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The Secretary  
Senate Standing Committee on Economics  
PO Box 6100  
Parliament House  
CANBERRA  
ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

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**Securities & Derivatives Industry Association Submission:**  
Senate Inquiry into Private Equity Investment

Please find below the issues that the SDIA considers are of significance and that require analysis, to ultimately ensure that the integrity of the Australian companies that currently enjoy foreign and national investor confidence is maintained for the long term.

The SDIA appreciates the positive aspects of Private Equity Investment in Australia but also understands this type of investment also requires a proper understanding of any potential negative impact such as volatility and the disruption of broader asset markets that it could have on the Australian economy.

**Issues**

**1. Shareholder Approval**

Consideration should be given to a threshold whereby a Private Equity Investment (PEI) consortium must seek shareholder approval for the transaction. This threshold may well be set at a lot lower than that which currently seeks majority shareholder status and could be dependant on the percentage stake that the PEI intends to initially take in a company. Whilst seeking shareholder approval is always costly, a threshold system could halt any creep in bolstering a PEI holding and in some cases alleviate the need for shareholder approval.

**2. Lending Criteria**

Banks lending criteria requires scrutiny to ensure that in the PEI borrowing needs and the banks haste to lend, it does not eventually place a stable company in the unenviable position of possible default.

If a bank lends against the shares (held by the PEI) in the company that the PEI invests in and not other asset, and the shares for one reason or another are rightly taken by the bank lender due to agreement default by the PEI, then irrespective of the share price, the company could end up by default with another majority shareholder which is not beneficial to the company. The debt to equity ratio can potentially end up fairly skewed.

It is extremely important to the health of the Australian financial system for both wholesale and retail investors that there is proper regulatory (and accountable) oversight of PEI transactions, especially the debt levels.

It is also important that if mortgage risk is laid off, then those that are charged with monitoring and regulating the more sophisticated banking transactions completely understand what they are monitoring and reviewing.

### **3. Unlisted and Listed Public Companies**

Perhaps different criteria should apply to listed or unlisted companies. Unlisted companies usually have a more tightly held shareholding and therefore could possibly manage the entry of a PEI into its shareholding or even decline the PEI as a shareholder.

### **4. Foreign ownership of a PEI**

Foreign ownership of a PEI create another set of considerations. The ability of foreign entities to remove profits through dividends from the Australian economy along with the generous Capital Gains Taxation breaks has never been viewed by the Australian public as a level playing field and in fact most people consider this preferential treatment objectionable. In fact it could be seen to create another class of preferred shareholder.

All shareholders, their profits and the taxation implications should be treated equally.

### **5. Taxation implications for Australia**

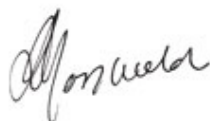
Given the scale of PEIs in the Australian economy it is imperative that the taxation laws for these types of transactions are immediately reviewed and the laws that allow deductions throughout the life of the PEI investment be tightened.

### **6. Interest Rates**

Given that a PEI is not a natural owner of a company, any reasonable increase in global interest rates could have a negative impact for a company and its investors if a PEI decides to exit at a particular time. This type of situation should be analysed for any general potential downside effect on the markets in general.

The SDIA would like to thank the Senate Standing Committee on Economics for this opportunity to comment. Should you require further information, please contact Jill Thompson, Policy Executive by email at [jthompson@sdia.org.au](mailto:jthompson@sdia.org.au) or 02 80803207 or myself on 02 8080 3208.

Yours faithfully,



**David Horsfield**  
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**Securities & Derivatives Industry Association**

**ABOUT SDIA:** The Securities & Derivatives Industry Association (SDIA) is the peak industry body that represents over 67 stockbroking firms across Australia, who in turn represent over 98% of the market by value on the ASX. The SDIA includes organisations of all sizes across the entire breadth of the industry, both institutional and retail, which enables the SDIA to have a comprehensive understanding of the challenges and opportunities facing our industry. The SDIA actively liaises with our members, regulators and other market participants to further strengthen our profession in Australia.

For information about the SDIA go to [www.sdia.org.au](http://www.sdia.org.au).