

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 200

Issued by authority of the Treasurer

European Bank for Reconstruction and Development Act 1990

European Bank for Reconstruction and Development Regulation 2012

The *European Bank for Reconstruction and Development Act 1990* (the Act) ratifies Australia's obligations to the European Bank for Reconstruction and Development (the Bank) in Australian law. Schedule 1 to the Act contains the *Agreement Establishing the European Bank for Reconstruction and Development* (the Agreement).

Section 6 of the Act allows Schedule 1 to the Act to be amended by regulation. It provides that the Governor-General may make regulations modifying Schedule 1 for the purpose of ensuring that the Schedule correctly sets out the English text of the Agreement as amended from time to time.

The Regulation amends Schedule 1 to the Act to reflect amendments to the Agreement, adopted at London on 30 September 2011. The Agreement is a multilateral treaty that establishes the Bank and provides the terms under which the Bank operates.

The Bank, established in 1991, has worked to support the development of market economies in 29 'countries of operation' from Central Europe to Central Asia following the widespread collapse of communist regimes. The Bank is currently owned by 63 countries, the European Union and the European Investment Bank. Australia has been a member since 1991.

In what became known as the 'Arab Spring', there were a series of political uprisings and moves towards democracy in parts of the Middle East and North Africa. On 30 September 2011, the Bank's Board of Governors responded by passing Resolutions 137 and 138 approving amendments to the Agreement. These amendments allow the Bank to expand its geographic scope to the Southern and Eastern Mediterranean region (including Jordan) and allow the use of 'Special Funds' in 'potential recipient countries'. The expansion will allow the Bank to support the transition to democracy in countries in the new region. Egypt, Morocco, Jordan and Tunisia have begun the process of becoming 'countries of operation' in this region which will allow them to benefit from the Bank's expansion.

A three-stage process is being implemented to allow the timely commencement of the Bank's operations in the new region.

- Stage 1 – 'Cooperation Funds' (funded by voluntary member contributions) are being used to provide technical cooperation and project preparation. This stage has begun and Australia (alongside other donors) has voluntarily contributed.
- Stage 2 – 'Special Funds' (funded by a transfer of €1 billion from the Bank) will be established to deliver the full range of activities in the new region. Special Funds are segregated assets of the Bank that are set aside

- to be used for a specific purpose. This stage is dependent on acceptance of amendments to Article 18 of the Agreement by the necessary number of member countries which is expected to occur by the end of 2012.
- Stage 3 – Once amendments to Article 1 of the Agreement are accepted by all member countries, countries in the new region will be eligible to become ‘countries of operation’ and recipients of the Bank’s capital resources. Article 1 provides the purpose and geographic remit of the Bank.

Details of the Regulation are set out in Attachment A.

The Act specifies no conditions that need to be met before the power to make the Regulation may be exercised.

Consultation on the amendments to the Agreement has occurred through the parallel treaty process.

On 28 February 2012, the amendments to the Agreement and a National Interest Assessment (NIA) were tabled in Parliament for consideration by the Joint Standing Committee on Treaties (JSCOT). The NIA also appeared for public comment on the JSCOT website however no public submissions were received. The JSCOT held a public hearing on 7 May 2012 and tabled Report 125 on 21 June 2012 in support of Australia taking binding treaty action by accepting the amendments to the Agreement.

The Regulation will not commence until the Agreement is formally amended for the Bank, which requires acceptance of the amendments by member countries. All international treaties, such as the Agreement, specify ‘entry into force’ requirements for amendments to the treaty. In this case, the Bank requires notification in writing that each signatory country has completed its respective statutory and constitutional procedures to accept the amendments required for the amended treaty’s entry into force. The Bank then notifies each country when the required number of member countries have accepted the amendments. The amendments to the treaty would then come into operation on a specific date that is calculated from the exchange of the notifications. The exact time of the commencement of the amendments to the Agreement is specified in the Agreement and then varied (as allowed by the Agreement) by the resolutions passed by the Board of Governors.

The Office of Best Practice Regulation has advised that the Regulation does not require a Regulatory Impact Statement.

ATTACHMENT A

Details of the *European Bank for Reconstruction and Development Regulation 2012*

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *European Bank for Reconstruction and Development Regulation 2012*.

Section 2 – Commencement

Subsection 2(1) paragraph (a) provides that sections 1 to 4 and Schedule 1 to the Regulation commence on the later of; the day that the amendment to the Agreement made by Resolution 138 enters into force for Australia; and, the day after the Regulation is registered.

Subsection 2(1) paragraph (b) provides that section 5 and Schedule 2 to the Regulation commence on the day that the amendment to the Agreement made by Resolution 137 enters into force for Australia.

Article 56 of the Agreement provides the process for amending the Agreement and also provides that amendments enter into force three months after the date of the formal communication by the Bank unless the Board of Governors specifies a different period. Both Resolution 137 and 138 specify seven days.

Schedule 1 to the Regulation contains the amended Article 18 of the Agreement. According to Article 56, to be amended, Article 18 requires not less than three-fourths of the members (including at least two countries from Central and Eastern Europe listed in Annex A to the Agreement), which have not less than four-fifths of the total voting power of the members, to accept the amendment. Sections 1 to 4 and Schedule 1 enter into force seven days after the Bank certifies by formal communication to all members that the required number of members have accepted the amendments to Article 18.

Schedule 2 contains the amended Article 1 of the Agreement. According to Article 56, amended Article 1 is required to be accepted by all members of the Bank. Accordingly, section 5 and Schedule 2 commence seven days after the Bank communicates to all members that all members have accepted the amendments to Article 1.

Subsection 2(2) provides that the Minister must give notice in the Gazette of the day on which each of the amendments to the Agreement come into force.

Section 3 – Definition

This section provides that the term ‘Act’ means the *European Bank for Reconstruction and Development Act 1990*.

Section 4 – Amendments of *European Bank for Reconstruction and Development Act 1990*

This section provides for the *European Bank for Reconstruction and Development Act 1990* to be amended as set out in Schedule 1.

Section 5 – Amendments of *European Bank for Reconstruction and Development Act 1990*

This section provides for the *European Bank for Reconstruction and Development Act 1990* to be amended as set out in Schedule 2.

Schedule 1 – Amendments

Item [1] substitutes the current wording of Article 18 with amendments which allow ‘Special Funds’ to be used in the Bank’s recipient countries and also in ‘potential recipient countries’. The amendments also provide rules about ‘potential recipient countries’.

In effect, the amendments to Article 18 allow the Bank to use Special Funds to start investment in the new region prior to certain countries becoming ‘countries of operation’.

The amendments to Article 18 explain the term ‘potential recipient country’. The Board of Governors is empowered to decide that a country is a ‘potential recipient country’ for a limited period and under the terms they think are advisable. The voting requirements are included in the amendments. ‘Potential recipient countries’ must also meet the requirements for becoming a recipient country pursuant to Article 1 (as it will read upon amendment). That means that ‘potential recipient countries’ must be within the geographical ambit of the Bank’s operations, including the new region, and must be committed to and applying the principles of multiparty democracy, pluralism and market economics. The Bank can wind-up operations in a ‘potential recipient country’ if that country has not graduated to a recipient country within a timeframe stipulated by the Bank’s Governors.

Schedule 2 – Amendments

Item [1] substitutes the current wording of Article 1 with amendments to expand the geographic remit of the Bank to the Southern and Eastern Mediterranean region.

Article 1 explains the Bank’s purpose – to foster the transition towards market-oriented economies and to promote private entrepreneurial initiative in the Bank’s countries of operation. These amendments allow the Bank to pursue its purpose in certain countries of the Southern and Eastern Mediterranean as well as Central and Eastern Europe and Mongolia. The Board of Governors can determine the countries of the new region in which the Bank can operate. The voting requirements are included in the amendments.

Finally, the amended Article 1 clarifies that the language used to describe original recipient countries of the Bank also applies to new recipient countries in the Southern and Eastern Mediterranean.

ATTACHMENT B

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

European Bank for Reconstruction and Development Regulation 2012

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Regulation amends Schedule 1 of the *European Bank for Reconstruction and Development Act 1990* (the Act) to reflect amendments to the *Agreement Establishing the European Bank for Reconstruction and Development* (the Agreement). Section 6 of the Act allows Schedule 1 to the Act to be amended by regulation. The regulation will not amend the Act until the Agreement is formally amended (this requires a certain number of members of the Bank to have accepted the amendments through their domestic procedures). Accepting the amendments to the Agreement is a treaty action and was recommended by the Joint Standing Committee for Treaties in Report 125 tabled on 21 June 2012.

The amendments to the Agreement allow the Bank to expand its geographic scope to the Southern and Eastern Mediterranean region and allow the use of Special Funds in ‘potential recipient countries’ to support the transition to democracy in such countries. The amendments were approved by the Bank’s Board of Governors on 30 September 2011. Egypt, Morocco, Jordan and Tunisia have taken steps so that they may potentially benefit from the Bank’s expansion.

There are no financial implications of the expansion of the Bank for Australia.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.