

1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented and read a first time, 21 December 1989)*

(MINISTER FOR INDUSTRY, TECHNOLOGY AND COMMERCE, SENATOR BUTTON)

## A BILL

FOR

### **An Act relating to the law to be applied in determining certain questions relating to foreign corporations, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **Short title**

- 5     **1.** This Act may be cited as the *Foreign Corporations (Application of Laws) Act 1989*.

#### **Commencement**

- 2.** This Act commences on the day on which it receives the Royal Assent.

#### **Interpretation**

- 10     **3.** In this Act, unless the contrary intention appears:

“asset” means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and

- (b) any chose in action; and
- (c) any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

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**“Australia”** includes all the external Territories;

**“Australian court”** means a federal court or a court of a State or Territory;

**“Australian law”** means:

(a) a law in force throughout Australia; or

(b) a law of, or in force in, a part of Australia;

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and includes the principles and rules of the common law and equity as so in force;

**“body”** includes an association, entity or society;

**“entity”** includes an executive entity and, in sections 8 and 9, also includes a legislative or judicial entity;

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**“foreign corporation”** means a body or person incorporated in a place outside Australia;

**“incorporate”** includes form;

**“law”** includes written and unwritten law;

**“officer”**, in relation to a foreign corporation, includes a director, secretary, executive officer, agent or employee of the foreign corporation;

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**“place”** means a place that, in practice, applies a separate system of law.

#### **Extraterritorial operation of Act**

4. This Act applies both within and outside Australia.

#### **Extension of Act to external Territories**

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5. This Act extends to each of the external Territories.

#### **Act to bind Crown**

6. This Act binds the Crown in right of the Commonwealth, each of the States, the Australian Capital Territory, the Northern Territory and Norfolk Island.

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#### **Law applied in place of incorporation applicable law in determining questions relating to status of foreign corporation etc.**

7. (1) The section applies in relation to the determination of a question arising under Australian law (including a question arising in a proceeding in an Australian court) where it is necessary to determine the question by reference to a system of law other than Australian law.

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(2) Any question relating to whether a body or person has been validly incorporated in a place outside Australia is to be determined by reference to the law applied by the people in that place.

(3) Any question relating to:

(a) the status of a foreign corporation (including its identity as a legal entity and its legal capacity and powers); or

(b) the membership of a foreign corporation; or

5 (c) the shareholders of a foreign corporation having a share capital; or

(d) the officers of a foreign corporation; or

(e) the rights and liabilities of the members or officers of a foreign corporation, or the shareholders of a foreign corporation having a share capital, in relation to the corporation; or

10 (f) the existence, nature or extent of any other interest in a foreign corporation; or

(g) the internal management and proceedings of a foreign corporation; or

15 (h) the validity of a foreign corporation's dealings otherwise than with outsiders;

is to be determined by reference to the law applied by the people in the place in which the foreign corporation was incorporated.

(4) A matter mentioned in subsection (2) or (3) is not to be taken, by implication, to limit any other matter mentioned in those subsections.

20 **Certain acts not to be recognised etc.**

8. Where an act of a foreign state, or an entity of a foreign state:

(a) purports to affect a foreign corporation or its assets or dealings; and

(b) the act is based on, or derives from, the assertion of sovereignty or other authority over the place in which the foreign corporation was incorporated;

25 the act is not to be recognised, or in any way given effect to, under Australian law unless it is recognised, and would be given effect to, under the law applied by the people in the place in which the foreign corporation was incorporated.

30 **Recognition or non-recognition irrelevant consideration in application of Act etc.**

9. (1) It is the intention of the Parliament that the application of this Act is not to be affected by the recognition or non-recognition, at any time, by Australia:

35 (a) of a foreign state or place; or

(b) of the government of a foreign state or place; or

(c) that a place forms part of a foreign state; or

(d) of the entities created, organised or operating under the law applied by the people in a foreign state or place.

(2) Without limiting subsection (1), it is also the intention of the Parliament that the application of this Act is not to be affected by the presence or absence, at any time, of diplomatic relations between Australia and any foreign state or place.

