



30th September 2020

The Hon Josh Frydenberg MP
Treasurer
Parliament House
Canberra ACT 2600
Australia

By email: FIRBStakeholders@treasury.gov.au

RE: Foreign Investment Reforms – Tranche II

Dear Treasurer,

**AustCham Hong Kong Submission:
Major Reforms To Australia's Foreign Investment Framework**

Further to our letter of 31st August 2020, we are pleased to provide additional commentary on the remainder of the Exposure Draft Regulations. Once again, we would like to commend the Commonwealth Government on this very comprehensive reform exercise and a highly engaging consultation process. As part of this process, we were grateful to take part in yesterday's Public Information Session which we found particularly helpful.

As previously noted, through the Exposure Draft Legislation and the Explanatory Memorandum documentation, it is gratifying to note the emphasis placed on the continued importance of foreign investment. This is particularly relevant in the context of Hong Kong which is currently the second largest overseas investor in Australia in terms of volume of transaction approvals.

On behalf of the membership of the Australian Chamber of Commerce in Hong Kong and the broader Hong Kong – based investor community with interests (existing and prospective) in Australia, we are grateful to have this further opportunity to provide feedback for your consideration.

As before, we very much respect the need to allow for proper review in the interests of national security. A core theme that runs through our two areas of feedback below is the desire, from an investor's perspective, for transparency, certainty of decision and timing, and as much overall clarity as possible. Clearly, all foreign investors wish to avoid what they might consider unnecessary complexity or delay.

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1) Reviewable National Security Actions – Proposed Time Limit on Call-In Power

We note that the draft Regulations allow for a time period of 10 years for the Treasurer's Call-In Power to be exercised. We appreciate, from the Explanatory Memorandum, that the stated intention of this time limit is to provide foreign investors with "greater certainty as to the Treasurer's powers and assist in the decision as to whether to voluntarily notify". While this intention is understood, the time period of 10 years may be seen as excessive – particularly in the case of investments which are regarded as less contentious from a national security perspective.

Without wishing to add greater complexity, one option might be to consider some form of tiered or scaled approach to the call-in power whereby longer periods would apply to more sensitive investments – and, conversely, the time limit for the Treasurer's call-in power to be exercised could be reduced for more straightforward investments where there are less concerns about national security.

Such an approach would be consistent with the stated objective of introducing streamlining measures in respect of less sensitive investments.

2) Timeliness of Approval Turnaround Times / Resourcing Implications

There are various relaxation measures within the draft Regulations which will be welcomed by foreign investors, for example, the revised treatment in respect of passive investments and, perhaps most notably, the reinstatement of foreign investment monetary thresholds with effect from 1st January 2021 (subject, of course, to the prevailing COVID-19 situation).

In spite of these positive changes, given the far-reaching nature of the new Foreign Investment Framework, there will inevitably be concern, particularly for prospective investors, that they will need to voluntarily notify or apply for exemption certificates in order to achieve certainty of decision. Efforts to obtain such up-front approval will of course place considerable resourcing pressure on approving bodies.

Such certainty of decision or clarification may not be simply sought by foreign investors but also financial institutions which are requested to provide financing to support such investment activities. In such a scenario, one unintended consequence may be that banks may be reluctant to provide financing in the absence of regulatory approvals first being in place. In extreme situations, this may extend timelines and put the underlying transactions at risk.

While we have no doubt that these implications have already been carefully considered, in the interests of avoiding unnecessary delays or excessive turnaround times, we would recommend sufficient resources be put in place to ensure the intended streamlining objectives will be achieved.

Once again, on behalf of the Chamber and its members, I would like to express my sincere thanks for the opportunity to provide commentary in respect of this critical legislation. We stand ready to provide any further clarification or assistance that might prove helpful.

Yours faithfully,



Jacinta Reddan

Chief Executive

The Australian Chamber of Commerce in Hong Kong

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CC:

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