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Online submission

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Dear Sir/Madam

Submission on Foreign Investment Framework 2017 Legislative Package

Herbert Smith Freehills is pleased to provide this submission in response to the Government's consultation paper entitled 'Foreign Investment Framework 2017 Legislative Package' (**Consultation Paper**).

We regularly advise clients on the application of Australia's foreign investment laws and the process for obtaining foreign investment approval under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**Act**). This submission seeks to draw on that experience to respond to each of the issues for consultation identified in the Consultation Paper, as well as raising miscellaneous technical issues and ideas for further law reform.

While the package is more comprehensive and brings most elements of the former policy into the law (where it should be), it has become very complex and difficult for both investors and advisors to interpret and apply. Many unintended consequences and regulatory burdens have emerged. We have sought to address some of them in this submission.

We also have concerns about the Government's decision making processes with respect to the utilities and infrastructure sectors. Some of these decisions have led to a significant loss of confidence among foreign investors in these and other sectors. We are hopeful that better outcomes may emerge from the development of the new Critical Infrastructure Centre.

Overall, investors perceive the new framework to be (1) more complex (2) slower (3) more expensive and (4) less predictable.

1 Residential land

In our view, Option 5 should be adopted in relation to the various issues identified in the Consultation Paper in connection with the regulation of foreign investment in Australian residential land. This option would result in the greatest reduction in the regulatory burden, without compromising the policy underpinnings of the foreign investment regime insofar as it relates to that type of land.

1.1 Inconsistent exemption certificate framework

Creating a new category of exemption certificate for purchasers of a new dwelling or vacant residential block is consistent with the policy underpinnings of the Act, that foreign investment in residential real estate should be channelled into new dwellings.

In our view, it is inconsistent with the foreign investment policy to have an exemption certificate regime for foreign persons wishing to purchase an established dwelling, while

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requiring foreign purchasers of new dwellings to apply for approval on a case by case basis, unless they purchase in a development in respect of which the developer has obtained an exemption certificate. Foreign persons who wish to purchase a vacant residential block or a new dwelling in a smaller development (less than 50 dwellings) presently have no choice but to apply on a case-by-case basis.

In a context where applications by foreign persons to purchase a new dwelling are ordinarily approved without conditions, and the conditions applicable to the purchase of a vacant residential block are settled, we submit that implementing an exemption certificate regime for purchasers of new dwellings or vacant residential blocks will not adversely affect the appropriate regulation of foreign investment.

1.2 Treatment of failed off-the-plan settlements

Creating a new exemption certificate for failed off-the-plan settlements is consistent with the policy underpinnings of the Act and would address the problems created for developers (through no fault of their own) by the Act as it presently applies to this situation.

There is no policy basis for treating a new dwelling, the settlement of which has failed, as an established dwelling for foreign investment regulation purposes. It could be argued that this outcome is appropriate because having encouraged construction of the dwelling through the more lenient foreign investment treatment accorded to new dwellings, there is no policy basis for retaining this treatment once settlement of the completed residence has failed. However, this arbitrarily creates risk for developers who must resell the unit into a smaller pool of buyers, potentially resulting in a loss on resale if the property market is stable or falling.

FIRB's laudable administrative solution to this situation, while practical, does not address the technical contravention of the FATA by a developer selling such a dwelling under an exemption certificate. Nor does it avoid the unnecessary costs borne by foreign persons who, in these circumstances, opt to seek case-by-case approval for a purchase. Implementing an exemption certificate regime for purchases of new dwellings the settlement of which has previously failed will address these issues while not adversely affecting the appropriate regulation of foreign investment.

1.3 Residential land used for commercial purposes

Residential land that is used for commercial purposes (aged care facilities, retirement villages and student accommodation) should be subject to the same foreign investment treatment as developed commercial land, rather than residential land.

We submit that the policy basis for the more restrictive treatment accorded to residential land – that is, that foreign investment should increase the nation's housing stock – is not applicable to investment in developed commercial uses of this kind. Foreign persons investing in land of this type will do so for the purposes of deriving profit from the operation of the associated business, rather than to speculate in the land or occupy it for their own personal use. Accordingly, it is appropriate that the applicable monetary thresholds correspond to those for developed commercial land, rather than residential land.

There is also some confusion as to whether premises such as a café located in a building which is mostly comprised of residential apartments is residential land (see 5.5 below).

Streamlining the approval of land acquisitions of this type pursuant to mandatory buy-back mechanisms is desirable since it reduces the regulatory burden without diminishing the oversight of foreign persons' investment in Australian land (since the purchaser will have sought and obtained approval when it initially acquired the land, subject to the applicable monetary threshold).

2 Non-vacant commercial land

In our view, Option 2 should be adopted in relation to the regulation of non-vacant commercial land.

In our experience, the inclusion of “land under prescribed airspace” as a form of low threshold developed commercial land has substantively undermined the potential reduction in non-contentious acquisitions requiring approval that would otherwise have resulted from the 2015 increase in the monetary thresholds for ‘non-sensitive’ commercial land acquisitions. Many uncontroversial acquisitions of metropolitan commercial property have remained subject to the foreign investment regime despite the 2015 rewrite, often far from airports and regular flightpaths.

As a policy matter, the rationale for treating acquisitions of almost all classes of low-threshold developed commercial land as sensitive is self-evident – for example, land to be leased to government bodies or used for data centres or the location of ADIs’ servers. However given the very large reach of the prescribed airspace, the policy basis for treating land under it as sensitive it is not immediately clear.

Aside from the questionable policy basis for the special treatment of this class of land, we submit that linking the foreign investment monetary threshold of a parcel of land to a completely extrinsic regulatory regime results in unnecessary complexity and expense for foreign persons contemplating investment in Australian commercial land.

Option 3 would obviously deliver the greatest reduction in regulatory burden associated with foreign investment in non-vacant commercial land. However, we are concerned that a complete abolition of the concept of low-threshold developed commercial land may be subject to criticism that it constitutes an inappropriate narrowing of the foreign investment approval regime. Accordingly, we support Option 2.

3 Low sensitivity business investment

3.1 General comments

In our view, Option 2 should be adopted in relation to the regulation of low sensitivity business investment, but without the power for the Treasurer to make orders in relation to an acquisition after it has completed.

We agree with the assessment in the Consultation Paper that the existing foreign investment regime imposes a higher than desirable regulatory impost on business proposals that are of low sensitivity. This has the capacity to act as a disincentive to foreign investment in Australian small to medium enterprises.

The introduction of the two exemption certificate regimes contemplated in the Consultation Paper (for interests in securities and for foreign government investors (**FGI**s)) would go some way towards address the over-regulation of non-controversial transactions.

However, in order to be attractive to foreign persons (and therefore achieve their intended objective of reducing regulatory burden), these exemption certificate regimes should not reserve the right for the Treasurer to make divestment orders or impose conditions in respect of the transactions to which they relate. In our experience, foreign investors are very conscious of ensuring regulatory certainty when transacting. Accordingly, our expectation is that the exemption certificates would be unattractive to most foreign investors if there is the prospect that the Treasurer could impose conditions on, or seek to unwind, the transaction after it has been consummated (even if the practical likelihood of this occurring is remote).

The parameters of the proposed exemption certificates are ultimately a political matter for the Government, where the objective of streamlining the foreign investment regime will have to be balanced against the need to not unduly narrow the ambit of the transactions over which the Treasurer has national interest oversight.

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Having said that, it seems that the proposed $100 million limit may be inappropriately low in the case of the proposed 'general' exemption certificate for interests in securities. This is because the monetary threshold for an acquisition of securities in a non-sensitive business is $252 million, calculated by reference to the value of the entity in which securities are being acquired. Accordingly, even at the level of that monetary threshold, the greatest interest that could be acquired pursuant to an exemption certificate would be 39%. This will limit the scope of the transactions for which these certificates can be used.

We do not support Option 3. This is on the basis that our expectation that FGIs (being the key class of foreign persons to whom the proposed exception would apply) would be very hesitant to prosecute a significant action without voluntarily notifying the Treasurer. Accordingly, we doubt that this option would reduce the regulatory burden in a material way.

3.2 Exemption certificate for private equity funds that are FGIs

We act for private equity funds (**PE funds**) that source capital from a number of foreign investors, including foreign public pension funds, sovereign wealth funds and other sources that could be considered to be an FGI.

Typically, the investors in PE funds are purely passive investors that do not have any influence or control over the investment or operational decisions of any fund entity or any of their associated portfolio or investee companies. In particular, the investors in a PE fund will typically not even know the identity of an investee entity until binding transaction documents have been signed, conditions precedent satisfied and the PE fund has then issued a capital call notice to its investors. Accordingly, our submission is that a distinction should be drawn in the FIRB regime between an investment by a foreign government investor or state-owned enterprise (a 'true' FGI) and investments by a pooled managed fund whose FGI investors are purely passive investors making a purely financial investment.

For example, for one PE fund which is a major global investor, its investors have the following characteristics:

- approximately 70 institutional investors (and another 30 plus sophisticated investors comprising PE fund executives and high net worth individuals);
- there is no investor representation on the investment committee, whose approval is required for all investments made by the PE Fund;
- the scope of the decision-making power given to the advisory committee (a committee composed of 15 investors), was very limited and contractually documented in the terms of the fund documentation;
- no investors are appointed to the boards of any portfolio company; and
- the one FGI investor in the PE fund, a public pension fund, reports to an independent board of directors, not a foreign government. This board, not the foreign government, makes all investment decisions and operational decisions.

The implication of a PE fund, its fund entities and its portfolio companies being deemed to be FGIs, is that a huge volume of low value transactions below the usual thresholds applicable to foreign persons require FIRB approval. This results in FIRB devoting significant time and resources to processing low-risk applications and duplicating analysis already done on the investor composition of the PE fund. Examples of the kind of transactions issues that arise include:

- bolt-on acquisitions by those portfolio or investee companies who are deemed to be FGIs. Growth of portfolio or investee companies through bolt-on and consolidation opportunities is often a significant part of the investment thesis of the PE fund. While the initial portfolio investment at the fund level might be of significant monetary value , this is often not the case at the portfolio level, with most of these transactions falling well below the $252m threshold that would be apply to foreign persons. The requirement for FIRB approval in this scenario not only comes with financial consequences (namely the payment of the relevant $25,000 fee, the costs of preparing the application and responding to any RFIs), but also is seen as a material disadvantage and cause of potential delay as compared with an alternate bidder who could make an unconditional bid).

- acquisitions of freehold land and entry into long term leases by portfolio or investee companies. The investment thesis for some portfolio investments may involve expanding the number of stores or sites where the business operates. Alternatively, there may be no structured plan for property acquisitions, however, from time to time a portfolio company may be required to enter into a low value property transactions. It is untenable and impracticable for these portfolio companies to need to apply to FIRB for these types of low value transactions; and
- intra-group equity transactions. A vital component of intra-group capital management includes the ability to make urgent equity investments into subsidiaries within the portfolio companies corporate group (e.g in the case of unexpected financial distress of a subsidiary). If any of those entities are considered to be FGIs, because of the fund level tainting, then any injection of equity over the 10% direct investment level is arguably captured under regulation 56 of the regulations (other than in the case where it is the establishment of a new wholly owned subsidiary).

Accordingly, we recommend that the government consider implementing an exemption certificate regime for PE funds that are FGIs. Design features of such a regime could include the following:

- (**Provision of fund documents**): the fund documents could be provided to FIRB, on a confidential basis, for the purpose of FIRB confirming that the fund documentation contains the relevant contractual settings necessary to ensure the passivity of the investors, (*e.g* the investment committee is responsible for all investment decisions and the investors/advisory committee have limited decision making capability);
- (**Investor details**): subject to any confidentiality restrictions in the fund documents, a list of investors and a description of any applicable FGI could be provided to FIRB for the purpose of proving that those FGIs are purely passive investors (e.g the PE fund could provide details of any independent oversight over the FGI's board of directors, investment mandate and any other fetters or oversight mechanisms that limit the influence of any foreign government);
- (**Reporting conditions**); any exemption granted would be subject to appropriate reporting conditions (e.g an obligation to report on any material change to the investor composition of the PE fund);
- (**Exemption period**); the exemption certificate would apply for the investment period specified in the fund documents (e.g 10 years), unless there is a material change to the composition of the investors in the fund or fund documents which require FBI to reconsider whether the investors still continue to be passive investors; and
- (**Effect of the exemption**): The ultimate effect of the exemption certificate would be that the PE fund and all its associated fund entities, portfolio companies and investee entities would be deemed to be foreign persons, not FGIs, such that all the provisions and associated thresholds relating to foreign persons would apply to any actions proposed to be taken by those entities.

4 Commercial fees

In our view, the Option 3a, together with Option 2, should be adopted in relation to the various issues identified in the Consultation Paper in connection with the current commercial fee regime.

4.1 Fee complexity

We agree with the conclusion expressed in the Consultation Paper that the current commercial fee regime is unduly complex. Not only does this regime create work in the calculation of the appropriate fee, but this work sometimes has to be repeated if the consideration proposed to be paid changes (for example, in a contested public acquisition or a competitive trade sale process). We are aware of at least one instance where this recalculation has resulted in the application moving into the upper fee band, resulting in FIRB requiring the foreign person to withdraw and resubmit their application with the increased fee. As can be readily appreciated, the delay inherent in this process has the capacity to be damaging to a potential acquirer in a fast paced competitive transaction and causes unnecessary concern for investors (see 5.3 below for a suggested solution).

Option 3a would address the issue of complexity most effectively. However, as is presently the case with the lower fee band, a fixed fee at the levels proposed in the Consultation Paper would likely impose an inappropriately large burden on small transactions. Accordingly, we submit that the existing administrative fee waivers should also be legislated, as proposed in Option 2, to alleviate this burden.

In our view, tiering fees in the manner proposed for Option 3b could potentially increase the complexity inherent in the present fee regime, particularly as there will be a greater number of fee bands. Furthermore, as we have noted in previous submissions, a tiered fee structure based on consideration is not supportable by reference to the cost recovery policy underlying the fee regime. This is because there is unlikely to be a linear relationship between the consideration paid under a commercial acquisition and the costs associated with the examination and determination of the relevant foreign investment application.

4.2 Fees for small commercial transactions

We agree that in the case of small acquisitions (particularly those by FGIs), the present fee regime imposes an inappropriately large cost on the acquirer. Accordingly, we support the formalisation of the existing administrative fee waivers as proposed by Option 2.

4.3 Internal reorganisations

We support the broadening of the definition of an ‘internal reorganisation’ in the manner proposed by Option 2. Such a change is consistent with the cost-recovery policy underlying the fee regime, on the basis that even under the proposed broader definition of ‘internal reorganisation’, the foreign investment examination of the transaction would be limited in scope. Since there would be change in ultimate control of the securities or asset being transferred, we assume that the national interest analysis of the transaction would focus almost exclusively on its potential taxation impacts.

5 Miscellaneous technical issues and ideas for further reform

Based on our experiences advising in respect of the new foreign investment approval regime, we wish to make the following suggestions for further reform.

5.1 Tracing and ‘foreign government investors’

FIRB’s Guidance Note 23 *Foreign government investors* (**GN23**) advises investors that interests of an FGI are to be traced through ‘direct interests’ (ordinarily, 10% shareholdings). The legislative basis for this contention is unclear.

Section 19 of the Act establishes a clear tracing regime for substantial interests (20% holdings) so that a chain of 20% holdings will create a substantial interest in the underlying shares. This is the same policy approach adopted by the Corporations Act with respect to the relevant interest concept. Subsection (3) provides that this tracing regime does not apply to direct interests.

There is no corresponding regime for the tracing of direct interests. Regulation 17 provides that an acquisition of a direct interest by an FGI will arise from a chain of substantial interests (ie 20% holdings) where the entity at the top of the chain is an FGI.

The legislative regime is very confusing. Section 19 relates only to substantial interests. Subsection (3) provides that the 20% tracing does not apply to direct interests, so you cannot hold a 10% direct interest because of a chain of holdings of 20% substantial interests. Then regulations 17 and 48 essentially provide that the section 19 20% tracing does apply. But what is reasonably clear is that 10% tracing does not apply yet GN23 suggests that it does.

Regulation 56, which establishes when a significant action or notifiable action will arise for an FGI, merely refers to the acquisition of a direct interest. This would happen for example where a 10% holding is acquired directly by an FGI in an Australian entity or a 20% holding is acquired by an FGI in an upstream entity that holds a 10% holding in an Australian entity. But it does not arise where a 10% holding is acquired in an upstream entity.

GN23, if followed by investors, imposes a regulatory burden that is disproportionate to any perceived risk that investments by ‘upstream’ FGIs may pose to the national interest. We are aware of numerous transactions where an FGI has had a small passive investment that, when FIRB’s policy is applied, is then traced through a number of interests not amounting to a ‘substantial interest’ (the threshold for tracing interests of other foreign persons), resulting in foreign investment approval being required to be sought by the FGI (despite the fact that the acquiring entity itself is not an FGI).

By way of example, consider a sovereign wealth fund (**SWF**) that is controlled by a foreign government and holds a 10% investment in an investment fund (**A**) managed by a third party fund manager. SWF is an FGI by virtue of section 17 of the Regulations but A is not, without more, an FGI. However, if A then takes a 10% stake in an Australian entity (**B**), FIRB’s view is that SWF will be required to make an application in respect of that acquisition by A, despite the fact that A itself will not have to make an application as it is not an FGI.

This situation gives rise to two issues that, in our view, should be corrected.

Firstly, tracing indefinitely through direct interests creates a situation where an FGI that is remote from the acquisition in question (and very likely not even aware of it) will be legally obliged to make a notification despite the fact that SWF’s formal or practical influence on the affairs of the Australian target is likely to be negligible.

In the example above, SWF’s interest in B (by virtue of FIRB’s interpretation of the tracing regime) is taken to be sufficiently significant to warrant mandatory notification, regardless of the number of interposed entities (so long as there is at least a 10% interest at each level). By contrast, other legislative regimes that trace through immaterial interests adopt the approach of multiplying the percentage holdings – for example, Part 4 of Schedule 1 of the *Broadcasting Services Act 1993* (Cth) (**BSA**). Adopting that approach, SWF’s interest in B would be a mere 1% and SWF would not have to notify in relation to the acquisition of the interest in B.

GN23 itself recognises the practical problems associated with this process, noting that there will be instances where a passive upstream FGI will be unaware of an investment taken by a downstream investee entity. GN23 provides that fines will not be imposed, nor penalties or breaches pursued, in certain circumstances where the upstream FGI fails to notify in respect of an acquisition by the investee entity. This will not absolve the FGI of the fact that it has broken the law, and the very existence of this administrative 'fix' is indicative of the fact that the Act presently operates inappropriately in this area.

Secondly, we submit that tracing through direct interests is inconsistent with the test for a company, trustee or general partner being an FGI, which requires that a foreign government or separate government entity have a substantial interest (20%) or aggregate substantial interest (40%) . In the example above, the obligation to make a notification lies with SWF, since A is not also an FGI. However, if SWF does not make a notification, there is the risk for A that it will incur accessorial liability for the resulting breach, as is recognised by GN23, This is despite the fact that it is not an FGI , and SWF's interest in A is insignificant (and could be almost negligible if further entities were interposed between SWF and A).

We submit that either:

(a) GN23 should be revised so that it correctly reflects the Act and the Regulations to make it clear that tracing only occurs through 20% chains not 10% chains (consistent with the Corporations Act); or

(b) the Act and Regulations should be amended in a manner analogous to the framework adopted by the BSA, with the FGI only being required to make a notification in respect of a transaction if it has an interest in the proposed acquirer amounting to 10% or more after multiplying through the percentage holdings in the chain.

In our view, neither option would detract from the national interest oversight of transactions involving FGI involvement, while eliminating many applications that are technically required by law but in which the relevant FGI has no genuine influence.

5.2 Aggregation of FGIs (sometimes referred to as "The Canadian Problem")

In our view there is a strong case for there to be two categories of FGIs:

- State owned commercial corporations and sovereign wealth funds which are not independently managed; and
- Sovereign wealth funds and state controlled pension funds which are independently managed.

We have argued for this in the course of consultation about the Act but the Government did not appear comfortable making this distinction.

The second category of funds frequently runs into problems because those funds are independently managed. In most cases they have no idea what holdings other funds from the same country (let alone other countries) may have. Usually the only way they know is if the holdings has been publicly reported or disclosed in a substantial holding notice.

Regulation 17, which aggregates the interests of FGIs, creates problems for these funds, which could easily be in breach without knowing it. We submit that the administrative 'fix' set out in GN23, whereby FIRB will not levy fines or pursue penalties in respect of certain classes of unintentional breaches by FGIs, is not sufficient. One useful step would be for regulation 47 to apply to regulation 17 as well as the definition of foreign person in section 4 of the Act.

5.3 Avoiding duplicate notifications

In its present form, there are many instances in which the Act would require duplicate applications for a single transaction.

By way of example, if a foreign person is a member of a consortium (holding, say a 22% interest) that acquires an Australian incorporated company (**AusCo**), when AusCo subsequently enters into a transaction that requires foreign investment approval (by reason of the foreign person having a substantial interest in AusCo), separate approvals are technically required by both AusCo and the upstream foreign person.

We submit that in these situations, there is negligible regulatory benefit associated with requiring foreign investment applications from both the upstream foreign person and also AusCo (itself a foreign person). Involving the shareholder in very minor applications by the Australian entity creates a regulatory burden on both the company and its investors, who find it difficult to understand why should also be applying. Many companies simply proceed with an application at the AusCo level, disclosing fully their foreign ownership.

We suggest that the foreign investment regime be amended to make it clear that a notification is only required from the Australian company (in its capacity as the purchaser of the land, securities, assets, etc) in these circumstances. This would apply only where there has been no substantive change in the identity or interest of the direct holders, or ultimate beneficial owners, of interests in the Australian company since foreign investment approval was obtained for the acquisition of the Australian company (or for the Australian company's last investment requiring foreign investment approval).

5.4 Fee top up for tiered fees

If Option 3b is adopted in relation to commercial fees (that is, a sliding scale by reference to consideration is utilised), we submit that the fees regime should be amended to specifically allow an applicant to 'top up' its fee if the consideration is increased and as a result, the application moves into the next fee band. In our view, there is no policy basis for requiring an applicant to withdraw and resubmit their application simply because the fee has moved into the next bracket. This will avoid delays in the approval process, which is particularly important to potential acquirers participating in a competitive trade sale process.

This should also be adopted if Option 1 is adopted in relation to fees, which would be relevant if a transaction crosses the present $1 billion threshold.

5.5 Custodian exemption

Under the Act, foreign custodian corporation holdings are technically taken into account in determining whether an entity is a 'foreign person'.

While section 30 of the Regulations provides that the 'excluded provisions' do not apply in relation to an acquisition of an interest in securities by foreign custodian corporations, section 28 of the Regulations provides that the definition of "foreign person" is not an 'excluded provision'.

This has the effect that an Australian company would technically be considered a 'foreign person' if a foreign custodian corporation holds a substantial interest (or foreign custodians together with other foreign persons hold an aggregate substantial interest) in the Australian company, even where the foreign custodians hold the interests solely on behalf of Australian investors.

We understand that this is an unintended consequence of the 2015 amendments and submit that a regulation should be included in the Regulations to disregard foreign custodian holdings for the purposes of the definition of 'foreign person'.

5.6 Definition of 'land'

The definition of land under the Act includes a building or part of a building. However, as the definition of land is not exclusive, it is difficult for foreign investors to identify the relevant notifiable action (and the applicable fee) where the transaction relates to part of a building that is a 'mixed use' building – for example a café located in a building which it mostly comprised of residential apartments.

For example, where a foreign person proposes to acquire an interest in commercial land that is part of a residential apartment building, it is unclear whether the commercial land, while in the same building, should be viewed separately to the residential land or whether due to the fact the commercial land being acquired is part of a residential building it should be viewed as residential land for the purposes of the Act.

FIRB's Guidance Note 20 *Mixed Use Land* (**GN20**) states that while acquisitions of interests in land are generally considered on a title-by-title basis, there are circumstances where different types of Australian land may co-exist on the same title. Consistent with GN20, we suggest that FIRB clarify (in its guidance notes or otherwise) that a foreign person may acquire an interest in one part of a title (for example, commercial land) even though the majority of the land relates to another type of land (for example, residential land).

5.7 Categorisation of 'Australian land corporations' and 'Australian land trusts'

The Act and the Regulations have sought to make it easy for corporations / trusts to work out whether they are an Australian land corporation / Australian land trust by allowing them to just look at their accounts, without having to make a forensic enquiry or perform valuations. However, this still calls for an element of judgment by foreign investors as to whether a line item is likely to represent an interest in land. There is an open question as to whether certain items should be treated as land items or non-land items (for example, an item described as 'fixtures and fittings').

Given the uncertainties involved we suggest that FIRB clarify that only line items which clearly comprise land should be treated as such.

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We thank the Government for the opportunity to make the submissions set out in this letter and look forward to discussing any of the matters contained herein, if required.

Yours sincerely

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