FOREIGN OWNERSHIP AND CONTROL REGISTRATION BILL 1985

(Private Senator's Bill)

Date Introduced: 20 March 1985
House: Senate
Presented by: Senator Jack Evans

Short Digest of Bill

Purpose

To require any foreign corporation which owns or controls Australian assets worth more than the value prescribed by the Bill to lodge an annual balance-sheet and statement with the Treasurer. With this information, the Treasurer will be required to keep a Register of Foreign Corporations which will be open to public inspection.

Main Provisions

A "foreign corporation" is widely defined by the Bill. The definition includes any body incorporated outside Australia and any unincorporated society, association or body formed outside Australia. Any such body which holds a controlling interest in an Australian Corporation and a corporation in which either one or more persons not ordinarily resident in Australia hold a controlling interest are also classified as foreign corporations (sub-clause 3(1)).

However, not all foreign corporations will be governed by the Bill. The Bill will only apply to a corporation which either:

(i) holds a single asset in Australia which is worth more than $1,000,000; or

(ii) holds assets in Australia worth more than $3,000,000

(sub-clauses 4(b-d)).

An "asset" is defined as including all or any of the following: land situation in Australia; mineral rights; shares in a corporation incorporated in Australia; securities issued in Australia or assets included in a prescribed class of assets (sub-clause 4(a)).
The Bill distinguishes between a foreign corporation registered under Division 5 of Part XIII of the Companies Act 1981 and one that is not so registered. Different requirements apply to the two types of corporation.

Thus a corporation registered under the Companies Act is required to lodge a balance-sheet with the National Companies and Securities Commission. Under the new Bill these corporations will be required to lodge a copy of that balance-sheet with the Treasurer (clause 5).

Alternatively, a foreign corporation which is not registered under the Companies Act must lodge a copy of its balance-sheet with the Treasurer once every year (within a fifteen month interval). Moreover, the corporation will also be required to lodge copies of such documents which it is already required by law to prepare in the place of its incorporation or formation (clause 6).

If the Treasurer is not satisfied that documents lodged under clauses 5 and 6 sufficiently disclose a corporation's financial position, he may serve a notice on that corporation requiring further documents and particulars to be filed (sub-clause 6(3)).

All foreign corporations governed by the Bill will, in addition, be required to lodge with the Treasurer an audited statement setting out the particulars to which the balance-sheet refers. A corporation will be required to disclose its name; address of its registered office; names and addresses of its agents in Australia, names and address of any corporation which it holds in Australia and also the total and specific value of its assets in Australia (clause 7).

The Treasurer will be required to keep a Register of Foreign Corporations. The register will contain the details of those corporations which have lodged balance-sheets including a record of when balance-sheets were lodged by these corporations. This register can be inspected by any person and copies or extracts may be made or taken of it (clauses 10, 11).

The Bill also outlines several penal provisions. A corporation which does not lodge the prescribed documents with the Treasurer or fails to comply with a notice served by the Treasurer on it; or lodges a balance-sheet or statement which is false and misleading shall be liable to a penalty of $10,000.
Moreover, any officer or agent of the corporation who is directly or indirectly responsible for the failure of the corporation to comply with the provisions of the Bill will be liable for a fine of $5,000.

For further information, if required, contact:

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Economics and Commerce Group
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