

Manager
Policy Framework Unit, Foreign Investment Division
The Treasury
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By email: FIRBStakeholders@treasury.gov.au

11 March 2022

Dear Sir/Madam

Submission – Enhancing Australia’s foreign investment framework: Government response to the evaluation of the foreign investment reforms and discussion paper (Tranche 2 broader legislative and regulatory reforms)

Thank you for the opportunity to make this submission with respect to the *Tranche 2 broader legislative and regulatory reforms* in the *Enhancing Australia’s foreign investment framework: Government response to the evaluation of the foreign investment reforms and discussion paper* dated February 2022 (**Discussion Paper**).

We wholeheartedly agree that foreign investment plays a vital role in Australia’s economic prosperity, and support the Government’s ongoing efforts to achieve the right balance between facilitating investment and protecting the national interest (including national security).

IP Group Australia

IP Group Australia was formed in 2017 to create world-changing businesses from the research carried out at leading research universities in Australia and New Zealand. IP Group Australia is a wholly owned subsidiary of IP Group plc. IP Group plc is a FTSE 250 company listed on the Main Market of the London Stock Exchange with a net asset value of £1.4bn (A\$2.5bn). IP Group plc (together with its subsidiaries, **IP Group** or the **Group**), is one of the world’s leading intellectual property commercialisation companies, creating and developing companies primarily based on fundamental scientific innovations from its research-intensive partner universities. As at 30 June 2021, the Group had created more than 300 companies, created more than 5,000 jobs and invested more than £950m (A\$1,700m) into portfolio companies that in turn have raised £6bn (A\$10.8bn).

Set up with a mission to evolve great ideas into world-changing businesses, the Group achieves this by systematically helping to create, build and support outstanding intellectual property-based companies. The Group pioneered the concept of the long-term partnership model with UK universities including Oxford, Cambridge and Imperial College London, and has spent many years honing a unique approach to building businesses and providing support from ‘cradle to maturity’. It replicated this approach with a select group of US institutions including Princeton, Yale, Columbia and the University of Pennsylvania before expanding to Australia.

In Australia, IP Group signed long-term partnership agreements in 2017 with the Group of Eight Universities (**Go8**) in which IP Group committed to invest a minimum of \$200 million over ten years in companies based on Go8 research. Since then, IP Group has established a substantial team of 12 highly qualified staff in Australia with extensive experience locally and globally in developing early stage companies. The team have now completed 11 investments into Australian companies based on university research, through IP Group’s Australian investment vehicle IP2IPO Australia VCLP No 1 LP, in a range of industry sectors. In a given year we anticipate completing three to six investments in new companies and up to ten follow-on investments. For example, in calendar year 2022 we completed investments in three new companies and six follow-on investments.

Innovative companies based on world-leading research from our partner universities will be a major driver of growth in the Australian economy. The local ecosystem is developing, but the reality is that it continues to require access to global capital, networks and expertise. There are significant gaps especially in early stage funding, as



companies get off the ground, and in the expertise needed to steer these companies from promising technology to world-beating products.

Areas to reduce regulatory burden (consultation question 1.3 other opportunities)

Exemption for internal reorganisations

An internal reorganisation only occurs where the ultimate parent entity remains the same. We query whether an internal reorganisation changes the risk to national interest at all such that it would warrant making an application to FIRB. The legal costs and official filing fee, together with the time required for approval, seem to be an unnecessary administrative burden on investors and not commensurate with protection of the national interest.

Recommendation:

1. We recommend that an internal reorganisation be exempt from requiring approval.

Exemption Certificates (consultation questions 3.1 and 3.2)

IP Group's activities in Australia would typically not exceed the current monetary thresholds, but we do engage in activities to which a \$0 threshold applies (e.g. acquisition of a direct interest in a national security business). For each transaction, regardless of transaction value, we must therefore assess whether the target is a national security business and whether a mandatory notification is required (or voluntary notification desired). The risk of being in breach of provisions that carry significant criminal and civil penalties weighs heavily where there is any uncertainty in this assessment.

Making an application prior to a given transaction increases the time to closing. This delay in receiving investor funding can be critical for early stage companies, where a month or two can be the difference between business continuity and insolvency. In addition, IP Group invests in science based companies, so without timely funding, there is a significant risk that the early stage company will be wound up and its technology sold off.

The exemption certificates are intended to enable up-front approval for a program of investments, and would ideally operate to address both investor uncertainty and the impact of delay felt by targets. For IP Group and its investee companies, the exemption certificates in their current form do not achieve either of these aims.

As mentioned above, in a given year we anticipate completing three to six investments in new companies and up to ten follow-on investments. Given the range of industry sectors in which IP Group invests, we are not able to determine in advance how many (if any) of such investments would give rise to the need to seek FIRB approval. It would also be challenging to describe proposed targets and their industries and therefore whether they raise any national interest issues when the targets have not been identified and the breadth of our investment mandate. Despite the ability to rollover unused financial limits and the 25% discount on equivalent fees, the potential number of investments estimated compared to those made that would have in fact required approval make the exemption certificate application an even more expensive exercise, particularly when it must be repeated in 12 months if the exemption certificate only lasts for 12 months.

Reducing the fees and increasing the validity period of the exemption certificates would be of some assistance. We would also encourage the introduction of an investor-specific exemption certificate. We would see an investor-specific exemption certificate focussing on the applicant and its business activities, allowing the investor to be exempt from not only the defined program of investments, but also other activities which may otherwise require assessment and application by the investor. If the investor has been reviewed, assessed, and is not considered a risk to the national interest, it should not matter whether the investor acquires direct interests in a national security business or signs a 6 year lease or conducts an internal reorganisation, such activities would all be within the scope of the exemption certificate.

The scope of an investor-specific exemption certificate should cover the applicant itself, as well as those wholly owned entities with the same ultimate parent as is currently the practice for the existing exemption certificates. To have a wholly owned subsidiary or direct parent have to make its own exemption application would be an unnecessary duplication of resources.



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Further, it should be possible to apply, as part of the process for an investor-specific exemption certificate, to include investee companies in the scope of the exemption certificate. For example, where an applicant holds a 20% interest in an Australian company, and that investee company would not be considered a foreign investor but for the applicant's shareholding, the investee company should be able to be named in the application and covered by the scope of the investor-specific exemption certificate.

Recommendations:

1. We support broader validity periods (longer acquisition periods to execute investments) for exemption certificates to reduce the regulatory burden on investors whose business it is to engage in a program of investments.
2. We support the reduction of fees for exemption certificates, either across the board or for certain targets such as early stage companies or particular industries to encourage investment.
3. We recommend the introduction of an investor-specific exemption certificate which focuses more on the investor itself and its typical activities, rather than on proposed targets for an application, and the wholly owned entities in its corporate group.
4. We recommend allowing an investor-specific exemption certificate to include its named investee companies which would otherwise be exempt but for the 20% or more ownership stake of the applicant.

Overall operation of the foreign investment framework (consultation question 5.1)

Fee framework reforms

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. The application fee for any of these investments, if notifiable, is \$6,600.

The tiered fee structure demonstrates recognition of the principle that application fees should be closely linked to transaction size. However, the first tier, which covers transactions up to \$50 million, is too large and disproportionately impacts transactions at the lower end of this tier. This concept is recognised by the introduction of the *de minimis* rule under the revised fees framework, but the \$75,000 threshold is too low relative to the next hurdle (the \$50 million ceiling of the first tier).

We note Finding 7, which the Government accepts, that the new fee structure ensures the cost of administering the foreign investment framework continues to be borne by foreign investors and not Australian taxpayers. Whilst the foreign investor directly pays the application fee to FIRB, this does not reflect the practical reality in which foreign investors typically pass on the costs of both application fees and related legal costs to the Australian targets.

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 application 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.

In addition, to the extent that internal reorganisations require FIRB approval (see our recommendation above), we regard the \$12,700 flat fee as disproportionately high.

Recommendations:

1. We recommend that the first tier for businesses and entities is split into two tiers. For example, the \$6,600 fee could apply where the consideration is less than \$50 million but more than \$5 million or \$10 million. Where the consideration is below that, a lower fee should apply.



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2. We recommend that the *de minimis* rule be increased from \$75,000. For example, the threshold could be increased to \$500,000 or \$1 million.
3. If an application must be made for internal reorganisations, we recommend that the flat fee be reduced to a minimal fee, for example \$2,000, to reflect the lower risk.

Conclusion

IP Group's purpose is to evolve great ideas into world-changing businesses that achieve a positive impact on the environment and society as well as a 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 this opportunity to comment on the issues raised in the Discussion Paper, and the Government's exploration of further improvements to the framework.

Please do not hesitate to contact us if you would like to discuss any of these matters further.

Yours sincerely

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