

Agreement with New Zealand in relation to Mutual Recognition of Securities Offerings

Background

- 8.1 The proposed *Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings* (the Agreement)¹ is part of a general initiative for greater coordination of business law between Australia and New Zealand.²
- 8.2 A Memorandum of Understanding (MOU) provides the framework for the coordination of business law between Australia and New Zealand.³ The first such MOU formed part of the 1988 review of the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA).⁴
- 8.3 New Zealand is Australia's fifth largest merchandise export market and Australia is New Zealand's top merchandise export market. New Zealand is the sixth largest foreign investor in Australia and Australia

1 The Agreement was signed in Melbourne, Australia on the 22 February 2006.

2 Regulation Impact Statement (RIS), p. 1.

3 The long title is: *Memorandum of Understanding between the Government of Australia and the Government of New Zealand on the Coordination of Business Law*. The most recent version was signed on 22 February 2006.

4 RIS, p. 1.

is the largest investor in New Zealand. In 2004, two-way investment between the nations was A\$61.8 billion.⁵

- 8.4 The economic and trade relationship between the countries has been shaped by ANZCERTA since it came into effect in 1983. Both the Australian and New Zealand governments have also indicated that they are committed to working towards a trans-Tasman single economic market.⁶
- 8.5 On 4 October 2001, the Australian Minister for Financial Services and Regulation wrote to the New Zealand Minister for Commerce proposing that Australia and New Zealand consider formal processes for mutual recognition in financial services regulation.⁷
- 8.6 Under the current regulatory regime issuers from one country (the home jurisdiction) who wish to offer securities to investors in the other country (the host jurisdiction) need to comply with two substantive regimes.⁸

Purpose of the Agreement

- 8.7 The Agreement provides for a scheme to offer securities⁹ and managed investment interests in both Australia and New Zealand, in the same manner and with the same offer documents.¹⁰ Securities include shares¹¹ and debentures.¹²

5 NIA, para. 8; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 29.

6 This is subject to certain exceptions. NIA, para. 7.

7 RIS, p. 1.

8 RIS, p. 1.

9 The Agreement defines securities as debt securities, equity securities, interests in collective investment schemes and any interest in, or an option to acquire such securities. In the context of financial markets securities are written undertakings securing repayment of money. They are typically negotiable instruments such as bonds, bills of exchange, promissory notes or share certificates which establish ownership and payment rights between parties. The word 'securities' has come to mean any interest-bearing piece of paper traded in financial markets. Securities in the sense of 'marketable securities' may be unsecured (that is, simply debt obligations) and so a holder may not have security in the generally accepted sense. Carew, E, *The Language of Money*, ANZ Bank, viewed 11 April 2006, <www.anz.com>

10 This is subject to certain entry and ongoing requirements. NIA, para. 3.

11 Part of the ownership of a company. A person who buys a portion of a company's capital becomes a shareholder in that company's assets and as such receives a share of the company's profits in the form of an annual dividend. Carew, E, *The Language of Money*, ANZ Bank, viewed 11 April 2006, <www.anz.com>

- 8.8 The Agreement is a further step towards a single trans-Tasman economic market, based on common regulatory frameworks. Entering into the Agreement will remove regulatory barriers for business and allow for increased investment with New Zealand resulting in an increased choice for investors from both countries.¹³
- 8.9 The Committee received evidence that it is likely that the Agreement will be of more benefit to New Zealand than to Australia because of New Zealand's smaller economy and evidence that issuers issuing into Australia do not currently issue into New Zealand due to additional costs and requirements. This does not diminish the importance of the Agreement for Australia as it will serve to promote trans-Tasman investment.¹⁴
- 8.10 Treasury informed the Committee of the benefits of the Agreement:
- ... this treaty achieves a balance of outcomes that will remove unnecessary regulatory barriers for business, allowing for increased investment with New Zealand and increased choice for investors while ensuring investor confidence in the regulation of securities offerings is maintained. The proposed treaty when implemented will produce a positive economic and political benefit. Gains include a reduction in compliance costs and red tape for companies offering into New Zealand with enhanced competition in capital markets and increased choice for investors. The treaty also reaffirms Australia's previous commitment to a single trans-Tasman economic market based on common regulatory frameworks.¹⁵

12 A type of fixed-interest security, issued by companies (as borrowers) in return for medium and long-term investment of funds. A debenture is evidence of the borrower's debt to the lender. Debentures are issued to the general public through a prospectus and are secured by a trust deed which spells out the terms and conditions of the fundraising and the rights of the debenture-holders. Typical issuers of debentures are finance companies and large industrial companies. Debenture-holders' funds are invested with the borrowing company as secured loans, with the security usually in the form of a fixed or floating charge over the assets of the borrowing company. As secured lenders, debenture-holders' claims to the company's assets rank ahead of those of ordinary shareholders, should the company be wound up; also, interest is payable on debentures whether the company makes a profit or not. Debentures are issued for fixed periods but if a debenture-holder wants to get his or her money back, the securities can be sold. Carew, E, *The Language of Money*, ANZ Bank, viewed 25 May 2006, <www.anz.com>

13 NIA, para. 5; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 28.

14 NIA, para. 11; Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, pp. 27-28.

15 Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, pp. 29-30.

- 8.11 In relation to a single trans-Tasman Economic Market, Treasury stated:

There is also work ongoing between the various attorney-generals' departments on closer harmonisation of court proceedings. We have now also launched negotiations between Australia and New Zealand on adding an investment protocol.¹⁶

- 8.12 The Committee also received evidence that in addition to working towards a joint therapeutic products agency and having in place ANZCERTA, Australia and New Zealand are also considering other areas of cooperation in business law which include:

Mutual disqualification of directors and those involved in managing a company and mutual disqualification of financial intermediaries or mutual recognition of qualification as a financial intermediary. They are some of the aspects that we are looking at. Also, accounting standards are being examined.¹⁷

Entry into force and withdrawal

- 8.13 The Agreement will enter into force when the Parties exchange diplomatic notes.¹⁸ Either Party may terminate the Agreement by giving written notice through diplomatic channels on a date agreed or one year after the date on which the notice was received.¹⁹

Consultation

- 8.14 Relevant Australian Government agencies have been kept informed at all stages of the development process and were consulted prior to commencing negotiations and before the finalisation of the

¹⁶ Mr Hans Saxinger, *Transcript of Evidence*, 8 May 2006, p. 30.

¹⁷ Ms Ruth Smith, *Transcript of Evidence*, 8 May 2006, p. 30.

¹⁸ NIA, para. 2.

¹⁹ NIA, para. 28.

Agreement.²⁰ States and Territories were consulted at the early stages of negotiations and were kept informed through the Ministerial Council for Corporations. States and Territories will also be consulted on the legislative amendments to the Corporations Act and the approval of the Ministerial Council prior to introduction.²¹

- 8.15 The Australian and New Zealand Governments prepared a discussion paper which outlined three possible models and identified Australia and New Zealand's preferred model.²² Most of the submissions preferred the adopted model.²³

Costs

- 8.16 Compliance costs associated with the need to adhere to the different regulatory requirements for Australia and New Zealand are likely to be reduced. There may be some small additional costs for ASIC in relation to trans-Tasman enforcement. While there are no estimates as to how much this will be, the additional costs are likely to be negligible.²⁴

20 These agencies include: the Attorney-General's Department, the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade and the Australian Securities and Investments Commission (ASIC).

21 NIA Consultation Annex.

22 NIA Consultation Annex, para. 3.

23 The following organisations and individuals made submissions: Australia and New Zealand Banking Group Ltd, Australian Shareholders' Association Ltd, Australian Stock Exchange, Challenger Financial Services Group, Clayton Utz Simpson Grierson, Commonwealth Bank of Australia, Consumers' Institute, Dowler, Mr Rob WM, Employers and Manufacturers Association (Northern) Inc, Financial Services Federation, HRL Morrison & Co Ltd, Institute of Financial Professionals New Zealand Inc, International Banks and Securities Association of Australia, Investment Savings and Insurance Association, Izard Weston Lawyers, Macquarie New Zealand Ltd, New Zealand Bankers' Association, New Zealand Exchange Ltd, New Zealand Law Society, New Zealand Securities Commission, PriceWaterhouseCoopers, Promina Group Ltd, Securities and Derivatives Industry Association, Securities Institute of Australia, Takeovers Panel, Telecom, Trustee Corporation of New Zealand, Walker, Professor Gordon, La Trobe University Law School.

24 NIA, paras 21-22.

Legislation

- 8.17 The *Corporations Act 2001* (Cth) will be amended to give effect to Australia's obligations under the Agreement.²⁵ The Government has indicated that relevant amending legislation will be introduced into Parliament in late 2006.²⁶

Conclusion and recommendation

- 8.18 The Committee understands that Australia and New Zealand share a close relationship created through migration, trade, tourism, defence cooperation, and strong personal links. Australia and New Zealand also maintain a close political relationship and work together through regional bodies such as the Pacific Islands Forum, the Asia-Pacific Economic Forum and the Southeast Asian Nations Regional Security Forum.
- 8.19 The Committee believes that this Agreement will serve to increase two-way investment between Australia and New Zealand and also strengthen existing ties between the countries to forge a greater link towards a single trans-Tasman market.

Recommendation 6

The Committee supports the Agreement between the Government of Australia and the Government of New Zealand in relation to Mutual Recognition of Securities Offerings and recommends that binding treaty action be taken.

Dr Andrew Southcott MP

Committee Chair

²⁵ NIA, para. 18.

²⁶ NIA, para. 2.