

# Chapter 2

## ABIP operations

### Governance

2.1 The shareholders of ABIP will be the Australian government (with a 50 per cent stake) and the four major banks (each with a 12½ per cent stake). The board will comprise five directors, one appointed by each of the shareholders, with the government-nominated director being the chairperson.

2.2 Board resolutions must generally be unanimous. (The exception is resolutions to commence enforcement processes in relation to property of a borrower, which may be passed by the chair and three of the other four directors.) This requirement effectively gives the government nominee on the board a veto.

2.3 The shareholders of ABIP will enter into a Shareholders' Agreement which will detail governance arrangements for ABIP operations. To provide greater transparency, the final agreement and any amendments to it will be made public as soon as practicable.<sup>1</sup> A draft, prepared by Mallesons Stephen Jaques, was tabled in the Senate on 12 March 2009.

2.4 As soon as possible after the Bill receives Royal Assent, the Australian Government Solicitor will apply to the Australian Securities and Investments Commission to register the 'Australian Business Investment Partnership Limited' as a public company limited by shares.<sup>2</sup> This ensures that the directors of ABIP are subject to provisions of the *Corporations Act*. This requires them to act in the best interests of ABIP rather than in the interests of the bank (or government) which appointed them.

2.5 ABIP's annual financial report, audited by the Auditor-General, will be tabled in parliament.

2.6 On 20 February 2009, the Treasurer announced the appointment of Mr Ahmed Fahour, former National Australia Bank executive, as the interim Chief Executive Officer of ABIP.<sup>3</sup> The Government has not yet announced its nominee for the board.

### Borrowing arrangements

2.7 The issuing of any debt by ABIP will be subject to the unanimous agreement of ABIP shareholders. Government-guaranteed debt will only be issued once the initial \$4 billion funding is exhausted and will attract an appropriate fee (agreed by

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1 *Explanatory memorandum*, p 10.

2 *Explanatory memorandum*, p 9.

3 The Hon Wayne Swan MP, 'Australian Business Investment Partnership Interim CEO Announced', *Media Release*, 20 February 2009.

shareholders) having regard to risk and liquidity factors and general market conditions at the time any such debt is issued.<sup>4</sup>

2.8 If ABIP has profits available for distribution, it will pay half year and full year dividends. Any 'first loss' will always be to ABIP's equity, including the provisions for bad and doubtful debts. After that if ABIP issues no debt, any subsequent losses will be borne by the four major domestic banks and the government, proportionate with their initial contributions.<sup>5</sup>

### **Time limit**

2.9 ABIP is only intended to operate for five years. It will only be able to make loans for two years from its establishment and the maximum term of loans is three years.<sup>6</sup>

2.10 This limit is supported as a key feature of the scheme by some contributors to the inquiry:

We give support on the basis that it is temporary, that there are the extraordinary circumstances and that a lot of our members are saying that they simply cannot get finance.<sup>7</sup>

A fundamental feature is ABIP's limited tenor (ie. Five years; two-year availability window and maximum facility term of three-years). It is envisaged as a temporary solution in which to execute its mandate (if required), straddle the tight liquidity period and provide for refinancing back into the financial markets in an orderly fashion.<sup>8</sup>

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4 *Explanatory memorandum*, p 8.

5 *Explanatory memorandum*, p 12.

6 Sections 8(4) and 8(5) of the Bill. The maximum term can be extended by regulation.

7 Mr Harnisch, Master Builders Association, *Proof Committee Hansard*, 14 April 2009, p 27.

8 ANZ, *Submission 12*, p 2.