the size of individual shareholdings in a bank from less than 10% to 15% without the Governor-General's approval. Shareholdings exceeding 10% but not greater than 15% will require approval from the Treasurer; shareholdings exceeding 15% will require approval from the Governor-General.

Background

A similar Bill, namely the Banks (Shareholdings) Amendment Bill 1984, was introduced into the House of Representatives on 3 October 1984. It later lapsed with the dissolution of Parliament prior to the December 1984 election. The current Bill differs from the original Bill in that incorporates certain amendments designed to improve the Act's administration.

Under the Principal Act, a person or associated persons may only hold an interest of less than 10% of the bank's total voting shares. However, an exemption to this limit may be granted by the Governor-General on the Treasurer's recommendation. The Commonwealth Government, by imposing such a limit, would be ensured of having adequate power to control large share acquisitions by local and foreign interests in Australian banks. The Act had been passed during a period when foreign interests were attempting to gain control of a small bank.

Both the Committee of Inquiry into the Australian Financial System (Campbell, 1981)[1] and the Review Group into the Australian Financial System (Martin, 1984)[2] regarded the limit on shareholdings as restricting bank entry and, consequently, competition. However, removal of this barrier would need to be weighed against the maintenance of prudential standards. The Campbell Committee recommended the repeal of the Principal Act and amendment of the Banking Act 1959 to provide for the control of
shareholdings of 10% or more through the Reserve Bank. The Martin Report, however, favoured retention of the Principal Act but with amendments allowing the general limit on shareholdings to 15% as well as providing for exemptions. Furthermore, the Group maintained that the presumption of shareholding dispersion in the Principal Act should be maintained to prevent control of a bank by one or few interests.

In a Press Release, dated 10 September 1984,[3] the Treasurer foreshadowed amendments to the Principal Act to raise the individual shareholding limit to 15% and to allow exemptions in the national interest. The Government would approve such exemptions to facilitate bank entry. Exemptions would apply where the establishment of a new bank could be expected to provide strong competition subject to the bank meeting the high prudential standards of entry into banking.

In the same Press Release, the Treasurer called for applications from both domestic and foreign interests to operate banks in Australia. The Treasurer also announced the Government's intention of achieving 50% Australian equity in the new banks. However, it would consider proposals with less than 50% Australian equity which would provide significant benefits to Australia. The Treasurer stated that:

"The Government believes that its decision to encourage the establishment of new banks will bring substantial benefits to the Australian community through the development of a more innovative, efficient and competitive financial sector.

Ultimately, a more dynamic financial sector will help to promote a higher rate of economic growth, providing more jobs and a higher standard of living for the people of Australia". [4]

The embargo on foreign interests operating banking business in Australia, which has existed since 1945, finally has been lifted. The two government-owned foreign banks currently operating in Australia, namely Bank of New Zealand and Banque Nationale de Paris, were established before 1945. The Campbell Committee had recommended that the embargo should be lifted and that the rate of entry should be carefully managed.

The previous Liberal Government had also called for applications from foreign interests on 13 January 1983. On 29 May 1984, the Labor Government announced that it would not proceed with the previous Government's policy on foreign
bank entry until it had considered the outcome of the Martin Review.

In a Press Release dated 27 February 1985, the Treasurer announced that the Government has selected 16 foreign banks to operate in Australia. All would involve exemptions to the 15% limit. The Minister, in his Second Reading Speech, stated that the Government would be prepared to recommend the required exemptions to the Governor-General.[5]

Main Provisions

The Bill will come into operation on the date of Royal Assent (clause 2).

The Commonwealth, State and Territory governments and their agencies in their capacity as shareholders of a bank, will be bound by the provisions of the Principal Act (section 2, amended by clause 3). Furthermore, the definition of "corporation" is amended (section 9) to include governments and their agencies (clause 4).

The limit placed on any one shareholder holding more than 10% of a bank's voting shares, unless exempted by the Governor-General, will be raised to 15% by an amendment to section 10 of the Principal Act (clause 6). An individual shareholder may not hold more than a 10% interest without the Treasurer's approval. The Treasurer may not approve such a holding where approval would be against national interest. Should the Treasurer approve a shareholding greater than 10%, it must not, however, exceed 15% without an exemption from the Governor-General.

Where an exemption has been given to a corporation, the Treasurer may give an exemption to the relevant officers (proposed sub-section 2B).

If the Treasurer revokes the approval of a shareholding greater than 10% because it is against national interest, the shareholder will have 3 months in which to reduce its interest (proposed sub-section 19(2E)).

The Governor-General, by notice in the Gazette, may fix a percentage greater than 15% when he is satisfied that it would be in the national interest to do so (proposed sub-section 10(4)). The Governor-General may revoke an exemption (proposed sub-sections 10(7A) and 10(7B)) in the national interest.

The Treasurer may disregard a person's interest which is insignificant and as a result of a person's
association with another. Such a declaration may be revoked by the Treasurer within 3 months of giving notice (proposed sub-sections 10(10) and 10(11)).

Transitional provisions are outlined in clause 12. Where an exemption currently exists for a shareholding greater than 10% but less than 15%, it will continue as an exemption by the Treasurer, and by the Governor-General where it is greater than 15%. Furthermore, where a government or government agency currently has an interest in a bank greater than 15%, the Governor-General will be deemed to have provided the exemption applying after the Act’s commencement.

Remarks

An individual may now hold a 10% interest rather than less than 10% without approval.

For further information, if required, contact:

8 May 1985

Economics and Commerce Group
LEGISLATIVE RESEARCH SERVICE

References

4. ibid.