



# **International Financial Institutions Legislation Amendment Act 2010**

**No. 133, 2010**

**An Act to amend the law relating to some  
international financial institutions, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **International Financial Institutions Legislation Amendment Act 2010**

**No. 133, 2010**

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**An Act to amend the law relating to some  
international financial institutions, and for related  
purposes**

*[Assented to 24 November 2010]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *International Financial Institutions  
Legislation Amendment Act 2010*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 November 2010
2. Schedule 1	The day after this Act receives the Royal Assent.	25 November 2010
3. Schedule 2, Part 1	<p>The later of:</p> <p>(a) the day after this Act receives the Royal Assent; and</p> <p>(b) the day the amendment of the Articles of Agreement of the International Finance Corporation, that the Board of Directors of the Corporation recommended, in a report approved on 20 July 2010, that the Board of Governors of the Corporation approve, comes into force for Australia.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce by notice in the <i>Gazette</i> the day that amendment of those Articles of Agreement comes into force for Australia.</p>	<p>27 June 2012</p> <p>(paragraph (b) applies)</p>
4. Schedule 2, Part 2	<p>The later of:</p> <p>(a) the day after this Act receives the Royal Assent; and</p> <p>(b) the day the amendments of the Convention Establishing the Multilateral Investment Guarantee Agency that were approved by the Council of Governors</p>	<p>25 November 2010</p> <p>(paragraph (a) applies)</p>

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	by the resolution set out in the provision(s) come into force for Australia.	
	The Minister must announce by notice in the <i>Gazette</i> the day those amendments come into force for Australia.	

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Extra shares in International Bank for Reconstruction and Development**

### ***International Monetary Agreements Act 1947***

#### **1 After section 8F**

Insert:

#### **9 Appropriation for Australia to buy extra shares in the Bank**

The Consolidated Revenue Fund is appropriated for the purposes of payments by Australia under one or more agreements that:

- (a) are made by the Minister, on behalf of Australia, with the Bank, for Australia to buy a total of not more than 7,128 additional shares of the capital stock of the Bank at a price equivalent to 120,635 United States dollars a share; and
- (b) contain terms and conditions determined by the Minister.



## **Schedule 2—Changes to international agreements**

### **Part 1—Articles of Agreement of the International Finance Corporation**

#### ***International Finance Corporation Act 1955***

##### **1 Section 3 (definition of *the Agreement*)**

Repeal the definition, substitute:

*the Agreement* means the Articles of Agreement of the International Finance Corporation set out in the First Schedule to this Act, as amended in accordance with the following resolutions accepted in accordance with Article VII of those Articles:

- (a) the resolutions set out in the Second and Third Schedules to this Act;
- (b) the resolution the preamble to which and Part (A) of which are set out in Schedule 4 to this Act.

##### **2 At the end of the Act**

Add:

#### **Schedule 4—Resolution recommended by the Board of Directors on 20 July 2010**

Note: See the definition of *the Agreement* in section 3.

#### **Amendment to the Articles of Agreement and 2010 Selective Capital Increase**

WHEREAS at its April 2010 meeting, the Joint Ministerial Committee of the Boards of Governors of the Bank and the Fund on the Transfer of Real Resources to Developing Countries endorsed proposals for the second phase of reforms to enhance the voice and participation of developing countries and countries in transition in the World Bank Group.

WHEREAS in their Report approved on July 20, 2010, the Board of Directors recommends that the Board of Governors approves:

- (a) an increase in Basic Votes which requires an amendment of the Articles of Agreement of the Corporation as set forth in Part (A) of this Resolution;
- (b) an increase in the authorized capital stock of the Corporation as set forth in Part (B) of this Resolution;
- (c) an allocation of shares to members as set forth in Part (C) of this Resolution; and
- (d) a periodic review of the Corporation's shareholding as set forth in Part (D) of this Resolution.

NOW THEREFORE, the Board of Governors, noting the recommendations and the said Report of the Board of Directors, hereby resolves as set forth below.

(A) Increase in Basic Votes and Amendment of the Articles of Agreement of the Corporation

The Board of Governors hereby resolves that:

1. Article IV, Section 3(a) of the Articles of Agreement of the Corporation shall be amended to read as follows:

Section 3. Voting

- “(a) The voting power of each member shall be equal to the sum of its basic votes and share votes.
- (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all members of 5.55 percent of the aggregate sum of the voting power of all the members, provided that there shall be no fractional basic votes.
  - (ii) The share votes of each member shall be the number of votes that results from the allocation of one vote for each share of stock held.”

2. The amendment above shall enter into force for all members as of the date three months after the Corporation certifies, by formal communication addressed to all members, that three-fifths of the Governors exercising eighty-five percent of the total voting power, have accepted the amendment.

## **Part 2—Convention establishing the Multilateral Investment Guarantee Agency**

### ***Multilateral Investment Guarantee Agency Act 1997***

#### **3 Section 3 (at the end of the definition of *Convention*)**

Add “, as that Convention is amended by the resolution of the Council of Governors of the Agency, a copy of which is set out in Schedule 2”.

#### **4 At the end of the Act**

Add:

### **Schedule 2—Resolution adopted by the Council of Governors on 30 July 2010**

Note: See the definition of *Convention* in section 3.

#### **Modernizing MIGA’s Mandate: Amendments to MIGA’s Convention**

WHEREAS, Article 59 of the MIGA Convention Establishing the Multilateral Investment Guarantee Agency (“the MIGA Convention”) provides that, “this Convention and its Annexes may be amended by vote of three-fifths of the Governors exercising four-fifths of the total voting power”; and

WHEREAS, Article 60 of the MIGA Convention provides that, “Any proposal to amend this Convention, whether emanating from a member or a Governor or a Director, shall be communicated to the Chairman of the Board who shall bring the proposal before the Board. If the proposed amendment is recommended by the Board, it shall be submitted to the Council for approval in accordance with Article 59. When an amendment has been duly approved by the Council, the Agency shall so certify by formal communication addressed to all members. Amendments shall enter into force for all members ninety days after the date of the formal communication unless the Council shall specify a different date.”

NOW THEREFORE the Council of Governors hereby resolves that:

1. Article 11 of the MIGA Convention shall henceforth read as follows:

**Article 11. Covered Risks**

(a) Subject to the provisions of Sections (b) and (c) below, the Agency may guarantee eligible investments against a loss resulting from one or more of the following types of risk:

(i) *Currency Transfer*

any introduction attributable to the host government of restrictions on the transfer outside the host country of its currency into a freely usable currency or another currency acceptable to the holder of the guarantee, including a failure of the host government to act within a reasonable period of time on an application by such holder for such transfer;

(ii) *Expropriation and Similar Measures*

any legislative action or administrative action or omission attributable to the host government which has the effect of depriving the holder of a guarantee of his ownership or control of, or a substantial benefit from, his investment, with the exception of non-discriminatory measures of general application which governments normally take for the purpose of regulating economic activity in their territories;

(iii) *Breach of Contract*

any repudiation or breach by the host government of a contract with the holder of a guarantee, when (a) the holder of a guarantee does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach, or (b) a decision by such forum is not rendered within such reasonable period of time as shall be prescribed in the contracts of guarantee pursuant to the Agency's regulations, or (c) such a decision cannot be enforced; and

(iv) *War and Civil Disturbance*

any military action or civil disturbance in any territory of the host country to which this Convention shall be applicable as provided in Article 66.

(b) In addition, the Board, by special majority, may approve the extension of coverage under this Article to specific non-commercial risks other than those referred to in Section (a) above, but in no case to the risk of devaluation or depreciation of currency.

(c) Losses resulting from the following shall not be covered:

- (i) any host government action or omission to which the holder of the guarantee has agreed or for which he has been responsible; and
- (ii) any host government action or omission or any other event occurring before the conclusion of the contract of guarantee.

2. Article 12 of the MIGA Convention shall henceforth read as follows:

**Article 12. Eligible Investments**

(a) Eligible investments shall include equity interests, including medium- or long-term loans made or guaranteed by holders of equity in the enterprise concerned, and such forms of direct investment as may be determined by the Board.

(b) Loans other than those mentioned in Section (a) are eligible for coverage (i) if they are made to finance or are otherwise related to a specific investment or project in which some other form of direct investment is present, whether or not guaranteed by the Agency and regardless of when such other investment was made, or (ii) as may be otherwise approved by the Board by special majority.

(c) The Board, by special majority, may extend eligibility to any other medium- or long-term form of investment.

(d) Guarantees shall generally be restricted to investments the implementation of which begins subsequent to the registration of the application for the guarantee by the Agency or receipt by the Agency of other satisfactory evidence of investor intent to obtain guarantees from the Agency. Such investments may include:

- (i) a transfer of foreign exchange made to modernize, expand, or develop an existing investment, in which case both the original investment and the additional investment may be considered eligible for coverage;
- (ii) the use of earnings from existing investments which could otherwise be transferred outside the host country;
- (iii) the acquisition of an existing investment by a new eligible investor;
- (iv) existing investments where an eligible investor is seeking to insure a pool of existing and new investments;
- (v) existing investments owned by an eligible investor where there is an improvement or enhancement of the underlying project or the investor otherwise demonstrates medium- or long-term commitment to the project, and the Agency is

**Schedule 2** Changes to international agreements

**Part 2** Convention establishing the Multilateral Investment Guarantee Agency

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satisfied that the project continues to have a high developmental impact in the host country; and  
(vi) such other investments as may be approved by the Board by special majority.

- (e) In guaranteeing an investment, the Agency shall satisfy itself as to:
- (i) the economic soundness of the investment and its contribution to the development of the host country;
  - (ii) compliance of the investment with the host country's laws and regulations;
  - (iii) consistency of the investment with the declared development objectives and priorities of the host country; and
  - (iv) the investment conditions in the host country, including the availability of fair and equitable treatment and legal protection for the investment.

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*[Minister's second reading speech made in—  
House of Representatives on 28 October 2010  
Senate on 17 November 2010]*

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(265/10) *International Financial Institutions Legislation Amendment Act 2010* No. 133, 2010