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PRIME MINISTER

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FOREIGN INVESTMENT POLICY

In this statement I am announcing details of further developments in the Government's policies towards foreign investment. These developments follow a review by the Resources Committee of Cabinet of certain aspects of the policies in the light of the experience gained since December 1972. They are also intended to clarify certain aspects of our policies where there appears to be some confusion in the minds of foreign investors.

This announcement comprises a complete statement of the Government's policy in the field of foreign investment.

The Australian Government is determined to safeguard the legitimate national aspiration of Australians to achieve their rightful share in the control and ownership of their own resources. We recognise that development of those resources is essential for Australia's growth. We believe the guidelines we are setting out will greatly assist development but at the same time protect the rights of Australians in the ownership, development and use of their resources.

The Government is looking to the business community to co-operate with it in helping to achieve the policy objective of maximum practicable Australian participation

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in the activities of foreign companies operating in Australia, on the basis of fair and reasonable negotiations. It is also, of course, important for there to be appropriate co-operation between the Australian Government and the various State Governments in achieving these objectives. For its part, the Government will be doing all in its power to foster this co-operation.

If this co-operation is forthcoming, I believe there will be great benefits accruing to all concerned - foreign investors themselves, Australian businesses and, most important of all, the Australian nation and the Australian people.

I emphasise that the Government recognises that Australia will, for the foreseeable future, continue to require foreign-capital, including equity capital, if we are to achieve our basic aim of ensuring that Australia's resources and industries are developed in such a way as to bring maximum benefits to the Australian people. Within this over-riding goal, however, the Government, while continuing to welcome beneficial foreign capital, has a major longer term objective of the promotion of Australian control and the maximum Australian ownership compatible with our long term capital requirements and our need for access to markets, advanced technology and know-how.

We recognise that the private sector has a major role to play in achieving this objective. Public bodies such as the AIDC also need to participate to the maximum extent practicable if the objective is to be achieved.

This statement covers three main areas:

First, an expansion of the process of screening new foreign

investment proposals, and proposals to expand existing foreign investment activities, where these proposals do not involve exchange control approvals. In a statement on 12 June 1974, I announced the establishment of a new interdepartmental committee (the Foreign Investment Committee) to examine and provide advice on foreign investment proposals which come under notice through the exchange control mechanism. At the same time, I requested the bringing forward for the Government's consideration of detailed proposals for the screening of foreign investment activities which do not involve exchange control approvals - for example, investment proposals financed by foreign interests' from funds available to them from Australian sources.

The second area covered by today's statement is a further elaboration of the detail of the Government's policy on foreign investment in the minerals sector. The Government has given careful consideration to the question of foreign investment in the minerals sector in the light of various representations it has received to the effect that the policy has not been spelled out publicly with sufficient clarity, and that more specific guidelines are required in order to engender business confidence and to permit both Australian and foreign companies to plan ahead on projects where risks are high at the exploration stage and lead times are long at the development stage.

It continues to be the Government's firm policy, however, to examine foreign investment proposals, whether in the minerals sector or elsewhere, on a case-by-case basis. The details outlined later in this statement should, therefore, be regarded more in the nature of guidelines than as constituting inflexible rules. I stress that potential

foreign investors should submit their proposals to the Government at an early date. This is particularly important if the foreign investor is uncertain as to the acceptability of his proposals. Early submission will enable the investor to discuss the proposals with government and thereby obtain any necessary guidance on them.

The third matter covered by today's announcement is a review of the Government's policy on foreign investment in Australian real estate.

The Government has now reviewed the operation of its policy on foreign investment in real estate in Australia in the light of the experience we have gained since the first announcement of that policy by the then Treasurer, Mr Crean, in March 1973. In the light of this review, we have decided to introduce certain modifications to the policy and to set out clearly the principles under which the policy is to be administered.

The relevant details are set out below.

SCREENING OF FOREIGN INVESTMENT PROPOSALS

First, the comprehensive scheme for the screening of foreign investment proposals as foreshadowed last year.

Establishment of New Committee

The foreign Investment Committee and the Committee on Foreign Takeovers are to be merged into a single Committee to be known as the Foreign Investment Advisory Committee.

The new Committee will subsume the roles of the two Committees which it replaces. Like these Committees, it will be advisory, and will report to the Treasurer as the Minister

with overall responsibility for all foreign investment matters.

The new Committee will have responsibility for examining and advising the Treasurer on foreign investment proposals whether or not they involve exchange control approvals. At present proposals which do not involve exchange control are not screened by either Committee unless they fall within the ambit of the Foreign Takeovers Act.

Although the broadening of the Committee's role into the area outside exchange control and the foreign takeovers measures is a new development as far as the screening process is concerned, it does not involve any basic policy changes.

Foreign takeovers will continue to be examined in terms of the Foreign Takeovers Act which was passed by the Parliament on 21 Aug 1975. ,

In the non-takeovers area, the screening process will not, for the time being, be backed by specific new legislation.

The Government believes that there are considerable advantages for all concerned in continuing with a system which relies on the voluntary co-operation of business with the Government's policy objectives.

Of course, where any aspect of a foreign investment proposal requires approval under the Banking (Foreign Exchange) Regulations, the Reserve Bank will continue its practice of withholding such approval until the Government has indicated that the proposal is not against the national interest.

Membership of Committee

The new Committee will comprise representatives of the Treasury, Attorney-General's Department, the Department of Minerals and Energy, the Department of Overseas Trade, the

Department of the Prime Minister and Cabinet, the Department of Manufacturing Industry, and the Reserve Bank. Representatives of other departments will be co-opted to the Committee as appropriate in the examination of particular proposals. As previously, the Treasury will provide the executive to the Committee.

Criteria to be used by Committee

All examinable foreign investment proposals will be screened against the background of the Government's basic aim of ensuring that Australian industries and resources are developed in such a way as to bring maximum benefits to the Australian people.

In examining specific investment proposals, the Committee will take into account various criteria, the most important of which are listed in Attachment A to this statement. These criteria are not exclusive, however, and will be modified as necessary to suit particular cases and in the light of experience.

Relationship between General Foreign Investment Policy and Foreign Takeovers Act.

Foreign investment proposals will be examined as appropriate for compatibility with the Government's general foreign investment policy and/or for compliance with the Government's specific policy on foreign takeovers. However, foreign investment proposals which are actionable under the Foreign Takeovers Act and which are deemed to be acceptable to the Government in terms of that Act will not also be examined in light of the general foreign investment policy.

Foreign Investments to be Screened

For all foreign investment proposals, "foreign interests" for the purposes of the screening process are corporations in which a single foreign shareholder, or associated foreign shareholders, own 15 percent or more of the equity of the corporation, or in which the total foreign equity exceeds 40 per cent; or individuals whose normal place of residence is outside Australia. Corporations are deemed to include all types of businesses.

Commercial investments by foreign governments, other than investments related to their official representation, will also be screened.

"Foreign investment" means funds to be invested in fixed assets whether owned or leased, whether financed from equity or loan funds, and whether financed from whatever source within Australia or overseas.

A foreign investment proposal will be subject to the screening process if it is for the purpose of the foreign interests establishing a new business or undertaking a new mining project. In the case of manufacturing or service industries, such a proposal will be taken to involve an establishment of a new business if it would result in a foreign interest carrying on a new primary activity as defined in the Australian Standard Industrial Classification as published from time to time by the Australian Bureau of Statistics, unless the new activity were primary to a class in which the foreign interest is already engaged.

Except for non-bank financial institutions and insurance companies, which are dealt with later in the statement, the Committee will also screen foreign investment proposals involving expansions by existing businesses where the cost of the expansion, in any 12 months, amounts to more than 15 per cent

of the company's total assets before the proposed expansion, provided that any expansion involving more than \$10 million in any 12 months will be screened and further provided that all proposed expansions in mining and real estate will be screened.

The Committee will also screen proposals by companies operating in Australia to increase the overall proportionate foreign ownership of the company by more than a specified percentage above the level of foreign ownership which existed at the date of this statement. In the case of non-bank financial institutions and insurance companies, proposals will be screened if the foreign ownership increases by more than 5 percent, and in other cases if the foreign ownership increases by more than 15 per cent. This applies whether or not the company is already foreign controlled. The Foreign Takeovers Act applies whenever there is a change in control regardless of the degree of change in foreign ownership.

Foreign investment proposals as defined above, except those involving the development of uranium, will not be subject to examination where the total Australian participation in the proposal is 85 percent or more, unless there are associated arrangements attaching to the foreign participation which give the foreign parties a greater degree of ownership or control of the venture than would appear prima facie to be the case.

Except in the case of a new non-bank financial institution or a new insurance company, and except for minerals and real estate, foreign investment proposals which involve funds of less than \$1 million in any 12 month period will not be subject to examination by the Committee, although this will not affect the normal requirements of exchange control approval.

Furthermore, except for non-bank financial institutions, insurance companies, minerals and real estate, if it can be

demonstrated that a foreign investment proposal will be Australian controlled, it will in general be approved. Proposals which are not Australian controlled will be examined on their individual merits. Controlling interest in this context means the identity of the interest (company or person) in a position to determine the major policy decisions of the venture.

Non-Bank Financial Institutions and Insurance Companies

Non-bank financial institutions and insurance companies are subject to specific Australian Government legislation. Australia is already adequately supplied with non-bank financial institutions and insurance companies. Accordingly it is the Government's general objective to require foreign interests wishing either to establish, or to participate in the establishment of, a new non-bank financial institution or insurance company, or to significantly increase their participation in an existing institution, to demonstrate that the Australian economy would be advantaged by their doing so.

Foreign investment policy in respect of non-bank financial institutions and insurance companies will be broadly administered on the same basis as other forms of foreign investment (with the exception of minerals and real estate). The application of the general screening process and criteria is qualified, however, in four respects:

- (1) All foreign investment proposals relating to new non-bank financial institutions or insurance companies will be screened, irrespective of the level of funds involved.
- (2) All proposals to increase the overall proportionate foreign ownership of companies by more than 5 per cent will be screened.
- (3) Since the activities of non-bank financial institutions and insurance companies are associated principally with financial intermediation, it would be inappropriate

for these institutions to be subject to the screening benchmark (15% increase in liabilities or \$10 million, whichever is the lower) imposed on the expansion of non-finance business.

- (4) In view of the difficulty in distinguishing between the various "primary" activities of financial institutions, the new screening arrangements in this regard will not apply to these institutions so long as they confine their activities to financial intermediation. However, where financial institutions propose to expand their activities beyond what is generally regarded as financial intermediation, such an expansion will be subject to the screening process applicable to non-finance businesses.

Special Areas

There are also some other areas in which foreign investment is of particular concern to the Government. As well as the long-standing restrictions on foreign investment in banking, broadcasting and television, and some aspects of civil aviation, the Government will continue to pay particular attention to foreign investment proposals in the areas of real estate and minerals. In the minerals area, other important considerations will continue to arise, and will continue to be examined closely by the Government to ensure balanced development of Australia's mineral resources in the national interest. Our policies in these areas are spelt out in detail below.

FOREIGN INVESTMENT IN THE MINERALS SECTOR

There have been several previous statements of the Government's general policy towards foreign investment in the minerals sector by myself, and by my colleague the Minister for Minerals and Energy. On 7 Nov 1973, I tabled in Parliament a statement I had previously made at the Tokyo meeting of the Australia-

Japan Ministerial Committee. In addition, guidelines were set out in my press statements of 3 Nov 1974 and 12 Mar 1975. The Minister for Minerals and Energy announced in the Parliament on 31 Oct 1974 the Government's policy towards uranium in the Northern Territory.

Despite these statements, it appears from various communications the Government has received that there is still uncertainty among foreign mining companies as to some of the details of the Government's policy on foreign equity participation in the mining industry in the future. The purpose of today's statement is to outline the Government's policy in detail in order to resolve these uncertainties..

I emphasise, however, the point made earlier in this statement that it continues to be the Government's firm policy to examine all foreign investment proposals on a case-by-case basis in order to ensure that Australia's resources and industries are developed in such a way as to bring maximum benefits to the Australian people.

There may, of course, be some proposals which do not meet the guidelines, but which will have characteristics which make them acceptable to the Government. These could include cases where foreign companies are unable to find significant Australian participation. Conversely, in the Government's consideration of specific proposals, there will be a prima facie presumption that proposals falling within these guidelines will be acceptable to the Government unless there are special circumstances attaching to the proposal which indicate that its approval would be against the national interest.

A. Foreign Equity Participation in Mineral Exploration

The Government has reviewed the administration of its policy towards foreign equity participation in mineral exploration

in the light of the experience gained since the establishment of the Foreign Investment Committee in June 1974. We consider there is scope for some administrative changes which should be of benefit to both Australian and foreign exploration companies and which will at the same time continue to meet the Government's policy objectives.

The Government wishes to see a significant degree of Australian involvement in mineral exploration, including participation with foreign exploration companies. Although it will not be mandatory for foreign exploration companies to seek Australian participation at the outset of initial, or grass roots, exploration programs, it will be necessary for those companies to notify the Foreign Investment Advisory Committee of their exploration programs at the time they are formulated or subsequently significantly varied. Foreign companies will in future be required to report to the Treasurer, through the Foreign Investment Advisory Committee, when the detailed proving up stage is reached and in any case every two years on the efforts they are making to attract Australian participation in their exploration activities in Australia.

The only exception to the procedure outlined in the preceding paragraph is uranium exploration in the Northern Territory. As announced by the Minister for Minerals and Energy on 31 October 1974, all new exploration for uranium in the Northern Territory will be carried out exclusively by the Australian Atomic Energy Commission.

The procedure will apply to both on-shore and off-shore exploration.

Foreign companies making commercial mineral discoveries will be able to proceed to the development of those discoveries

only on the basis of the guidelines for Australian participation in development projects outlined below. Australian participation is to be sought on fair and reasonable terms, on the basis of normal commercial negotiations.

B. Foreign Equity Participation at the Mineral Development Stage

- (i) Uranium. The Government's policy objective is to seek full Australian ownership in the development of uranium deposits. However, in relation to foreign companies which already have discovered, or may in the future discover, uranium ore bodies on exploration licences or equivalent exploration titles granted up to the date of this statement, the Government will be prepared to discuss with those companies their participation in the development of those ore bodies on fair and reasonable terms. The development of uranium ore bodies discovered on exploration licences or equivalent exploration titles granted after the date of this statement will be on the basis of 100 per cent Australian ownership.
- (ii) Other Minerals. The Government has as a desired objective the promotion of Australian equity in and control of its mineral resources, and maximum Australian ownership compatible with Australia's longterm capital requirements and its need for access to markets, technology and know-how. However, given the existing high degree of foreign ownership and control in the minerals sector, we recognise that this objective can only be met in a total sense in the longer term.

As a major step towards this objective, the Government will expect proposals for all new mineral development

projects (other than those relating to uranium) to have no more than 50 per cent foreign ownership, and with the foreign participants having no more than 50 per cent of the voting strength on the board of the development company. The Government will not insist on the Australian participants necessarily being the technical operators and supervisors of the project, but will expect Australian nationals to have a significant role to play in the management, technical operation and control.

This procedure will apply to development proposals both on-shore and off-shore.

In considering proposals for foreign equity participation in mineral development projects, account will be taken of the relationship between the prospective foreign participant and the expected main sources of demand for the output of the development.

Export Licences

A foreign investment proposal for mineral development which receives approval from the Government as being not inconsistent with its foreign investment policies can be assured that it will not be disadvantaged, in applications for export licences, because of the degree of foreign participation in the development.

ACQUISITION OF REAL ESTATE BY FOREIGN INTERESTS

In a statement on 20 March 1973, the then Treasurer, Mr Crean, drew attention to the Government's concern about the ownership and control of Australia's resources and, in particular, asked overseas interests not to enter into significant commitments for real estate purchases for the time being. Later that year, I said that specific proposals involving foreign investment

in real estate would be examined on their merits. This case-by-case approach to foreign investment in real estate has operated since then.

The Government has reviewed its policy, and the administration of this policy, in this area in the light of the experience gained in the past two years.

Within the general context of the foreign investment policy, the Government is particularly concerned to ensure that Australian real estate does not come under the ownership of foreign interests except in certain specific instances.

The detailed principles which will govern the administration of the Government's policy with regard to foreign investment in Australian real estate are set out in Attachment B to this statement. ,

SUBMISSION OF FOREIGN INVESTMENT PROPOSALS

Where a foreign takeover is involved, foreign investors should continue to submit their proposals to the Treasury in Canberra. All other proposals should be submitted, in duplicate, either to the Treasury or to the Reserve Bank.

In the non-takeovers area, applicants can expect to receive a decision by the Government on their proposal within a maximum period of 90 days from the date of submission of the proposal. It is expected, however, that most proposals will be determined in a significantly shorter time. In the takeovers area the time periods are laid down in the Foreign Takeovers Act.

CRITERIA FOR ASSESSMENT OF FOREIGN INVESTMENT PROPOSALS

The objectives of the Government's foreign investment policy are twofold:

- . To ensure that foreign investment proposals are associated with productive investment which adds to Australia's real resources and brings benefit to the nation; and
- . Whilst continuing to welcome beneficial foreign capital, to promote, in the longer term Australian control - and maximum practicable Australian ownership - of its industries and resources.

For foreign takeovers the criteria will continue to be as spelt out in the Treasurer's second reading speech on the Foreign Takeovers Bill 1975. In the non-takeovers area the Foreign Investment Advisory Committee will, in considering cases for the purpose of advising the Treasurer whether or not proposals are against the national interest, take account of a wide variety of criteria. The most important of these are outlined below (they are similar to those applicable to takeover proposals). However, given the very great variation between proposals, it should be kept in mind that not only will a specific criterion not necessarily apply in a particular case but that the weighting given to it may well vary from case to case.

OWNERSHIP AND CONTROL

In the light of the Government's objectives with regard to Australian control and ownership, the Committee will take into account:

- . the extent of Australian control (including management) and ownership in a project; and
- . the extent to which the participants have sought Australian equity participation from either the private or the public sector.

NET ECONOMIC BENEFITS

The Committee will take into account whether, against the

background of existing circumstances in the industry concerned, the proposal will lead, either directly or indirectly, to net economic benefits in relation to such matters as:

- . a broadening of Australia's industry base;
- . competition, level of prices and efficiency;
- . productive capacity;
- . introduction of new technology, managerial skills and other know-how;
- . development of new markets;
- . production;
- . quality and range of products and services;
- . employment, including numbers and staff training.

ADDITIONAL CRITERIA

In assessing a proposal the following additional criteria will also be taken into account:

- . whether the new venture could be expected to follow commercial practices consistent with Australia's interest in matters such as:
 - exports
 - local processing of materials produced
 - research and development
 - industrial relations
 - financial arrangements, including taxation
 - royalty and licencing arrangements
 - the interests of shareholders, insurance policy holders, and claim holders generally, as appropriate.
- . whether the proposal would be consistent with Australia's international obligations and with the Government's objectives for, inter alia:
 - environment
 - urban and regional development
 - Aboriginal land rights
 - maximum practicable Australian ownership of real estate
 - defence.

GUIDELINES GOVERNING THE ADMINISTRATION OF GOVERNMENT
POLICY ON FOREIGN INVESTMENT IN AUSTRALIAN REAL ESTATE

Application of the real estate policy is not restricted to large investments, but covers all cases no matter what their size unless otherwise specified below. The policy covers ownership of Australian real estate, and therefore applies to all forms of freehold acquisition. However, it also applies to certain types of leasehold acquisition. The policy also applies whether or not the foreign investment proposal requires exchange control approval. The sale and/or transfer of real estate between foreigners is subject to the real estate policy.

The acquisition of an interest in real estate for mining or quarrying purposes will not be determined in the context of the Government's real estate policy. Such investments will be examined, as in the past, in the light of the Government's policy on foreign investment in mining.

Investment by a foreign interest associated with and made in order to complete a contractual commitment to acquire or develop real estate made prior to 20 March 1973, will continue not to be affected by the Government's real estate policy.

The following categories of real estate investment will, as a general rule, be approved as being in conformity with the Government's policy:

- (a) acquisitions of real estate by life insurance companies where such acquisitions represent the investment of the company's Australian statutory funds;
- (b) acquisitions by foreign or overseas controlled charities or charitable trusts which operate in Australia for the benefit of Australians;
- (c) acquisitions of land and/or a residence; a business; or a farm, for their own ultimate use by:
 - (i) expatriate Australians who intend to resume residence in Australia (up to a total amount of \$100,000, with applications for amounts

in excess of this to be considered on their individual merits);

- (ii) intending migrants who have been formally accepted as such by the Australian Government.
- (d) transfers of real estate between overseas residents who are members of the same family, provided that the grounds for undertaking any such transfer do not conflict with the Government's policy in this or other areas;
- (e) acquisition of residences by foreign or overseas controlled companies exclusively for use by their employees resident or temporarily resident and working in Australia;
- (f) acquisitions of residences for their own or their immediate family's use by foreign individuals, temporarily working or resident in Australia;
- (g) acquisition of offices and residences by foreign missions for use as official missions or as residences for staff.

Approval for acquisitions listed in (e), (f) and (g) above will be conditional on the properties being sold to Australians, or other eligible purchasers, when they are no longer being used for the approved purpose.

Applications for the acquisition of the following types of real estate will be critically examined, having in mind both the Government's normal criteria for foreign investment proposals and the special significance the Government attaches to foreign acquisition of real estate. (The normal criteria are listed in Attachment A to the Prime Minister's statement.)

- (a) real estate incidental to other purposes. This may include factories, shops, hotels, etc or sites therefore acquired by foreign interests and necessary for their own use in pursuit of the purpose concerned;
- (b) real estate which is in the nature of normal stock-in-trade for real estate developers and which is to be developed within a specific period and sold to Australians (or to foreign interests eligible to acquire Australian real estate) on completion of

development. Land held by developers for speculative purposes or for development at some indefinite time in the future will not be regarded as normal stock-in-trade;

- (c) properties for long term use for rural purposes and which can be expected to continue to be available for such purposes.

All forms of real estate acquisition other than those outlined in the foregoing will not normally be approved.

As well as freehold, the term "real estate" for the purposes of this statement includes leases which provide for profit sharing arrangements to the foreign lessee, which carry options to purchase, which provide for a transfer of ownership in specified circumstances, or which provide for compensation or payment on surrender of the lease. Leases which do not include any of these provisions will normally be accepted as being in conformity with the Government's policy.