

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**MANAGEMENT AND INVESTMENT COMPANIES LEGISLATION
AMENDMENT BILL 1987**

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1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 22 October 1987

(Minister representing the Minister for Industry, Technology and Commerce)

A BILL

FOR

**An Act to amend the *Income Tax Assessment Act 1936* and
the *Management and Investment Companies Act 1983***

BE IT ENACTED by the Queen, and the Senate and the House of
Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Management and Investment
Companies Legislation Amendment Act 1987*.

Commencement

2. This Act shall come into operation on the day on which it receives
the Royal Assent.

10 **PART II—AMENDMENT OF THE INCOME TAX ASSESSMENT
ACT 1936**

Principal Act

3. In this Part, “Principal Act” means the *Income Tax Assessment Act
1936*¹.

Moneys paid on shares in management and investment companies

4. Section 77F of the Principal Act is amended:

- (a) by omitting from paragraph (2) (d) “and”;
- (b) by adding at the end of subsection (2) the following word and paragraph:
 - “; and (f) a reference to the sale, or the disposal, of a share in a licensee includes a reference to the sale, or the disposal, of a share in a former licensee.”; and
- (c) by adding at the end of paragraph (10) (f) “, or former licensee, as the case requires”.

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PART III—AMENDMENTS OF THE MANAGEMENT AND INVESTMENT COMPANIES ACT 1983

Principal Act

5. In this Part, “Principal Act” means the *Management and Investment Companies Act 1983*².

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Interpretation

6. Section 3 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subsection (2):

- (a) a person who is engaged, other than permanently, by a business entity as an auditor, accountant, consultant or other expert for the purpose of providing expert advice or other services to the business entity shall not be taken to be concerned, or to be taking part, in the management of that business entity; and
- (b) a person shall not be taken to be concerned, or to be taking part, in the management of a business entity merely because that person assists the business entity to meet the requirements for certification under section 29.”.

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Delegation

7. Section 15 of the Principal Act is amended by inserting after paragraph (1) (b) the following paragraph:

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“(ba) to refuse to approve the surrender of a licence under section 23A;”.

Application for grant of licence

8. Section 20 of the Principal Act is amended:

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- (a) by adding at the end of paragraph (2) (g) “and”;
- (b) by omitting paragraph (2) (h); and
- (c) by omitting subsection (3).

Grant of licence

9. Section 21 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsections:

5 “(1) Subject to subsections (2) and (2A), the Board may grant or refuse to grant a licence to an applicant and where the Board grants a licence it shall specify in the licence the amount of approved capital of the licensee for the purposes of this Act.

10 “(1A) For the purposes of subsection (1), the approved capital of the licensee is an amount equal to or exceeding the amount of the applicant’s paid-up share capital on the day on which the licence is granted.”;

(b) by inserting after subsection (2) the following subsections:

15 “(2A) Where an applicant’s paid-up share capital is less than the relevant amount, then, even if the applicant’s authorised share capital is not less than that amount, the Board shall not grant a licence to the applicant unless the applicant provides the Board with a declaration under subsection (2B).

20 “(2B) A declaration shall be signed by the secretary of the applicant and shall state that undertakings in writing by persons to subscribe, if the applicant is granted the licence, to shares in the applicant such that the applicant’s paid-up share capital will not be less than the relevant amount have been made and will be made available for inspection by the Board at a place determined by the Board.”; and

25 (c) by adding at the end the following subsection:

“(6) In this section, ‘relevant amount’ means the amount of \$5,000,000 or, where the regulations prescribe another amount for the purpose of this section, that other amount.”.

Revocation of licence

30 10. Section 23 of the Principal Act is amended by omitting from paragraph (1) (c) “, 26 or 29” and substituting “or 26”.

11. After section 23 of the Principal Act the following section is inserted:

Surrender of licence

35 “23A. (1) A licensee may, by notice in writing served on the Board, request the Board to approve the surrender by the licensee of its licence.

“(2) A request shall contain such information as the Board determines.

“(3) The Board shall, within 28 days after receipt of a request, by notice in writing served on the licensee:

40 (a) where the Board is satisfied that paragraph 23 (1) (a), (b), (c) or (d) applies to the licensee:

(i) inform the licensee that the Board is so satisfied and intends to refuse to approve the surrender;

(ii) specify in the notice the reasons why the Board is so satisfied;
and

(iii) invite the licensee to make written submissions to the Board,
within 14 days after the licensee receives the notice, in
relation to those reasons; or

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(b) in any other case—approve the surrender of the licence.

“(4) The Board shall consider any submissions made to the Board under
a notice referred to in paragraph (3) (a) and, not later than 14 days after
the expiration of the period referred to in that paragraph, by notice in
writing served on the licensee:

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(a) approve the surrender of the licence; or

(b) refuse to do so.

“(5) Where the Board does not, within 28 days after receipt of a request,
serve a notice on the licensee under subsection (3), the Board shall be
deemed to have approved the surrender of the licence on the expiration of
that period.

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“(6) Where the Board serves a notice on a licensee under paragraph
(3) (a), but does not serve a notice on that licensee under subsection (4)
within the period specified in that subsection, the Board shall be deemed to
have approved the surrender of the licence on the expiration of that
period.”.

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Renewal of licence

12. Section 25 of the Principal Act is amended:

(a) by omitting from paragraph (2) (a) “and”;

(b) by omitting from paragraph (2) (b) “as are prescribed or”; and

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(c) by adding at the end of subsection (2) the following word and
paragraph:

“; and (c) such other particulars, if any, as the Board considers
necessary.”.

Publication of Board's decisions

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13. Section 27 of the Principal Act is amended:

(a) by inserting “approving, or refusing to approve, the surrender of a
licence or” after “practicable after”; and

(b) by inserting “that the Board has approved or refused to approve
the surrender of the licence or” after “stating”.

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Certification

14. Section 29 of the Principal Act is amended:

(a) by omitting from subsection (2) “the prescribed form and manner”
and substituting “the manner and form approved by the Board”;

(b) by omitting from paragraph (3) (c) “directing” and substituting
“requesting”;

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- (c) by omitting from subsection (4) “directs” and substituting “requests”;
- (d) by omitting from subsection (5) “required” and substituting “requested”;
- (e) by inserting after subsection (5) the following subsection:

5 “(5A) The Board may:

- (a) impose conditions when certifying a business entity as an eligible business entity in relation to a licensee or, by notice in writing served on the licensee, at any time while the certification remains in force; and
- 10 (b) at any time while the certification remains in force, by notice in writing served on the licensee, vary or revoke any of the conditions so imposed, or impose further conditions.”;
- (f) by omitting from paragraph (6) (a) “businesses” and substituting “business activities”;
- 15 (g) by omitting from paragraph (6) (d) “3 months before nor more than 1 month” and substituting “6 months before nor more than 6 months”;
- (h) by omitting from paragraph (6) (e) “business or businesses” and substituting “business activity or business activities”;
- 20 (j) by omitting from paragraph (6) (e) “business was, or those businesses” and substituting “business activity was, or those business activities”;
- (k) by omitting from subsection (9) “The” and substituting “Subject to subsections (9A) and (9B), the”; and
- 25 (m) by inserting after subsection (9) the following subsections:

 “(9A) The Board may, on the request of a licensee made before the expiration of the period specified in a notice of certification referred to in subsection (3) or (5), as the case may be, extend the period of certification for such further period as the Board thinks fit.

 “(9B) The Board may extend the period of a certification under subsection (9A) in spite of the fact that the period has expired and, where the Board does so, the period of extension shall be taken to have commenced on the expiration of the first-mentioned period.”.

35 **Cancellation of certification**

15. Section 30 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “other than a business” and substituting “activity other than a business activity”; and
- (b) by inserting after paragraph (1) (a) the following paragraph:

40 “(aa) the business entity fails to comply with a condition imposed by the Board under subsection 29 (5A);”.

Guarantor interests in eligible business entities

16. Section 35 of the Principal Act is amended by omitting subsections (2) and (3).

Prescribed interests in business entities that cease to be eligible

17. Section 36 of the Principal Act is amended:

- (a) by omitting from subsection (2) “may specify” and substituting “shall specify in the approval”; and
- (b) by inserting after subsection (2) the following subsections:

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“(2A) The Board may, on the request of the licensee made before the expiration of the date specified by the Board in an approval, vary the approval by specifying a later date in place of the date originally specified and the approval shall have effect accordingly.

“(2B) Where, under subsection (2) as in force immediately before the commencement of this subsection, the Board has approved the continued holding, or the acquisition, of prescribed interests in a business entity by a licensee without specifying a date by which all prescribed interests held by the licensee in the business entity must be disposed of, the Board shall, as soon as practicable after the commencement of this subsection, by notice in writing served on the licensee, specify such a date and that date shall be deemed to have been specified by the Board when that approval was given.”.

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Share capital

18. Section 38 of the Principal Act is amended by omitting subsection (5).

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Repeal of section 39

19. Section 39 of the Principal Act is repealed.

Share register

20. Section 42 of the Principal Act is amended by omitting subsection (4).

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Cross ownership to be notified

21. Section 45 of the Principal Act is amended by adding at the end the following subsection:

“(2) A licensee shall forthwith notify the Board in writing of any information given to the licensee under subsection (1).”.

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Review of certain decisions of the Board

22. Section 47 of the Principal Act is amended by inserting “to refuse to approve the surrender of a licence or” after “Board”.

Statement to accompany notice of reviewable decisions

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23. Section 48 of the Principal Act is amended:

- (a) by inserting in subsection (1) “a licence, to refuse to approve the surrender of a licence” after “to revoke”; and
- (b) by inserting in subsection (1) “, 23A (3)” after “subsection 23 (1)”.

NOTES

1. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; Nos. 17 and 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; Nos. 50 and 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53, 164 and 165, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; Nos. 80 and 117, 1975; Nos. 50, 53, 56, 98, 143, 165 and 205, 1976; Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133, 134 and 159, 1980; Nos. 61, 92, 108, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123 and 168, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 49, 51, 52, 90, 109, 112 and 154, 1986; and Nos. 23, 58, 61 and 62, 1987.
2. No. 123, 1983, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; and Nos. 48 and 76, 1986.

