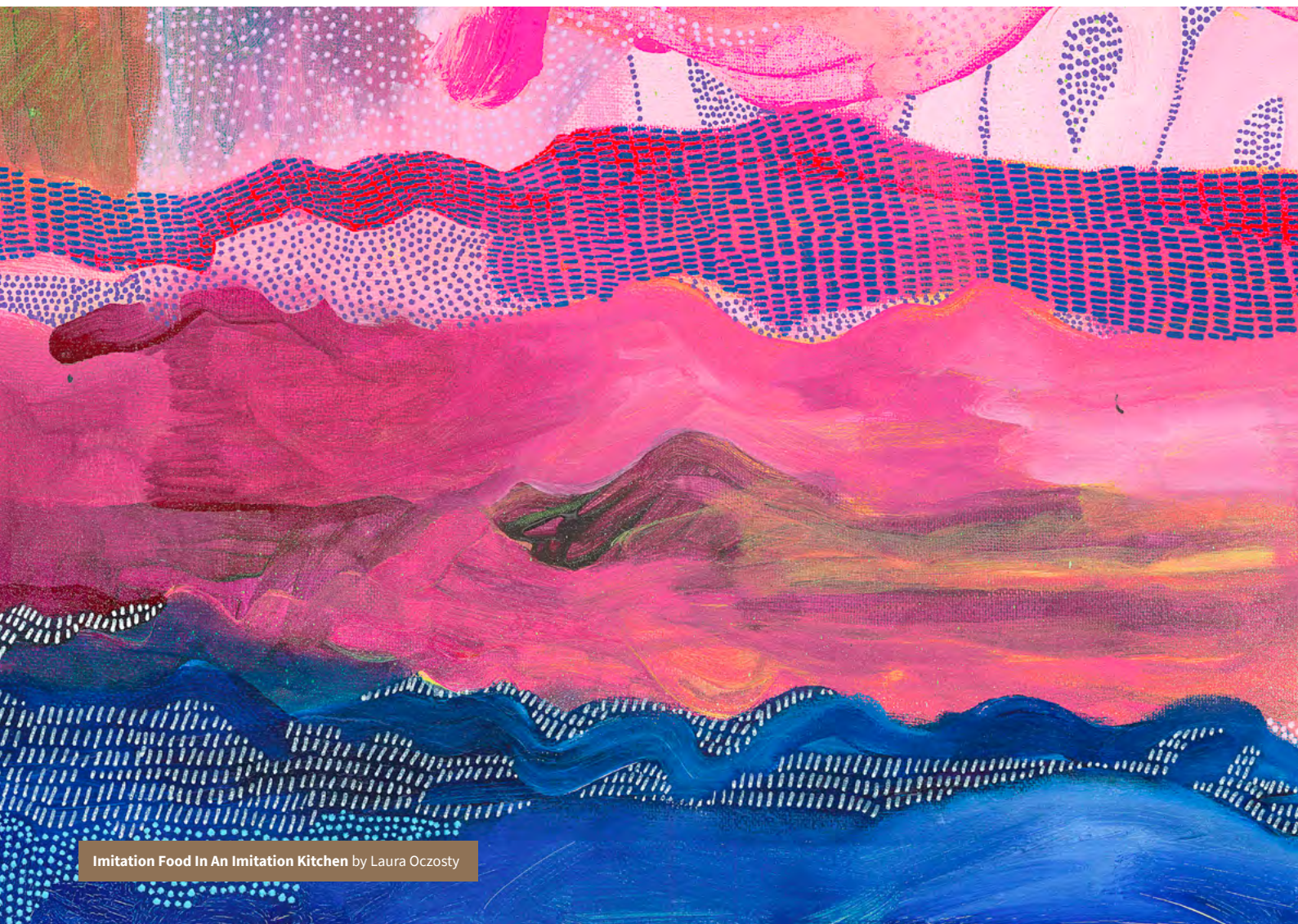


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BACK TO THE FUTURE: THE RE-EMERGENCE OF THE GOLDEN SHARE

And like Marty McFly – golden shares are back conferring on governments rights about strategic matters, including the identity of future owners.

Golden shares emerged prominently in the 1980s and 1990s during the wave of privatisations across Europe, particularly in the United Kingdom. As the economic integration and market liberalisation within the European Union progressed – golden shares came under increasing legal scrutiny with the European Court of Justice (ECJ) repeatedly finding national golden shares to be incompatible with the free movement of capital.

SWORD

However, the loud signalling of the arrangements by the Trump Administration in the Nippon Steel-U.S. Steel case heralded the return of the golden share and government stakes in companies as a vehicle of industrial revival.

Nippon Steel's 18-month struggle for its US\$14.9 billion acquisition of US Steel came with a national security agreement inked with the Trump administration, granting the US Government the authority to name a board member as well as a non-economic golden share, held personally by President Trump (which passes to the Treasury and Commerce Departments as representatives of the US Government after the President leaves office).

According to announcements from the US Securities and Exchange Commission (SEC), the golden share does not entitle the US Government to block the sale of the company to a third party, but grants veto power over business decisions at U.S. Steel including:

- Changing U.S. Steel's name, moving its headquarters from Pittsburgh, relocating the company outside the US.
- Closing, idling, selling production locations through to 2035, and U.S. Steel's Granite City Works through to 2027.
- Cutting the base salary of employees through to 2030.
- Reducing, waiving or a delaying the timeline set out for US\$10.8 billion in capital investment.
- Acquiring any business in the US that competes with U.S. Steel or its suppliers.

Less than a month later, in an escalation of the reprisal of industrial policy, US listed MP Materials announced its 'transformational Public-Private Partnership' with the Department of Defence (DoD) under which DoD agreed to purchase US\$400 million of a newly-created series of the company's preferred stock convertible into shares and a warrant permitting it to purchase additional shares. As a result of the investment, DoD is positioned to become MP Materials' largest shareholder, holding 15% of MP Materials on an as-converted and as-exercised basis. The partnership also included a loan and 10-year agreement establishing a floor price of US\$110 per kilogram for MP Materials' products stockpiled or sold.

So, in a golden age and before making investments in capital markets, policy makers should ask themselves:

1. Does the industry require support the capital markets |cannot provide?
2. What government tool will have the greatest likelihood of success at the most reasonable cost?
3. Should the state intervene in capital markets or provide incentives?

A BARGAINING CHIP

Bidders can use the promise of a golden share to secure an acquisition.

The golden share offered by EP Group in December 2024 to secure its takeover of Royal Mail gives the UK Government special approval rights over significant changes to the company's ownership, tax residency, place of headquarters and ensures the postal service remains in the UK. Covalis Capital offered the UK Government - as part of its £5bn bid for Thames Water – a retaining a seat on the board and a golden share giving certain rights to protect the provider of water and sewage services.

However, all that glitters is not gold. If golden shares become a regular bargaining chip for approval there could be costs to an efficient market and lower takeover premiums to enable bidders keep something in reserve.

In addition, questions about how these arrangements work in practice and can be enforced need to be considered. How would a government compel investment to a promised amount, especially if the buyer finds itself in a fragile economic position? A golden share may give a government substantial strategic control for no outlay, but governments may find some promises hard to enforce in a soft economy.

A CAPITAL SHIELD

A self-imposed golden share can benefit targets too. The Austal arrangements cleverly flip the narrative from the interventionist sword of the State asserting its control to a capital shield.

Austal is Australia's global shipbuilder and defence prime contractor designing, constructing and sustaining some of the world's most advanced commercial and defence vessels. It's the country's largest defence exporter, first ASX-listed shipbuilder and is the only foreign-owned prime contractor designing, constructing and sustaining ships for the US Navy.

Under the Strategic Shipbuilding Agreement finalised with the Commonwealth, a newly created special purpose vehicle and Austal subsidiary, 'Austal Defence Shipbuilding Australia', will be appointed as the Commonwealth's strategic shipbuilder for Tier 2 surface combatants at Henderson, Western Australia. Under the arrangements, the Commonwealth will be issued a single sovereign share in Austal Defence Shipbuilding Australia. While Austal will have day-to-day management control of Austal Defence Shipbuilding Australia and will derive all economic rewards and bear the economic risks of controlling it, the Commonwealth will have information and veto rights and in limited circumstances an ability to give directions.

In addition, the Commonwealth will be granted a call option over Austal's shares in Austal Defence Shipbuilding Australia. This can be exercised where a third party acquires control of Austal Limited or acquires all or a substantial part of Austal's business or assets, or where a third party acquires an interest (including a synthetic interest) in more than 20% of Austal limited, subject to Commonwealth consent and acceptances under a takeover bid that remain conditional.

South Korea's Hanwha made its first approach to Austal in 2023 and since then has made three more non-binding approaches. In March 2025, Hanwha acquired a 9.9% stake (along with a further 9.9% as a cash settled return swap) in Austal, stating it had 'no intention of submitting a control proposal, or making a takeover bid for the company, at this time', but noted it would obtain foreign investment approval to acquire up to 19.99%.

THE GOLDEN TICKET – A PERFECT PUZZLE

It is trite to reflect that maximising efficiency in accessing capital markets to pursue opportunities is an objective for Australian companies. However, in this new world order, boards must also grapple with the need to do what they can to ensure a company's capital structure does not impact on its ability to transact in Australia or elsewhere.

Any changes to capital structure for geopolitical resilience in Australia will need to be a careful exercise. A balance must be struck between the need for new capital or growth projects against the risk that 'golden share' or similar structures may create friction for future liquidity and value maximisation (potentially nixing the possibility of a takeover premium and with that effectively put a cap on share price performance).

In developing these capital arrangements, boards will need to be cognisant of their statutory and fiduciary duties (which are stricter than the US in some respects), and ensuring an efficient, competitive and informed market for control, as well as the Takeovers Panel's frustrating action guidance.

Additionally, arrangements that seek to create differential rights in a listed entity's shares or securities may struggle to satisfy ASX's ongoing listing requirements, which generally outlaw dual-class structures (although that is under current consideration).

A careful and finely balanced approach, which deeply considers the imperative of any change, will be critical to securing the necessary stakeholder support.





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