

Manager, Policy Framework Unit
Treasury
Langton Cres
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By email: FIRBStakeholders@treasury.gov.au

1 October 2020

Dear Sir/Madam

Submission – Reforms to the Foreign Investment Framework (September Tranche 2)

Thank you for the opportunity to make this submission with respect to the exposure drafts of the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020 (ED Regulations)* and the *Foreign Acquisitions and Takeovers Fees Imposition Regulations 2020 (ED Fees Regulations)*.

In our earlier submission dated 31 August 2020 we noted our support for the core principle that foreign investment should be welcomed in Australia for the significant economic benefits it provides, and our support for reforms to protect against emerging risks and certain global developments.

IP Group Australia

In our earlier submission we provided information about IP Group Australia and its corporate group ultimately owned by IP Group plc (**IP Group**). We explained that our mission is to create world-changing businesses from the research carried out at leading research universities. Our support for such businesses includes, importantly, the provision of early stage funding.

IP Group Submission - fees

Under the ED Fees Regulations, the notifiable national security action fee payable for an acquisition of interests in a business with a consideration of \$50 million or less is \$6,600. This is more than a threefold increase from the current fee (while the monetary thresholds are temporarily reduced to nil) of \$2,100.

IP Group's investments in Australia may be as low as \$200,000 if we assist in a company's formation and the demonstration of its initial thesis. Our ability to invest at this early stage is welcomed by our university partners due to the absence of other investment options in Australia for projects at this stage of maturity. Alternatively, IP Group's investments may range from \$1-3 million to support a company's growth stages in an early stage fundraising round, in some situations up to \$10 million.

Investment in early stage companies is vitally important to Australia's interests, but at these lower levels of investment, the costs associated with a FIRB notification are material as a proportion of the total investment. This may discourage such activity and can be punitive to the early stage company itself (as fees would typically be passed on by the foreign investor).

Recommendation: We suggest amending the ED Fees Regulations so that the \$6,600 fee applies where the consideration is less than \$50 million but more than \$5 million. Where the consideration is up to \$5 million, a lower fee could be introduced, or the *de minimis* rule could be expanded to cover all or part of this gap.



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IP Group Submission – de minimis rule

IP Group supports the principle of the new *de minimis* rule introduced by the ED Fees Regulations but suggests that it be increased above \$75,000. The *de minimis* rule helps prevent the perverse outcome where low consideration transactions bear a disproportionately high fee and discourage investment activity.

Given that a \$6,600 fee represents 3% of a \$200,000 investment (compared to 0.15% for \$45 million investment) we consider that \$75,000 is too low a threshold.

Recommendation: We suggest that the *de minimis* rule, at least where it applies to business acquisitions, be increased from \$75,000 to at least \$1 million.

IP Group Submission – voluntary notification fees

IP Group supports the proposal to charge 25% of the applicable fee where a reviewable national security action is voluntarily notified.

If a foreign investor (say, together with an academic founder and the related university) intends to form a company in order to continue research into a particular technology, we think it unlikely such an early stage company could be considered a national security business. However if any Defence use cases are identified, the foreign investor may choose to make a voluntary notification to provide all shareholders and the company itself with more certainty, particularly given the long time period (10 years) for which the call-in power is proposed to be available.

Recommendation: In the case above we assume the applicable fee would be \$500. We recommend that guidance notes or other support be provided for clarity as to when the 25% fee will be applicable.

IP Group Submission – reinstate the monetary thresholds

IP Group strongly supports the proposed reversal of the changes to the monetary value thresholds. The Explanatory Materials state that these amendments depend on whether ongoing safeguards are required to protect Australia's national interest.

Recommendation: We recommend that the thresholds formerly in place be reinstated at 1 January 2021, adjusted for indexation. The significant package of reforms to be implemented on 1 January 2021 will provide extensive protection for Australia's national interest. The nil dollar threshold combined with the increased fees would have a stifling effect on investment in early stage businesses.

Conclusion

As mentioned in our earlier submission, IP Group's purpose is to evolve great ideas into world-changing businesses that make a positive impact on the environment and society as well as an attractive financial return. We believe that our global experience, expertise and networks can play an important role in driving growth in Australia through the creation of new technology companies from Australia's university research.

We appreciate the Government's efforts throughout the ongoing pandemic, and its desire to strengthen national security. Please do not hesitate to contact me at Michael.Molinari@ipgroupplc.com if you would like to discuss any of these matters further.

Yours sincerely

Michael Molinari
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