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Manager
Policy Framework Unit
Treasury
Langton Cres
Parkes ACT 2600

FIRBStakeholders@treasury.gov.au

Re: APREA FIRB Submission

Dear Sir/Madam,

Thank you for providing the opportunity to comment on the proposed changes to the FIRB legislation which has been released in two tranches – the first on 31 July 2020, and the second on 18 September.

APREA is a leading pan Asian trade group that champions the property investment industry across AsiaPac. Our members include prominent pension, insurance and sovereign wealth funds, investment and asset managers, family office platforms, developers and respected service providers.

As the Australian Chapter of APREA we which to highlight some of the key items of concern which we believe may affect our members ability to maintain competitiveness within the Australian property investment market.

Areas of concern	Explanation	APREA Comment
Call in power	In the Tranche 1 changes, the Treasurer was given the power to call in for review any matter which may post a national security concern (undefined) and which has not previously been notified to FIRB. The period of that call in power was to be set out in Trache 2. In Tranche 2, the power has been set at 10 years after the relevant activity.	This is significantly longer than the anticipated period, and creates uncertainty for acquisitions and projects. The result is that it is likely that financiers, purchaser and others will require that FIRB approval be sought as a condition of financial close to ensure acquisition or project certainty. This will increase the number of acquisitions/ projects that apply for approval and will mean that FIRB will need to substantially increase its resourcing to deal with the increase in applications. The Explanatory Memorandum states that the purpose of the period is 'to assist in the foreign person's decision as to whether to voluntarily notify.'

National security land	In the Tranche 1 changes, national security land was defined as defence premises, or land in which an agency in the national intelligence community has or will have an interest if at the time of acquisition the foreign person could reasonably be expected to be aware of the agency's interest or prospective interest, or land declared by the Treasurer to be national security land.	There is no further clarity on the level of due diligence required to assess whether the foreign person could 'reasonably be expected to be aware of the agency's interest or prospective interest'.
Monetary thresholds	Under Tranche 2, we understand that the pre-COVID monetary thresholds are to be reinstated from 1 January 2021. Note that the Explanatory Memorandum states that the reintroduction of monetary thresholds will depend on the ongoing impact of COVID.	Given that real estate ownership generally speaking is a passive investment and does not present a national security risk, the monetary thresholds for this sector (excluding residential) should be reconsidered and substantially increased, especially in relation to the Asia Pacific jurisdictions which are keen to invest into various real estate sectors in Australia. In particular, nil threshold for vacant land should be revisited and more relevant parameters included around vacant land acquisitions.
Fees	The FIRB fees have been restructured in Tranche 2. The maximum fee payable for commercial land is now 500,000 on a sliding scale calculated at ($13.2k x consideration-in-$M – 1) / $50M. As before, the FIRB fees are determined on the value of the consideration (as defined in the regulations) in respect of each acquisition.	The new FIRB fees are generally greater up to 20M, and less up to 100M (almost equivalent to the previous 26,700) and greater after 100M consideration, with a maximum of 500k fee payable at approximately 1.9B consideration. While the meaning of consideration of commercial land is understood to be the purchase price of the land, there has been some suggestion (through FIRB RFIs) that consideration may include development costs as well. Such an approach would result in considerably greater FIRB fees being paid than at present.
Timing	The 6 month statutory period will cease when the COVID changes cease. From 1 January 2021 the period	This does not alter the ability of the Treasurer to request that the Applicant

	for a decision will change to the periods set out in Tranche 1, namely 30 days, with the Treasurer being able to extend for a further 90 days.	requests an extension (as occurs now). We would recommend a more streamlined approval process for real estate acquisitions and investments if they satisfy certain "passive investment" criteria. A 30 day period together with a 10 day notification does disadvantage foreign investors in a competitive sale process.

We would welcome the opportunity to further discuss these items with you at an appropriate time.

Kind Regards,

Trevor Cooke

Chair, Australian Chapter

APREA