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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

POOLED DEVELOPMENT FUNDS AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Industry, Science and Technology,  
Senator the Hon Peter Cook)



## POOLED DEVELOPMENT FUNDS AMENDMENT BILL 1994

### OUTLINE

The purpose of this Bill is to give effect to changes to operational rules applying to Pooled Development Funds (PDF) announced as part of a wide range of measures by the Prime Minister on 4 May 1994 in the White Paper on Employment, Industry and Regional Development. The PDF Program, which was introduced in June 1992, is designed to channel long-term equity capital to small and medium sized enterprises (SMEs).

PDFs are concessionally taxed investment vehicles that may be established under the *Pooled Development Funds Act 1992 (PDF Act)* for the purpose of investing in equity in SMEs within the parameters set out in the Act.

Changes announced to the Program are designed to improve the incentive for investing in PDFs, and the flexibility of the operational rules for PDFs. The revised incentive involves a reduction in the tax rate from 25% to 15% on the profits a PDF derives from its investments in SMEs. The Treasurer will be introducing legislation to give effect to this measure.

Changes to the operational rules will improve their commercial flexibility, details of which are given in the body of this Memorandum. As an inducement for PDFs to invest their funds in SMEs it was also decided to raise from 50% to 65% the level of raised capital a PDF must invest within 5 years.

### FINANCIAL IMPACT STATEMENT

There is no financial impact that arises from the amendments to the PDF Act.

**NOTES ON CLAUSES****PART 1 - PRELIMINARY**Clause 1 - Short title etc.

1. This clause is self explanatory.

Clause 2 - Commencement

2. This clause is self explanatory.

**PART 2 - AMENDMENTS RELATING TO THE ASSETS  
OF INVESTEE COMPANIES**Clause 3 - Object of Part

3. This clause is self explanatory.

Clause 4 - Limit on size of investee company

4. This clause is to amend section 24 to allow for an increase from \$30m to \$50m of the total asset size limit of companies in which a PDF may invest.

**PART 3 - AMENDMENTS RELATING TO THE MAXIMUM  
LEVEL OF INVESTMENT IN AN INVESTEE COMPANY**Clause 5 - Object of Part

5. This clause is self explanatory.

Clause 6 - Interpretation

6. This clause provides for decisions taken by the PDF Registration Board under the discretionary powers proposed in clause 7 to be subject to review.

Clause 7 - PDF not to commit more than 30% of its committed capital to investee company

7. This clause amends section 25 in order to increase from 20% to 30% of the proportion of a PDF's raised capital that a PDF may invest in any one business, and to provide the PDF Registration Board with a discretionary power to exceed this limit in certain circumstances.

8. In order to assist the attainment of the object of the Act, the Board will be provided with a discretionary power to allow PDFs to invest in excess of the prescribed 30% limit in any one business at any point in time. The Board may not exercise its discretion if it believes that an investment exceeding the prescribed limit is being sought for the purpose of avoiding taxation provisions. A discretion granted by the Board will require the agreement by the PDF to meet the prescribed 30% limit within a specified time frame.

Clause 8 - Provisions relating to approvals by Board

9. This clause is required to amend section 28 as a result of the additional discretionary powers to be given to the PDF Registration Board under clause 7.

Clause 9 - Revocation at discretion of Board

10. A new provision is to be provided in section 47 to allow the PDF Registration Board to revoke the registration of a PDF in the event it fails to comply with the Board's conditions for exceeding the 30% limit of the proportion of a PDF's raised capital that a PDF may invest in any one business.

Clause 10 - Criminal consequences of contravening certain provisions

11. This clause sets the penalty for failure to comply with an undertaking made to the PDF Registration Board under its discretionary powers to be provided under clause 7.

## **PART 4 - AMENDMENTS RELATING TO INVESTMENT IN START-UP BUSINESSES**

Clause 11 - Object of Part

12. This clause is self explanatory.

Clause 12 - Interpretation

13. This clause amends section 4 as a consequence of the proposed repeal of section 26 by clause 13.

Clause 13 - Repeal of section 26

14. This clause repeals section 26, thereby removing the restriction on the level of investments in start-up businesses by a PDF, so long as the investment complies with the other provisions of the Act.

Clause 14 - Application

15. This is a transitional provision to cover any decisions made by the PDF Registration Board under section 26 prior to the enactment of clause 13.

## **PART 5 - AMENDMENTS RELATING TO THE LIMIT ON SHAREHOLDINGS IN A PDF**

### Clause 15 - Object of Part

16. This clause is self explanatory.

### Clause 16 - Limit on shareholding in a PDF

17. Section 31 is amended by this clause in order to raise from 20% to 30% the limit on ownership in a PDF by investors, other than banks and life offices for whom there is no limit, while retaining the Board's discretionary power to vary the restriction.

## **PART 6 - AMENDMENTS RELATING TO THE PERCENTAGE OF THE CAPITAL RAISED BY A PDF THAT MUST BE INVESTED**

### Clause 17 - Object of this Part

18. This clause is self explanatory.

### Clause 18 - Timetable for investing funds raised by PDF

19. Section 32 is to be amended to increase from 50% to 65% the level of a PDF's raised capital that must be invested in eligible businesses within 5 years of that capital having been raised.

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