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Australia's property industry
Creating for Generations

10 September 2021

John Breusch
Policy Framework Unit, Foreign Investment Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: FIRBStakeholders@treasury.gov.au

Dear John

Evaluation of the 2021 foreign investment reforms

The Property Council welcomes the opportunity to comment on Treasury's consultation paper regarding its evaluation of the 2021 foreign investment reforms (the consultation paper).

Australia's foreign investment review framework has undergone a series of major changes since 2015 – in particular the most recent 2021 changes – which have had a significant impact on the flow of foreign capital into Australia. Alongside these changes, the tremendous impacts of the COVID-19 pandemic on financial markets and business activity also affected foreign investor sentiment across the globe over the last 18 months. Both of these factors contributed to a fall of over $35b in approved foreign investment in 2019-20 compared to the previous year, according to the latest FIRB Annual Report.

Currently, the national economy is once again feeling the brunt of lockdowns and other health-related measures introduced across several states and territories to deal with the pandemic. This has slowed down the strong pace of the economic recovery that was seen over the preceding 12 months.

While dealing with the immediate impacts of the pandemic is of utmost importance, government should also focus its attention on helping get the economy back on a strong footing. Boosting investment and capital flows into local businesses and projects will be critical to ensuring that the economic recovery can speed up once again.

We are increasingly concerned that global investors in commercial real estate are viewing Australia as having more stringent, complex and costly regulatory and tax policy settings compared with other developed markets.

Improving FIRB and other aspects of Australia's foreign investment framework will thus need to be considered closely to help attract the necessary levels of foreign capital for our economic needs.

We would like to highlight several key priorities that we believe would enable the foreign investment framework to work effectively and as intended:

- Improving the timeliness and efficiency of the FIRB application process, including streamlining approvals for frequent investors
- Ensuring that the foreign investment rules for fund managers and residential and commercial property applies as intended
- Lowering application fees to align with other markets, investor expectations, and in the context of other significant transactions costs for foreign investors
- Ensuring conditions imposed are targeted, appropriate and do not duplicate existing legal or regulatory obligations
- Maintaining regulatory certainty and working with state/territory governments to enable Australia to compete for international investment

The recent focus of foreign investment policy changes has been squarely placed on mitigating national security risks and concerns, increasing the investigative and enforcement powers of the government, and strengthening compliance.

The Property Council believes that now is the time to tip the scales back towards encouraging and welcoming foreign investment into the Australian economy and ensuring our foreign investment settings are appropriately targeted and balanced.

We welcome the opportunity to provide industry's feedback and believe that this evaluation presents a chance to further enhance Australia's foreign investment regime for the better. We hope that our submission assists Treasury in this process.

The Property Council looks forward to working with the Government to ensure Australia remains an attractive destination for global capital at a critical juncture in our economic recovery.

We would be available to meet with you to discuss any aspect of this submission further, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au, or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely

Belinda Ngo
Executive Director – Capital Markets

PROPERTY COUNCIL
of Australia

Submission:

Evaluation of the 2021 foreign investment reforms

September 2021

PROPERTY COUNCIL of Australia

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1. About the Property Council

The Property Council of Australia champions the industry that makes up 13 percent of our nation's GDP and generates over 1.4 million jobs, making this sector a bigger employer than mining and manufacturing combined. Property investment affects 16 million Australians through their retirement savings and is a massive driver of foreign direct investment into our nation.

Property Council members invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

On behalf of our members, we provide the research and thought leadership to help decision-makers create vibrant communities, great cities and strong economies.

We support smarter planning, better infrastructure, sustainability, and globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and social well-being of Australians.

2. Executive summary

The Property Council welcomes the Government's commitment to reviewing and enhancing Australia's foreign investment settings to enable more foreign investment that is in the national interest.

The Property Council submission:

1. **Reinforces the critical importance of attracting and retaining global capital to Australia's economic growth and prosperity**, particularly for capital-intensive sectors such as real estate. As we look forward to our post-COVID economic trajectory, we will need this vital capital to support the development and investment in more homes, offices, retail centres, industrial sites, retirement living, student accommodation, hotels and community, cultural and sporting precincts.

2. **Cautions that Australia's increasingly complex and costly regulatory and tax regime for foreign investment in real estate is beginning to impact our global reputation and competitiveness** – our FIRB rules for real estate investment are more stringent than other well-developed markets, uncertainty regarding approval timeframes impact market liquidity and competition and we have imposed significant application fees and state-based taxes on foreign investors.

3. **Acknowledges that the 2020 temporary COVID measures and current lockdowns are adding to negative investor perceptions of Australia** – the combination of last year's $0 FIRB thresholds, delays in FIRB approval timelines, intervention by government in the sanctity of lease contracts through the national commercial leasing code and uncertainty on when we will reopen domestic and international borders have all adversely impacted perceptions of Australia.

4. **Clarifies the important distinction between ownership and access rights for commercial real estate transactions** – and proposes more targeted and streamlined approaches having regard to other Government frameworks such as the critical infrastructure regime.

5. **Puts forward recommendations to ensure the scope of the FIRB regime applies appropriately for commercial real estate investments, residential real estate investments and property fund managers –** including clarification of the 'sensitive land' and 'national security land' definitions, treatment of long-term rental accommodation, application of the money lending exemption, and thresholds for foreign investors in widely held managed funds.

6. **Puts forward recommendations to improve the timeliness and effectiveness of the approval process** to provide improved certainty for investors and more appropriately utilise time and resources of FIRB and referral agencies – including more competitive fee structure, removing unnecessary and duplicate conditions, improved pathways for 'frequent' and 'high value' investors, additional avenues for advice and guidance, and improve transparency and timeliness of referral agencies.

3. Role of international capital in shaping our cities and economy

Australia's ability to harness foreign capital

Australia has historically been a net capital importer. As the Reserve Bank of Australia's Deputy Governor discussed in a speech in August 2019,[1] our reliance on foreign investment is a consequence of economic strength rather than weakness:

> *Because there are a lot of profitable investment opportunities in Australia relative to the size of the Australian savings pool, we have sourced capital from the rest of the world either in the form of debt or equity. This is not because savings in Australia is particularly low; it is about on par with many other advanced economies. Rather,* ***it is because the share of investment in the Australian economy is higher than that in many other advanced economies, and foreigners were attracted by the investment returns on offer****.* (emphasis added)

Foreign capital is therefore attracted to the investment opportunities that Australia has on offer, and that capital is critical to the continued advancement of the overall economy. The Australian property sector is particularly attractive for investors given its relative stability, maturity, and desirable risk-return profile.

According to the Foreign Investment Review Board (FIRB), $55.9b of foreign capital was invested in Australian real estate in 2019-20, out of a total of $195.5b in approved foreign investment across the economy.[2] These capital inflows delivered a significant economic contribution to cities, regions and communities and supported thousands of local jobs. FIRB Chair David Irvine AO has noted that firms with foreign direct investment support 1 in 10 jobs in Australia and 40% of Australia's exports.[3]

Benefits of foreign investment in Australian real estate

The benefits that foreign investment brings to Australia are well-established but worth reiterating.

As mentioned earlier, the difference between our national investment needs and savings pool, of around 4% of GDP, is supported by foreign investment.[4] Domestic capital alone wouldn't be sufficient to get the Australian economy to reach its full potential, fund the creation of new infrastructure and help shape our cities. The higher economic growth driven by foreign capital results in higher productivity, greater employment opportunities and higher tax revenues for government.

Looking ahead, Australia's need for investment will continue to grow strongly – particularly as we look for opportunities to manage our way through the latest COVID-19 impacts and continue our economic recovery. Australia is one of the most urbanised countries in the world and many of our cities and regions are expected to continue to grow.

[1] Guy Debelle, Address to the Economic Society of Australia, Canberra – 27 August 2019, https://www.rba.gov.au/speeches/2019/sp-dg-2019-08-27.html

[2] FIRB Annual Report 2019-20, p. 27

[3] Address by Mr David Irvine AO, FIRB Chair to the Australia-China Business Council, Monday 19 August 2019

[4] https://www.dfat.gov.au/trade/investment/Pages/the-benefits-of-foreign-investment

This growth will require significant investment in real estate and infrastructure to ensure our cities remain both liveable and continue to be engines of economic prosperity. We will need more homes, offices, retail centres, industrial sites, retirement living, student accommodation, hotels and community, cultural and sporting precincts.

Without strong and stable flows of both domestic and international capital, the pressure to fund these significant investments will fall back to governments and will put further strain on government budgets. Or worse, many investment opportunities in Australian real estate would be delayed or not proceed and Australians will simply not have the real estate assets needed to sustain our quality of life.

Our industry understands that we need to have robust foreign investment policy settings to ensure we protect Australia's national interest. However, this must be carefully balanced with the critical need to continue to attract and retain international investment to underpin our economic growth and prosperity.

It is also worthwhile to remember that foreign investment brings with it tangible benefits to our local economy. We would welcome the Government setting out clear messaging to the community about these benefits and aligning its welcome stance on foreign investment with actions to improve the foreign investment regime.

Recommendation 1: Ensure that there is clear and consistent messaging from all tiers of government reinforcing the benefits of global investment for Australia

4. Global perceptions of Australia's foreign investment framework

Australia has historically been an attractive destination for global real estate investors

Factors that consistently drive investor decisions around where to allocate capital broadly fall into the following: macroeconomic conditions, market conditions, and processes/practicalities of investing in a certain market.

The Australian commercial real estate sector has historically been and remains an attractive investment destination for global capital, largely off the back of geographic and macroeconomic factors including:

- our underlying economic fundamentals, e.g. high population growth over the longer term and robust economic growth pre-COVID;
- transparency and stability of governance and legal frameworks;
- strong relative returns compared to other markets; and
- our geographic proximity to Asia.

In addition, investment into the real estate sector, both in Australia and abroad, has been driven by two macro trends over recent years:

- firstly, the weight of global patient capital looking for yield in a low interest rate environment means commercial real estate – with its stable rental returns and capital appreciation characteristics – continues to be an attractive asset class for institutional investment.
- secondly, many institutional investors have looked to diversify their investments beyond their home country and increasingly invest in other markets as their pools of capital have grown.

Impact of regulatory risk and uncertainty on commercial transactions

> ***"We have had approvals for similar transactions issued as fast as 30 days and as long as four months or more... Investors are finding it difficult to communicate clarity on timeframes to sellers on transactions because of this, and consistency or visibility on timing is needed to manage transaction timelines." - Adviser***

The time needed to go through regulatory screening and the financial impost of associated application fees and various taxes, have tangible impacts on commercial processes and decisions.

All things being equal, the quicker regulatory approval can be secured and the less expensive it is to get that approval in a certain jurisdiction, the more likely it is that capital will be invested there. This will support greater liquidity and price competition, which creates market efficiencies and positive commercial and economic outcomes.

Uncertainty regarding the FIRB process and approval timeframes can complicate large, complex transaction processes with multiple bidders. Where there is uncertainty or potential uncertainty in a transaction, this has an impact on the deal outcomes and increases deal risks for both vendors and bidders. For example, uncertainty could reduce the pool of potential buyers because domestic investors would gain an advantage over others by not having that uncertainty (and approval time delays) making an impact – thus reducing the pricing tension that a larger number of bidders would generate.

Overall, this would reduce the liquidity available in the market and potentially lock up capital that could otherwise be deployed to begin other projects, development sites, or businesses.

We have received strong feedback about the negative impact on perceptions and investor experiences stemming from increases to or inconsistency of approval times.

It is not just that some approvals are taking a long time to obtain. It can also be difficult for investors and their advisers to anticipate whether an approval will take a long or short time to obtain and therefore plan for completion and other transaction steps. The uncertainty and inconsistency with approval timeframes appears to be driven by a range of factors including the particular structure of the deal, type of asset being transacted, FIRB caseloads and decision-maker availability.

Increasingly complex and costly regulatory environment for global capital

Australia's relative strengths and global competitiveness is beginning to be eroded by the increasingly complex and costly regulatory environment that global investors face when investing in Australia.

In the past six years alone, we have seen the following substantive regulatory changes impacting foreign investment in Australian real estate:

2015 – modernisation of the FIRB regime

- At the end of 2015, significant reforms were made to the *Foreign Acquisition and Takeovers Act 1975* which included the introduction of FIRB application fees, increased penalties for non-compliance, the creation of a land register and increased scrutiny surrounding foreign investment in agricultural land and agribusinesses.

2015 to present – introduction of stamp duty and land tax surcharges for foreign investors

- Unrelated to FIRB but nonetheless a major headwind for many global real estate investors into Australia is the impact of state government taxes, in particular foreign buyer stamp duty and land tax surcharges.
- This began in 2015, when the Victorian state government introduced significant stamp duty and land tax surcharges for foreign investors (coinciding with the introduction of FIRB application fees and the broader FIRB reforms that year).
- In the years since, these surcharges have been adopted in jurisdictions around the country – with differing application for residential or commercial real estate – and with constant expansion or increases in the tax rate payable.
- Stamp duty surcharges are as high as 8% on top of already high stamp duty rates compared to global markets, while land tax surcharges add 2% (almost double) to annual property holding costs, diluting net returns.
- From a residential perspective, the surcharges have reduced demand and the amount of rental stock available if those residential properties are purchased as investments (see Box 1 below).

- From a commercial perspective, Victoria and Queensland have imposed the land tax surcharge on commercial property, which simply adds to the operating costs for local businesses and adversely impacts Australian property managers who partner with, and rely on, global capital to underpin the necessary investment in our cities.
- These additional taxes are not only a significant cost impost, but they are also very complex and confusing to navigate given differing rules across the eight state/territory jurisdictions and inconsistencies on the 'foreign investor' definition – across FIRB, income tax laws and regulations, and state taxes.

Box 1: Case study on impact of residential surcharges on Western Australia market

In Western Australia, in the 10 years prior to the introduction of the surcharge foreign buyers accounted for approximately 6 per cent of transactions.

In 2019-2020, they accounted for 2 per cent of transactions.

Based on an annual average of 21,500 new dwellings per year this represents a decline in purchases of over 800 dwellings, many of which would have been added to WA's rental stock.

In some instances, the surcharge has also acted as an unnecessary hurdle for skilled workers seeking to settle in Western Australia.

2017 – first further streamlining of the FIRB regime

- A number of issues with the 2015 modernisation were addressed in this round of reforms, including a flatter fee scale.
- While many of the reforms sought to exclude or provide more streamlined approaches for non-sensitive transactions, industry experience over the past few years indicates that more and more transactions are being viewed as 'complex', resulting in steady increases in time taken for FIRB approvals, introduction of more onerous or impractical conditions and more agency referrals.

2020 – introduction of COVID temporary measures

- As noted above, industry had already begun to experience delays in FIRB approval times prior to COVID, and this was exacerbated in 2020 when temporary changes to the FIRB rules were introduced that dropped monetary thresholds to $0, and suddenly ordinary commercial leases, renewals and other non-sensitive transactions required FIRB approval.
- The temporary changes gave rise to a massive increase in the number of applications FIRB was required to process, resulting in long delays in approvals – up to 9 months for some transactions (see Box 2 below).
- They also had a resounding impact on investor certainty and confidence in being able to transact in a timely fashion. While the temporary measures were amended and removed from 1 January 2021, there is still some confusion and lack of clarity in the market given this change coincided with the start of the new reforms.

Box 2: Case study of lease transaction impacted by COVID temporary changes

In 2020, a property fund entered into a 10-year lease with an American-owned food company. Ordinarily, this transaction would not have required FIRB approval.

However, due to the $0 temporary settings this lease was subject to FIRB approval. This added an extra few months before the transaction could take effect.

This resulted in the delay in construction of a temperature-controlled warehouse, and the delay of further jobs and economic activity that would be supported once the warehouse was fully operational.

2020 – introduction of commercial leasing code of conduct

- Also in 2020, the property industry had to grapple with the introduction of a commercial leasing code of conduct, in itself an extraordinary government intervention into commercial contracts and relationships between tenants and landlords requiring both the deferral and waiver of rent for tenants financially impacted by COVID-19. No other developed countries has taken such drastic measures.
- Commercial leasing codes have recently been reintroduced in our two biggest states, which has again raised regulatory uncertainty for investors that are impacted by the codes.

2021 – national security and other reforms to FIRB

- While the FIRB temporary measures were in place, another set of major reforms were announced, which included new national security rules and definitions, stronger compliance and enforcement powers, and fee increases. This heralded the start of a new FIRB regime from 1 January 2021 and which was subject to further change through amendments to the *Security of Critical Infrastructure Act 2018*.
- The property industry understands the importance of balancing national security concerns in the foreign investment framework. We are keen to continue to work with Treasury on evolving the market's understanding and transparency on what types of assets are considered "sensitive" and what is more benign to ensure that applications and FIRB's resources are triaged appropriately.
- These latest reforms raise the important question of whether the foreign investment framework is the best place for the Government's national security concerns to be applied. Other government reforms like the broadening of the critical infrastructure framework have already provided safeguards against malicious interference and government oversight of the most important sectors of the economy, which should lessen the criticality of FIRB as a national security policy tool.

Unfortunately, taken as a whole, the last six years have seen a dramatic increase to the cost and complexity of investing and transacting in the Australian real estate market for international capital providers.

Some members are also concerned that FIRB is becoming perceived to be a policy and regulations-setting body rather than an arm of government that reviews and approves foreign investment applications.

In effect, governments across the country are sending a message to global investors that, despite its important role for the Australian economy, the capital that they bring will be more taxed and scrutinised as time goes on. This has already impacted investor perceptions of Australia and how we compare to other markets.

Federal policy makers, and their state and territory counterparts, should actively consider how different policy levers interact to attract, or repel, global capital from investing in Australia, and seek to speed up FIRB approval times and remove counter-productive settings such as the foreign tax surcharges on residential and commercial property.

Rules applying to real estate investment are more stringent than other markets

> ***"Australia risks becoming the 'hermit kingdom' given our FIRB review process is far more stringent compared with other markets." - Global real estate fund manager***
>
> ***"We do not encounter anything similar to the FIRB regime anywhere else across the APAC region." - Global real estate developer and manager***

Australia is in a global competition for capital, and a common perception among industry is that other jurisdictions are more welcoming of global capital for real estate investments.

Overall, regulatory risk related to FIRB (e.g. broad scope of the new call-in power, government's 'last resort' divestment power) stemming from the reforms is negatively impacting perceptions around the attractiveness of Australia as a 'safe' destination.

Australia's FIRB screening regime captured almost 50 times more investments than the US-equivalent system.[5] In the US, only three real estate transactions were reviewed in 2020, compared to 440 commercial real estate transactions and over 7,000 residential real estate transactions in Australia.

Based on feedback from members that invest in commercial real estate in other jurisdictions, institutional investors are not required to seek similar approval to FIRB in other developed markets unless they are acquiring national security sensitive land (which is generally more narrowly defined than the Australian equivalent). Non-sensitive property investment (particularly passive investments via widely held funds) doesn't require foreign investment screening in most other developed countries.

In addition, no meaningful changes to foreign investment regulations have been observed overseas that go to the same extent as Australia's recent reforms, which raises further the perceptions of Australia being an uncertain market in terms of policy/regulation. For example, widely held property funds can invest in commercial property, including data centre properties, in other markets without requiring FIRB-equivalent screening and approvals.

Some jurisdictions even have quotas for foreign investment and many local governments and municipalities actively encourage foreign investment as a way of economically developing those regions, which sends a strong signal to global investors that this country is 'open for business'.

[5] Comparison is made between the number of 'covered transactions' in the CFIUS Annual Report to Congress for 2020 and the FIRB Annual Report 2019-20.

Challenges exacerbated by COVID outbreaks and lack of clarity on reopening of borders

Australia's success in suppressing and managing the spread of COVID-19 throughout 2020 meant that our ability to quickly reopen the economy was a major advantage over the rest of the world.

Despite these early successes, the more recent impacts of new COVID-19 strains have reverberated across the globe, and every country has been affected to a smaller or larger extent. The immediate priorities of the Government are rightly focused on managing these health impacts, but it must be recognised that Australia's current situation has affected investor perceptions of Australia being a difficult and uncertain market to navigate compared with other jurisdictions.

For example, real estate investments generally require physical inspections of sites as a standard practice. This has not been possible for many foreign investors and business travellers that are seeking out investment opportunities in Australia. Major developed economies are in the process of opening up borders, while Australia remains closed off even for many Australians seeking to return home.

The pronounced drop in migration to Australia because of our border policies has also impacted on parts of the residential real estate sector, as well as certain sectors (e.g. construction and agriculture) that rely on overseas arrivals to fill labour gaps.

At the same time as dealing with immediate concerns, we should be setting ourselves up to attract future investment by ensuring that we have the right policy settings – foreign investment policy settings foremost – in place to be the 'number one' destination of choice as soon as COVID is able to be managed and our borders reopen.

Recommendation 2: Produce data to show publicly the reduction and/or 'normalisation' in FIRB approval times to allay market concerns regarding timeliness of getting transactions approved.

Recommendation 3: The Federal Government and Treasury should coordinate with state counterparts on the importance of global capital to Australia's COVID recovery and ongoing growth and prosperity and advocate for the removal of counter-productive state-based stamp duty and land tax surcharges.

Recommendation 4: The Government needs to ensure we maintain regulatory certainty, open borders and restart migration as soon as we practicable (while balancing health considerations) so that we don't lose out on investment to other developed countries.

We set out further recommendations in the following chapters to better target the scope of the FIRB regime and improve the overall efficiency of the FIRB approval process.

5. Scope of FIRB regime should be targeted and balanced

The scope of the FIRB review process is one of the key parameters determining which investments are screened, and how these investments are assessed. Several issues have arisen regarding the scope of the FIRB framework for commercial real estate investments, residential real estate investments and property fund managers which should be considered by Treasury to ensure that the regime is applied within the policy intent of foreign investment legislation and regulations.

Ensure framework applies as intended to commercial real estate investments

The commercial real estate sector in Australia is a major beneficiary of global investment. According to FIRB data, $38.8 billion of foreign investment in commercial property was approved in 2019-20, and a record $73 billion was approved to be invested in the prior 12 months.

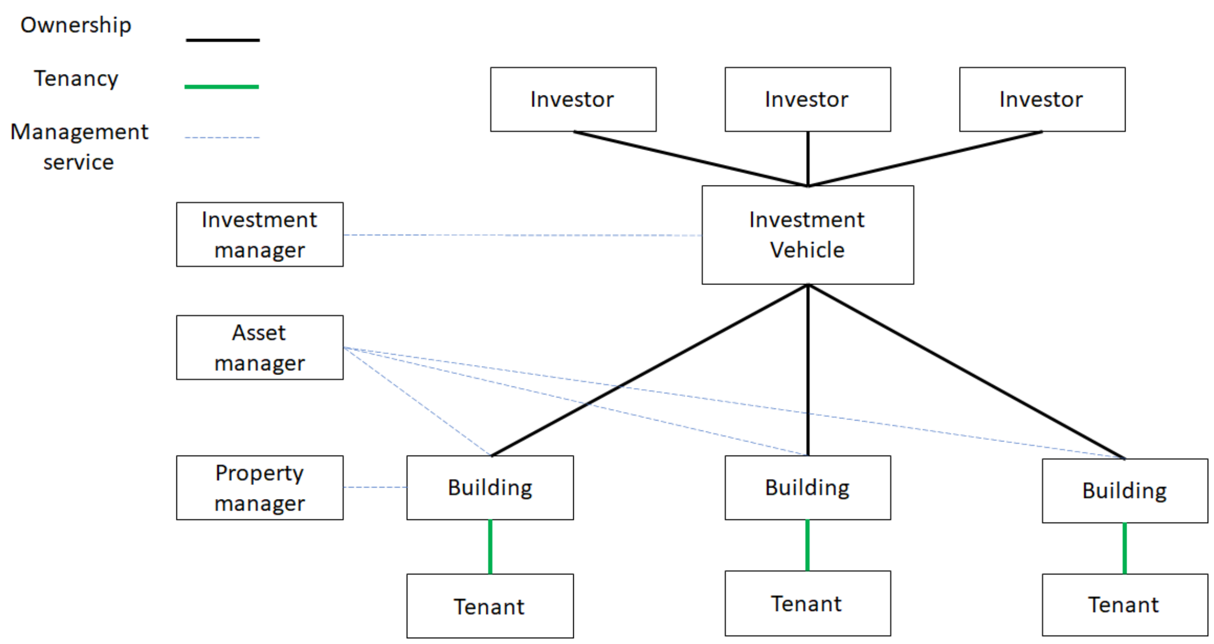
The implementation of the foreign investment framework should align to the Government's policy intent of welcoming foreign investment that is in the national interest, as the vast majority of investment in commercial property has been in past years.

The following section of the submission explains the standard commercial relationship between landlords and tenants in Australia's commercial property sector, and where foreign investors come into the picture.

The landlord-tenant relationship in the context of commercial property

This part of the submission has been raised in previous Property Council submissions to Treasury regarding FIRB matters.

To understand the property industry in Australia, it is helpful to understand the interaction and relationship between property owners and tenants, and the other parties involved in this relationship. The chart below provides a simplified overview:



It is also very important to make a distinction between the concepts of investment management, asset management and property management, which are interrelated.

A substantial proportion of commercial property in Australia's major cities (particularly office, industrial and retail property) is owned through collective structures by a diverse range of investors. These investments are managed by reputable and professional property fund managers/investment managers who typically hold Australian financial service licences and are regulated by ASIC. Investment managers will typically raise capital from a group of investors, then seek out and invest in a portfolio of assets (e.g. several office buildings) to generate returns for their investors.

Asset management is the process of overseeing property performance and planning the timing of capital upgrades (across a single asset/building or a number of assets in the portfolio), with the goal of enhancing value and maximizing investment returns. Asset management does not consist of a single activity that takes place at a discrete moment in time. It takes place over the life cycle of a property (i.e. from acquisition to disposal).

Property management is focused more on the day-to-day operational aspects of an individual property such as physical maintenance, repairs and renovations, rent collection, payment of expenses, cleaning etc. It may involve the use of one or more subcontractors to carry out the various functions mentioned above.

These management services may be undertaken by a single organisation (i.e. the investment manager also manages each asset/building in the investment portfolio and their property management arm provides day-to-day operational functions), or certain activities may be outsourced to different providers.

Regarding owners' access to property, much of this is determined by what is negotiated between the property owner (i.e. landlord) and the tenants, and tenancy agreements can vary widely.

Generally speaking, the following rights and responsibilities apply:

Landlord/lessor	**Tenant/lessee**
- No right of access to tenanted premises	- Rights of access to tenanted premises
- Right to rental income	- Responsible for general repairs and maintenance
- Responsible for structural repairs	

Building owners (or their representatives) do not have broad and free access to the tenanted areas of the buildings that they own. Landlords will generally have no rights of access to premises once the lease period begins, and only in extreme circumstances (e.g. premise abandonment or tenant bankruptcy) would a landlord be permitted unsupervised access to a leased property. Common clauses in agreements also set out how and when they can access a building for the purposes of re-leasing or selling the premises.

Tenants generally have the right to control how the space that they occupy is cleaned, maintained, and who can come and go – this can particularly be the case for major or 'anchor tenants', or entities that commit to becoming major tenants before or during the construction or development phase of a project. Government tenants will also have their own set of terms and conditions that must be included in tenancy agreements; such terms and conditions can be particularly stringent given the sensitive nature of many government functions.

It appears that concerns around landowner access to sensitive data/operations arise from a misconception about the nature of the landlord-tenant relationship. A landlord will very rarely, if ever, access a tenancy without the tenant present. In simple terms, while a landlord might own the 'box', it is the tenant who owns the contents.

Clarifying scope of national security business/land, including treatment of data centres

In the explanatory material of the recent national security regulations, some clarity was provided regarding the treatment of land that contains data centres to determine whether it falls within the national security land/business definitions.

While this is a positive step in providing some clarity around the issue of investments in data centres, we believe that the mere ownership of land that contains a data centre should not be deemed national security sensitive.

As explained in the prior section, the ownership of commercial property does not give landlords broad and free access to tenanted areas of the property that they own. Given the potentially sensitive nature of the data that may be housed by commercial data centre operators, rights of access are much more tightly controlled than in normal buildings or commercial premises. Even in the case of emergency, landlords may not be allowed access unless they are appropriately escorted by tenants.

This clarification of scope would align Australia's regime with others around the world in data centre property not having requirements to go through investment screening processes.

Therefore, we would recommend that the definition of national security land/business excludes land (and ownership of that land) on which data centres are located.

Recommendations 5: Clarify the definition of national security land/business to exclude the ownership of land on which data centres are located.

Clarifying scope of 'sensitive land' definition for land with telecommunications or public infrastructure

Commercial real estate investments that are considered 'sensitive land' are subject to the FIRB regime at a lower monetary threshold compared to other non-sensitive real estate investments.

The definition of 'sensitive' land and the conditions set out in paragraphs (viii) and (x) of section 52(6) of the *Foreign Acquisitions and Takeovers Regulations 2015* are triggered by the mere fact of having telecommunications or public infrastructure located on the land, regardless of ownership or control of the infrastructure.

We understand the Government's broader focus on critical infrastructure with respect to national security concerns. However, there is a separate 'critical infrastructure' regime that has been established to directly manage and mitigate these risks.

Meanwhile, the broad scope of the sensitive land definition increases the scope of commercial real estate investments that are captured by the FIRB regime, creating investor uncertainty and potentially deterring or delaying investment in assets that are mere conduits for housing telecommunications or public infrastructure (e.g. an office building with a mobile tower on the roof).

We believe that amendments should be made to the previously mentioned sections (section 52(6)(viii) and (x)) of the regulations.

As critical infrastructure concerns are best placed to be dealt with through the critical infrastructure regime, the definition of sensitive land should be streamlined to only apply where there is an acquisition of the *ownership* of telecommunications or other public infrastructure on the land in question.

Recommendation 6*: *The definition of sensitive land is amended to no longer apply where the relevant infrastructure is not owned by the landowner.

Clarifying scope of 'sensitive land' definition for land where certain are stored or contained material

Section 52(6)(c)(iv) of the FIRB regulations deals with land subject to authorisations under Commonwealth or state/territory law regarding certain materials stored or produced on that land. It is not clear what types of scenarios this part of the regulations refers to. We recommend that guidance (including examples) is provided as to what legislative authorisations, laws and materials this section is intended to address.

Recommendation 7: Further clarity is provided regarding section 52(6)(c)(iv) of the FATR and the types of authorisations, laws and materials that are referred to that section.

Clarifying scope of leasehold interests

There appears to be contradictory guidance on how leasehold interests are treated under the FIRB provisions. It is unclear whether these interests are determined to be only the tenanted premises and so the characterisation relates to the leased area of a building, or to the whole of the building in which the lease is contained.

Guidance Note 4 provides an example (Example 6) of referring to the whole of the building in the context of sensitive land because of the infrastructure located on the building. This could be inferred to result in the whole of the building being the relevant interest.

However, Guidance Note 8 refers to the leased premises only in the context of national security land:

> *However, with respect to acquisitions of land under a lease, the interest in land will be determined by what is being acquired on that title. Where an investor acquires a leasehold interest over part of the title (e.g. one floor in a commercial office building), their approval covers that leasehold interest only – not approval to acquire the entire building. Similarly, where an agency in the national intelligence community has an interest in a portion of land under one title, it is only that portion of land that is national security land. If an investor acquires an interest in land that only represents a portion of the title, and that portion is not national security land, it will not require mandatory notification.*

We believe that the relevant leasehold interest should only be the leased/tenanted area for all types of land (whether national security sensitive or not) and not apply to the building or whole property on which that tenanted area is located.

Recommendation 8: Further clarity should be provided in the guidance to explain that a leasehold interest is the leased/tenanted area and not the building or whole property on which that tenanted area is located.

Ensure framework applies as intended to residential real estate investments

A significant amount of foreign capital flows into the residential property sector every year – in 2019-20 alone more than $17 billion of foreign investment in residential property was approved by FIRB. The Government's underlying policy regarding foreign investment into residential property is channelling it towards new (or near-new) dwellings, thereby increasing housing supply, stimulating construction jobs and supporting economic growth. The rationale for this is expressly stated in *Australia's Foreign Investment Policy* document:[6]

> *The Government's policy is to channel foreign investment into new dwellings as this creates additional jobs in the construction industry and helps support economic growth…*
>
> *Foreign investment applications are therefore considered in light of the overarching principle that the proposed investment should increase Australia's housing stock (by creating at least one new additional dwelling).*

These same objectives can also be met by allowing for institutional investment in some types of existing residential property. This flow of capital and liquidity into the market would unlock more opportunities for local developers to start new projects, thereby boosting the supply of built-for-purpose housing stock and employment in the construction sector without pricing out Australian residents from the broader housing market.

Specific types of property assets which are comprised of established dwellings, namely social and affordable housing, specialist disability accommodation (both through the National Disability Insurance Scheme or otherwise), and Build-to-Rent housing, have been seeing strong institutional investor demand from domestic and foreign institutional investors.

However, there are three main regulatory barriers that are currently impeding the flow of institutional investment into these types of assets:

- FIRB definitions of 'residential land' and 'commercial land'
- moneylending exemption for residential property
- fees on institutional investment in residential property (see the next section of the submission regarding the impact of fees on residential investment)

Clarifying certain residential investments fall under the 'commercial land' definition for FIRB purposes

There are several key concepts in the FIRB regime that could impact whether institutional investors are able to invest in residential real estate investments that are more 'commercial' in nature:

[6] *Australia's Foreign Investment Policy*, The Treasury, 1 January 2021, pp. 10-11

- As noted above, the FIRB rules have very specific requirements for residential dwellings, in particular, foreign investors are only able to purchase 'new' residential dwellings rather than existing dwellings.

  There are specific exemptions to this policy that allow foreign entities to acquire existing 'commercial residential' dwellings, with reference to the 'commercial residential' definition under the GST rules as well as other types of existing dwellings such as retirement villages and certain student accommodation that do not fall under the 'commercial residential' GST definition. According to the explanatory material of the *Foreign Acquisitions and Takeovers Amendment (Exemptions and Other Measures) Regulations 2017*, this change was made "to align the treatment of these assets with like accommodation premises that are developed commercial land."

- In addition, the FIRB definition of 'commercial land' specifically includes land on which 10 or more residential dwellings can be built, or land which is considered 'commercial residential' premises.

In our view, investments in other types of long-term rental accommodation, including affordable housing, purpose-built disability accommodation, and Build-to-Rent developments, should all fall within the 'commercial' parameters of the FIRB regime – either because they consist of 10 or more dwellings, or because they are akin to the type of accommodation premises that are already considered developed commercial land. This will mean there are no restrictions on foreign investors acquiring 'existing' residential investments that fall within these parameters, and the commercial property fee thresholds should apply (see later discussion below regarding fees).

***Recommendations 9**: Make clear in the Guidance Notes (or clarify the law or regulations to state) that, similar to the approach currently applied to other forms of 'commercial' accommodation premises:*

- ***the definition of commercial land includes all forms of long-term rental accommodation, including affordable housing, purpose-built disability accommodation, and Build-to-Rent developments***
- ***the foreign investor limitations on purchasing 'new' dwellings do not apply to institutional investment in long-term rental accommodation, including affordable housing, purpose-built disability accommodation, and Build-to-Rent developments***

Fund investments in residential property

An alternative way of ensuring greater institutional investment in the residential sector without definitional changes is to allow for managed funds, such as Managed Investment Trusts, to invest in those types of residential property. Further details on how this type of investment works, and the regulations and oversight that they are conducted under is set out in the next section.

In essence, these funds are widely held across a number of investors, and the foreign investors that put capital into these funds are wholesale/institutional investors that don't acquire any control over the underlying assets of the fund.

We believe that amendments could, as an alternative to definitional changes explored above, be made to allow for institutional investment in existing residential assets under similar conditions as commercial property, provided these investments are managed through Managed Investment Trusts or similar wholesale investment fund structures (e.g. the recently announced Corporate Collective Investment Vehicle regime, which is set to start 1 July 2022).

Clarifying application of moneylending exemption for residential property

Section 27 of the Regulation exempts certain interests relating to moneylending agreements entirely from the operation of the Act, however, in the case of interests in residential land, the current moneylending exemption is very narrow as it only applies if the lender is an ADI or otherwise licensed as a financial institution (with certain caveats and restrictions, such as meeting the widely held test or listed test).

It is our understanding that this approach for residential interests is intended to capture those providing home loans to purchasers of residential dwellings, and not intended to broadly capture lending to residential developers. If the moneylending exemption does not apply for residential development, this would inhibit the ability of large financial institutions that don't meet the widely held or listed tests from lending to residential developments, thereby impacting on the supply of housing in Australia. This is because of the significant impact of application fees on financial returns and the timing impact. Given the lower thresholds and higher relative fees for residential property, foreign debt funding is often not financially feasible. Furthermore, speed to market for debt transactions is critical so the time delay for FIRB will render many offshore debt proposals uncompetitive.

Box 3: Case study of impact of FIRB fees on feasibility of moneylending

If a foreign lender provides a $20m bridging loan for a residential site, and the moneylending exemption does not apply, the FIRB application fee is $241,300 (based on the $20m interest in residential land).

If this is a 12-month loan at an 8% interest rate, the return without FIRB fees is $1.6m or 8%. With FIRB fees it falls to $1.36m or 6.8%; a reduction of 15%, which can render the deal unfeasible.

In our view, and consistent with our understanding of the policy intent, the moneylending exemption should be consistent with the above noted definition of 'commercial land' which includes land on which 10 or more residential dwellings can be built. That is, lending for the purposes of any residential development should be considered 'commercial' for the purposes of the moneylending exemption, which will mean these transactions are not required to seek FIRB approval, and could therefore be more financially viable.

Recommendation 10: Make clear in the Guidance Notes (or clarify the law or regulations to state) that the moneylending exemption for commercial property applies to residential developments of 10 or more residential dwellings.

Ensure framework applies as intended for property fund managers

Under the current settings, foreign persons need FIRB approval if they acquire an ownership stake of 5% or more in an unlisted wholesale fund (e.g. a Managed Investment Trust or MIT) even where that investor does not have any material control over the fund (and less than 5% if the fund invests in established dwellings).

However, trusts already have a to meet strict eligibility criteria to qualify as MITs. For example, they need to be widely held and are regulated as 'managed investment schemes' by ASIC. Under the Corporations Act, one of the criteria to meet the definition of a managed investment scheme is that:

> *the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions)*

Thus, investors in MITs are passive and there is no ability for an investor to influence the fund as it is controlled by a trustee entity (and that trustee is likely to in part be directed by independent directors).

We believe that there is no policy rationale for the threshold for unlisted fund investments not to be lifted to 10% (threshold for investing in a listed entity that owns Australian land). We note that the takeover provisions use a threshold of 20%.

The 10% threshold iwould be consistent with the tax regulations which see 10% as the threshold above which the trading of units is subject to capital gains tax.

Recommendation 11: Raise FIRB approval trigger for investors making investments in an unlisted Managed Investment Trust that is an Australian land trust to 10%, irrespective of whether it invests in established dwellings.

6. FIRB approval process should be timelier and more efficient

We have identified several issues and opportunities to enhance the Government's approach to the processing of applications and the overall operation of the FIRB review system to provide improved certainty for investors and more appropriately utilise time and resources of FIRB and referral agencies.

Ensure fees are competitive and do not inhibit investment in Australia

The impact of changes to the FIRB application fee structure has been significant for foreign investors in the property sector.

Commercial real estate fees

> ***"Given the significant increase to fees, this ensures we will not apply for FIRB until transaction documents are executed or at the very least, substantial due diligence has been completed and we are confident the transaction will progress." - Global real estate fund manager***

Firstly, our global investor members have noted for some time that FIRB application fees are not globally competitive compared to similar regimes.

While the Government has repeatedly insisted the fees are 'consistent' with other nations (although the maximum fee levied through FIRB is higher than for both the US and New Zealand - see below table), this overly simplistic statement ignores the fact that Australia's FIRB screening regime is significantly broader than other regimes in the scope of transactions that are captured.

	Australia	US	New Zealand
Maximum investment application fee	**A$503,000**	US$300,000 (**~A$410,000**)	NZ$54,000 (**~A$52,000**)
OECD FDI Regulatory Restrictiveness Index (higher number = more restrictive)	0.15	0.09	0.23

This also comes on top of the other transaction costs foreign investors are likely to face (e.g. stamp duty along with hefty foreign investor surcharges on the stamp duty).

We recommend that fees levied on commercial property transactions (particularly for non-sensitive assets or investments) are reduced to bring us in line with other markets and attract more inbound investment.

Fee increases for those investors seeking pre-approval can also be especially problematic. Prior to the fee calculations being adjusted as part of the reforms, investors were more comfortable in seeking FIRB pre-approval and paying requisite fees at the commencement of a due diligence process given the transaction cost "at-risk" should the deal not complete was not as significant.

However, transactions at the larger end of the scale now entail much higher application fees, which deters investors from seeking pre-approval or engaging in competitive bidding processes where speed of execution is a critical factor.

As alluded to earlier in the section on Australia's investment attractiveness, the ability of potential buyers to be involved in competitive bidding processes has an impact on market liquidity. High upfront transaction costs (which are not borne by all potential bidders) reduce the liquidity available in a given market to the detriment of sellers, be they foreign or domestic entities. This issue could be addressed in part by adjusting the application fees that are paid for pre-approvals by only levying a portion of the fee upfront and the rest once the deal is completed.

Recommendation 12: The Government should reduce FIRB application fees to remain competitive and in the context of the other large transaction costs incurred by foreign investors.

Recommendation 13: Fees for applicants that are seeking pre-approval should be adjusted (e.g. a portion of the fee is levied upfront, and the rest levied once the deal closes and FIRB approval is given) because of the greater completion risk.

Residential real estate fees

Fees for institutional investment into residential property present a separate problem. Institutional real estate investors make decisions based on, among other things, an assessment of the cost and expected return of particular investments.

Australia's alternative residential sector (which includes assets such as specialist disability and affordable housing, and other sectors identified in the previous section of this submission) is becoming an increasingly important part of the housing supply and mix but is currently unfeasible as an investment option for some investors because of the higher cost involved compared with the commercial property sector.

In some instances, these alternative residential assets may not meet the commercial land or commercial residential definitions and be defined as residential land (e.g. a specialist disability accommodation site on which less than ten dwellings can be built – see Box 4).

As a result, the applicable fee for foreign investment in a wholesale fund that is acquiring these assets is significantly more than for a fund that invests in commercial assets.

Box 4: Case study of FIRB fees for investment in specialist disability accommodation

If an institutional investor is investing $50m into a fund that invests into specialist disability accommodation, the FIRB application fee is $503,000.

By comparison, an investment for a similar value commercial property fund would equate to a FIRB application fee of $6,350. This amounts to just over 1% of the cost of a residential land application.

This deters greater investment in specialised housing that boosts housing supply and provides community benefits, including to disadvantaged parts of the community.

Given the higher FIRB fees for residential have historically been directed towards individual home buyers, there seems to be a mismatch that institutional investors face when comparing opportunities in the residential and commercial property sectors. We believe that to not deter foreign investment from supporting specialist residential sectors and put a handbrake on housing supply in Australia, fees for this type of residential investment should be aligned with fees applicable to commercial property.

Recommendation 14**: **Clarify that institutional investors investing into long-term rental accommodation, including affordable housing, purpose-built disability accommodation, and Build-to-Rent developments, will be subject to the commercial property fee scale (consistent with recommendation 6 above).

Ensure conditions imposed are targeted and appropriate

The introduction of a new guidance note which sets out the guiding principles for developing conditions (Guidance Note 11) is a welcome development for industry to increase understanding of how and why certain conditions are imposed.

However, two problems still arise for real estate applicants with respect to conditions:

1. conditions dealing with access to real estate sites
2. conditions duplicating existing legal/regulatory obligations

Conditions dealing with site access

As discussed earlier, landlords generally have no access to the tenanted areas of their buildings.

However, we have heard repeated instances of conditions being imposed on landowning entities or entities further up the chain of ownership (e.g. an overseas pension fund, as shown in the earlier diagram) that explicitly prevent directors of foreign entities that hold passive interests in pooled property funds from accessing the buildings acquired by those funds, or accessing specific data by those directors or their representatives.

These are just a couple of examples of conditions that do not reflect the standard practices of institutional investors ownership, leasing and management of commercial property. The implication that an international investment trust or its associates have any interest in the daily operations of a tenant who may or may not be a government agency or data centre operator highlights a fundamental misunderstanding of a landlord's commercial practices.

Such conditions can cause confusion for decision-makers and key investor stakeholders and create a significant compliance burden for the investor as well as the tenant or investee business.

Recommendation 15: Government should not impose conditions that do not reflect commercial practices and are best dealt with through commercial lease terms.

Conditions that duplicate existing legal requirements

We have also heard of repeated instances where conditions are imposed on FIRB applicants which replicate obligations that already exist under law (specifically obligations arising from tax law).

This can result in the imposition of more onerous implications of the same legal requirement given the consequences for breach of conditions and the trigger for a breach is a very low threshold (e.g. not notifying FIRB within 30 days of certain actions being taken).

This experience aligns with the views of the Productivity Commission,[7] which found that too many conditions were imposed through the foreign investment screening process. It stated that:

> *Conditions that duplicate existing legal requirements on businesses operating in Australia add to the regulatory burden without delivering additional benefits.*

Increased penalties for not complying with FIRB conditions can result in duplicate penalties being triggered for a single compliance failure. For example, the foreign investor may face penalties under both tax law *and* the FIRB framework for failing to lodge tax returns or other information within the timeframes specified by the ATO.

We would echo the view of the Productivity Commission and recommend that FIRB carefully considers that the conditions imposed upon approval are appropriate and reasonable for each case and applicant, and that these conditions don't duplicate obligations that already exist for applicants under existing law or regulation.

Recommendation 16: Government should ensure that conditions imposed do not duplicate existing legal obligations.

Amending guiding principles

One way of addressing the aforementioned two issues regarding conditions may be achieved by amending the guiding principles on developing conditions (i.e. Guidance Note 11) to include reasonableness and non-duplication as additional considerations.

Recommendation 17: Amend the guiding principles to include reasonableness and non-duplication as additional factors for considerations when setting conditions

Improve efficiency of regime for frequent investors in commercial real estate

Australia has benefited from a diverse and broad range of global patient capital providers (including sovereign wealth funds and overseas pension funds), as well as ASX or offshore listed corporations, that have been investing into the market for many decades. These investors are faced with the same level of scrutiny and detailed application process for each investment they make in Australia, adding unnecessary time and costs for both the investor and FIRB in processing the applications.

We believe there are simple and effective changes that can be made to streamline the application process for 'frequent investors'.

Ensuring the exemption certificates apply effectively for real estate and managed fund investments

While we have had some positive feedback from members regarding greater take-up of exemption certificates (ECs), we note that there are also challenges, such as the $100m limit on

[7] *Foreign Investment in Australia – Commission Research Paper*, June 2020, Productivity Commission

ECs and the need to have very specific investment criteria that covers the programme of investments under the EC. The exclusion for “sensitive land” also currently limits the use and take-up of ECs.

ECs granted for a program of investing into wholesale funds or Managed Investment Trusts (MITs) have been beneficial to the property industry as these are typically granted for larger amount of equity and over a 3-year period.

However, based on members’ experiences these ECs can take a very long time to be approved. There also seems to be a lack of understanding about the workings of the funds industry. For example, applicants are required to list every fund they may consider investing in upfront, which makes it more difficult to invest in newly established funds which may not have existed when the EC application was made, requiring a new FIRB application or a variation to the existing EC. This again can increase the cost and reduces the likelihood of investors taking up ECs or investing in these new funds altogether, thereby restricting the pool of capital available for them to make investments.

We recommend that ECs for investments into wholesale funds provide the flexibility to invest in new funds which have similar structure and features (e.g. that the fund is widely held, invests in similar real estate sectors) to those listed in the original application. Information required to prove this could be included as part of the conditions given with approval.

Recommendation 18: Broaden the exemption certificate criteria to ensure it operates effectively for real estate and managed fund investments including:

- ***removing the $100m limit, and***
- ***greater flexibility in detailing the nature of investments that can be undertaken, whether that be sensitive land or new funds which have similar features to those listed in the original application.***

Assigning a ‘case officer’ to frequent and high value investors

Frequent investors are generally assigned whichever case officer is available to handle their application. If the case officer hasn’t dealt with that applicant in the past, it will take time for them to understand who the applicant is, what other investments they have made in the past, who their investors are, etc.

Regulators such as the ATO provide case officers or relationship managers for taxpayers of a certain size. A similar approach could be adopted for investors that have invested significant volumes in Australia over the past, say, 3 years.

Assigning specific case officers to frequent and high value investors would cut down the time required for a case officer to become familiar with the investor, their circumstances, their investment strategy, and other specific details of the applicant. This would make the approval process and the overall management of cases by FIRB and referral agencies more efficient.

Recommendation 19: Assign specific case officers to frequent and high value investors.

Establishing unique investor identification numbers to streamline applications

Some investors are concerned and frustrated with having to provide the same investor information or answer the same questions time after time on applications.

This issue could be resolved with the use of unique investor identification numbers. The current update to the FIRB application portal could allow frequent investors to log in under their unique identification number and have easy access to their old case files and the ability to pre-populate information when preparing new applications.

Recommendation 20: Issue unique investor identification numbers and include the ability to access old case files and pre-populate forms based on previously submitted information.

Provide additional avenues for advice and guidance

> ***"We have had clients who decided to err on the side of caution and apply for a FIRB approval only to be told they didn't need to apply. This meant they had incurred unnecessary legal fees and time." - Adviser***

We acknowledge that FIRB's guidance material has recently been updated and simplified to cover the extensive reach of the foreign investment review system.

However, the broad and high-level nature of the guidance means that the examples provided can be fairly simple and do not address the more challenging 'grey' areas.

For example, there is still some uncertainty remaining with how the new national security definitions apply to certain businesses or land, and FIRB's guidance to voluntarily lodge an application if investors are not sure is at times not practical where there are commercial imperatives driving particular timelines or decisions, and given the significant fees involved.

There is also no avenue currently for a seller of assets to seek 'pre-approval' or guidance on whether the assets they are proposing to put on the market would require FIRB approval.

One potential improvement that we urge Treasury to consider is the creation of an ATO ruling-style system. Potential sellers or buyers could seek FIRB's confirmation that, given their unique set of circumstances, formal approval to transact is or is not required. This system or stream would sit alongside the normal FIRB application process but be able to provide certainty that is more timely and less costly than the usual FIRB application process.

Recommendation 21: Establish an ATO ruling-style process to provide timely advice or confirmation to investors about whether FIRB approval is required.

Improve transparency and timeliness of FIRB and referral agencies

> ***"Some case officers get frustrated when investors and advisers ask for updates on timing, even if just to manage deal certainty." - Advisor***

Based on our members' experiences, applicants are occasionally not given clear or timely information on how their application is progressing. Communication typically occurs late in the process with inevitable extensions of the review process implemented by FIRB.

This leads to uncertainty on transaction settlement times and last-minute changes have significant impact on financing arrangements, legal documentation, and other commercial aspects of transactions.

The investor experience from application to application can vary greatly depending on the relevant case officer as to how communicative they are and how much they are willing to share.

Members note that questions are often received from consult agencies which are either not relevant to the acquisition, misunderstand the acquisition or are otherwise addressed in the application itself. Some advisers are unable to liaise directly with consult agencies, which contributes to the slowness of the process.

We believe that there are several opportunities to improve the investor/applicant experience with FIRB to improve the transparency and timeliness of the application process.

Firstly, FIRB should continue the approach of triaging of applications early on in the process (as was done when temporary FIRB measures were in place) to determine what may be sensitive and require consult agency involvement, and therefore require more time and resources. The use of the ATO for more standard transactions would allow FIRB/Treasury to dedicate experienced case officers to applications that are more complex.

Secondly, it would be helpful if staff across FIRB/Treasury and consult agencies have a sound understanding of different markets and sectors – for example, how the real estate market works and how investment funds (e.g. Managed Investment Trusts) operate. Building skills, knowledge and experience across the case teams on an ongoing basis should be given priority.

Lastly, the involvement of consult agencies typically adds time and difficulty to the application process. Applicants should be provided with clarity on whether an application will require FIRB consultation with other agencies, and the extent to which this would affect the approval timeframe.

To improve the timeliness of processing these cases, a 'clock'-style system should be implemented where consult agencies have a fixed time to process the application or otherwise it is deemed to be approved. This system would also help FIRB to more actively manage consult agencies rather than simply passing on questions and responses between them and applicants.

Recommendation 22: Triaging of applications and appropriate resourcing of FIRB and referral agencies to enable swift processing of applications.

Recommendation 23: Providing ongoing training and education to case officers about different markets and industry sectors.

Recommendation 24: Implementing a 'clock'-style system to streamline approvals where consult agencies are involved, allowing for regular updates on the progress of applications, and opportunities provided to applicants to deal directly with consult agencies to reduce miscommunications or delays with information transfers.

7. Contacts

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