

House of Representatives

Supplementary Order Paper

Tuesday, 19 June 2012

Mixed Ownership Model Bill

Proposed amendments

Hon Tony Ryall, in Committee, to move the following amendments:

Clause 16: new section 45P(2)

In *clause 16, new section 45P(2)*, after the definition of **Crown** (after line 18 on page 7), insert:

“**excess securities** means those shares or voting securities in which a person has a relevant interest in excess of the 10% limit

In *clause 16, new section 45P(2)*, after the definition of **voting right** (after line 6 on page 8), insert:

“**voting security** means a security that confers a voting right.

Clause 16: new section 45R

In *clause 16*, replace *new section 45R(1)* (lines 17 to 24 on page 8) with:

- “(1) No Minister who is a shareholder in a mixed ownership model company may take any of the following actions if it would result in the Crown having less than 51% control of the company:
- “(a) sell or otherwise dispose of any shares in, or voting securities of, the company held in the Minister’s name:
 - “(b) permit shares in, or voting securities of, the company to be allotted or issued to any person.

In *clause 16, new section 45R(2)*, replace “other securities” (line 26 on page 8) with “voting securities”.

In *clause 16, new section 45R(2)*, replace “holding less than 51% of the voting rights in” (line 28 on page 8) with “having less than 51% control of”.

In *clause 16, new section 45R(3)*, replace “other securities” in each place (lines 29 and 30, line 32, and line 33 on page 8) with “voting securities”.

In *clause 16, new section 45R*, after *subsection (3)* (after line 34 on page 8), insert:

- “(4) The Crown has less than 51% control of a mixed ownership model company, for the purposes of this section, if the Crown holds less than—
 - “(a) 51% of any class of the issued shares of the company;
 - or
 - “(b) 51% of any class of voting securities of the company.

Clause 16: new section 45S

In *clause 16*, replace *new section 45S(1)* (lines 3 to 5 on page 9) with:

- “(1) No person (other than the Crown) may have a relevant interest in shares in, or voting securities of, a mixed ownership model company that comprise more than—
 - “(a) 10% of a class of issued shares in the company; or
 - “(b) 10% of a class of voting securities of the company.
- “(1A) In this Part, **10% limit** means the maximum relevant interest permitted under **subsection (1)**.

Clause 16: new section 45T

In *clause 16, new section 45T(1)(a)*, replace “securities” (line 12 on page 9) with “excess securities”.

In *clause 16, new section 45T(1)(c)*, replace “that exceed the 10% limit” (lines 22 and 23 on page 9) with “attaching to the excess securities”.

In *clause 16, new section 45T*, after *subsection (1)* (after line 23 on page 9), insert:

- “(1A) A person has no right to be paid a dividend or other distribution in respect of the excess securities (despite the Companies Act 1993).

In *clause 16, new section 45T(3)*, after “section)” (line 35 on page 9), insert “, and the company may, in accordance with the constitution, determine which shares or voting securities are the excess securities for the purposes of its application of this section”.

Explanatory note

The Bill currently contains 2 ownership limits for mixed ownership model companies: a 51% Crown control requirement and a 10% ownership cap for non-Crown persons. These ownership limits currently apply to voting rights attaching to shares and other securities of the company. This Supplementary Order Paper extends these 2 ownership limits so that they apply to shares of the com-

pany (including non-voting shares), as well as to the voting rights. The effect of doing so is that—

- the Crown must hold 51% of every class of shares in the company, as well as 51% of every class of the voting securities (which are voting shares and other securities with voting rights); and
- no person (other than the Crown) will be able to have relevant interests in more than 10% of any class of shares in the company or more than 10% of any class of the voting securities of the company; and
- if a person has relevant interests in shares or voting securities that exceed the 10% limit, as well as the person not being entitled to exercise voting rights attaching to the shares or voting securities in excess of the 10% limit, no dividend or other distribution may be paid in relation to them. So as to enable the company to act with certainty (eg, to deal with complicated shareholding situations), the company may determine which are the excess securities, in accordance with the constitution, in implementing the consequences of exceeding the 10% limit.

In addition, it is clarified that the current prohibition on sales of shares by Ministers that would result in the Crown ceasing to have 51% control applies also to other types of voting securities that the Ministers may acquire.
