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CAPÍTULO 5

AUSTRALIA'S SCREENING POLICY FOR FOREIGN INVESTMENT

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1 INTRODUCTION TO REGIME

Pursuant to the Australian Constitution, section 51(XXIX), matters relating to external affairs (wich includes foreign investment) come within the legislative power of the Federal Parliament of Australia. The primary legislation relating to foreign investment is comprised of the Foreign Acquisitions and Takeovers Act 1975 (FATA) and the FATA Regulation 2015 (the Regulation), supported by the FATA Fees Imposition Act 2015 and accompanying regulations.[2] The legislation has been amended numerous times since the enactment of the FATA in 1975, most recently in 2023, to reflect changes in government policy relating to investment, as well as the relevant terms of Australia's various free trade and other investment agreements (FTAs). The basic principle set out in the legislation is that foreign investment is permitted provided that the Treasurer of Australia, as the responsible minister, may refuse to permit an investment, or permit it only subject to conditions, on the basis that it would be contrary to the national interest or the national security of Australia. Over time, however, the legislative regime has expanded to include monitoring and enforcement, as well as to increase the stringency of review.

The Treasurer is primarily responsible for foreign investment and foreign decisions. Consideration of, and advice on, foreign investments are provided by the Foreign Investment Review Board (FIRB), a non-statutory body, and the Treasury, which advises the Australian government on foreign investment policy and reviews and advises on particular investment proposals as well as playing a role in enforcement. The FIRB also examines proposed investments and makes recommendations to the the Treasurer; provides advice on the operation of the legislation and the Policy and fosters "awareness and understanding, both in Australia and abroad, of the Policy and the Act" (Australia, 2024a). The Australian Foreign Investment Policy (Australia, 2023a), as updated from time to time,

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2. FATA Regulation 2015 (the regulation), available at: https://www.legislation.gov.au/F2015L01854/2021-12-18/text; FATA Fees Imposition Regulations 2020, available at: https://www.legislation.gov.au/F2020L01648/2021-06-25/text; Register of Foreign Ownership of Water or Agricultural Land Rules 2017, available at: https://www.legislation.gov.au/F2017L00833/latest/text.

provides a summary of the increasingly complex screening and monitoring regime for foreign direct investment (FDI) set out in the legislation, and also sets out the factors which are relevant to determinations relating to the national interest and national security. The newly reconfigured Foreign Investment in Australia website (under the auspices of the Treasury) also provides application forms and publishes detailed guidance notes and other material related to foreign investment applications.

The Australian Taxation Office (ATO) handles applications for the acquisition of residential real estate and and related regulatory aspects, is responsible for the Registers of Foreign Ownership of Land and Foreign Ownership of Water Rights (which are in the process of being phased out) as well as the newly established Register of Foreign Ownership of Australian Assets (Australia, 2024d).

2 AUSTRALIA'S SCREENING POLICY: OVERVIEW

Australia's stated foreign investment policy is to welcome foreign investment. "Investment" is, however, not a defined term in the FATA, which is focussed on acquisitions of businesses or land. An investor is not obliged to notify the Treasurer of a proposed investment except in the case of investments of a certain size in a range of categories of investment, or in the case of an investment which implicates national security. The list of transactions for which approval must be by a foreign person planning to invest in Australia has, however, expanded over time.

2.1 The screening process: who is a foreign person?

The Australian legislative regime focuses on actions by a "foreign person", as defined in s4 of the FATA and the Regulation. The concept of foreign person includes an individual not ordinarily resident in Australia; a corporation or the trustee of a trust in which a "substantial interest" (as defined) is held by another foreign person or persons or an aggregate substantial interest is held by two or more foreign persons; a foreign government or the general partner of a limited partnership in which one foreign person holds at least a 20% interest or two or more foreign persons hold interests at least 40%. The term "interest" is defined in relation to the relevant asset or entity, and refers to a legal, equitable or beneficial interest, as well as a right of control. A "substantial interest," generally speaking, is an interest of at least 20% of the relevant entity and an aggregate substantial interest is at least 40%. Determining whether a prospective acquirer of a business or assets is a foreign person may in some cases be a complex and contested matter.

In relation to a foreign government, or a foreign government entity, the position is further complicated by the detailed definition of "foreign government investor" set out in the regulation (Reg. 17). This term includes a foreign government, a separate foreign government entity, a corporation in which a foreign government or entity holds a substantial interest (20%), trustees, general partners and so on. An exception is provided for certain passive investments (Australia, 2023b). The breadth of this definition is significant because, unlike most other forms of investment, all proposed investments by foreign government investors are subject to approval requirements, including the acquisition of a direct interest (at least 10%) in an Australian entity or business; starting a new business; acquiring an interest in Australia land, or an interest of at least 10% in the securities of a tenement or mining, production or exploration entity, in all cases regardless of value (Australia, 2023a, p. 6).

The definition of a foreign person who is an individual is particularly significant because of the sensitivity of acquisitions of residential land by foreign persons, all of which are subject to prior review and approval by the ATO (although Australian citizens living overseas are exempted, The Regulation, Reg. 35).

The FATA does not discriminate between foreign persons by nationality. However, the effect of Australia's free trade agreements has been to give additional – and differing – benefits to investors depending on the country of their nationality. This has been done largely by the setting of agreed financial thresholds, updated annually (Australia, 2024b), for investments in particular industry sectors by investors from particular countries, below which notification and screening may not be required.

2.2 What is being acquired and how is this relevant to screening (and approval)?

The question whether pre-approval for investments is effectively required under the legislation has become increasingly difficult. The basic concept is that, with some exceptions relating mainly to larger transactions or acquisitions by foreign government investors, notification and screening is not required and the investment could proceed. This is implemented through the annual issuance of thresholds for different industry sectors (and investors of different nationalities). An investment which falls below the threshold is not subject to notification. Notifiable transactions include acquisitions by a foreign person, direct or indirect, of a direct interest in an agribusiness; acquisition of a substantial interest in an Australian corporation or unit trust, or acquisition of an interest in Australian land that is over the applicable threshold (FATA, ss 46-48). These must be notified to the treasurer for consideration before they can be undertaken (FATA, ss81-82). Both the ATO and the FIRB therefore refer to "approvals" for certain transactions.

In addition, the FATA creates a category of "significant actions" (FATA, ss39-45), which are those which (generally) involve a change of control as part of the relevant acquisition and meet the threshold test. These actions are not required to be notified to the FIRB unless they are otherwise notifiable (although most notifiable actions are in fact also significant actions). They can, however, subsequently be reviewed and, in an extreme case, unwound if the Treasurer determines that they are contrary to the national interest or national security. It may therefore be prudent for an investor to give notice to the Treasurer in relation to a transaction in order to obtain a no objection notice (FATA, ss 74-75).

In order to understand the framework, it is most convenient to look at the various sectors of investment separately. In 2020 and subsequently additional requirements were added to the legislation creating a separate category of notifiable national security actions and reviewable national security actions which relate to the establishment or acquisition of national security businesses and land. These are discussed below.

Under the FATA, acquisitions are divided between business acquisitions and acquisitions of different types of land.

2.2.1 Business acquisitions: sensitive, non-sensitive and agribusiness

Notification and screening are required for the acquisition by a foreign person of a substantial interest in an Australian entity that is valued above the relevant monetary threshold. Investors from certain FTA partners (as defined) may enjoy the benefit of a higher threshold for acquisitions in a non-sensitive business. (Sensitive businesses are media, telecommunications, transport, defence and military-related industries and activities, encryption and security technology and communications systems, uranium and plutonium, operation of nuclear facilities, Regulation, Reg. 22). For example, in 2024 an investor from the United States investing in a non-sensitive business has a threshold of AUD1, 427 million (Australia, 2024b), and a threshold of AUD$330 million for an investment in a sensitive business before the investment must be screened. An investment by an investor from Brazil, however, which does not have an FTA with Australia, is limited to a threshold of AUD$330 million for any business acquisition (other than an agribusiness) before screening is required.[3]

Approval is also required for the acquisition of a direct interest (of at least 10 per cent) in an agribusiness where the value of the holding is above the applicable threshold. Due to changes in Australian policy regarding agribusiness and agricultural land, investors from the United States, New Zealand and Chile

3. It should be noted that this summary does not set out all of the different thresholds, which can be found at Australia (2024b), and are indexed annually.

have a threshold of AUD$1,427 million, while all other investors, whether from an FTA partner or not, have a threshold of AUD$71 million. Indian investors enjoy a special $533 million threshold for service businesses.

Screening is required for all investments in a national security business (discussed below) or an Australian media business.

2.2.2 Acquisitions of Australian land

Foreign investment in land of all kinds, including agricultural, commercial, residential land, national security land and interests in mining, is an area of considerable sensitivity in Australia (Bath, 2018). Government policy has fluctuated in relation to this area of investment and, as a result, the thresholds for notification and screening may vary both as between investors from different FTA partners and between FTA and non-FTA investors.

All investments in national security land are subject to notification and screening requirements.

All foreign investments in residential land and vacant commercial land require prior approval, without exception. Generally speaking, a foreign individual will not be given approval to buy an established dwelling in Australia unless he or she is a permanent resident or a temporary resident while living in Australia but may buy a new dwelling (Australia, 2023e).

Other land, for investment purposes, is divided into three categories: agricultural land, developed commercial land and mining and production tenements. In the case of some investors, a distinction is made between "sensitive" and "non-sensitive" land and the applicable thresholds vary depending on relevant FTA agreements. Approval is also required for investments in Australian land entities – that is, entities which hold a majority of their assets in Australian – and the same thresholds apply.[4]

All investments in agricultural land (that is, land that is or could be used for a primary production business) above the threshold require approval. For investors from Chile, New Zealand and the United States, whose agreements were signed before the change in government policy, the threshold is AUD$1,427 million; for most other investors, the threshold is AUD$15 million (cumulative).

In the case of developed commercial land (which includes offices, factories and so on, as well as hotels and motels), approval is required for the acquisition of any interest above the relevant threshold. Investors from most FTA partners enjoy a threshold of AUD$1,339 million. For most other investors, the threshold

4. Sensitive land includes mines and land where critical infrastructure such as airports, ports, public transport and utilities is located (Regulation, Reg. 22-6).

is AUD$310 million, except in the case of sensitive land, for which the threshold is AUD$71 million.

The final land-related category is mining and production tenements where, again, certain investors (from Chile, New Zealand and the United States) enjoy the higher threshold of AUD$1,427 million, while, for all other investors, an approval is required for any investment.

Exemptions to the approval requirements may apply in some cases, such as devolution of operation of law and acquisitions by Australian citizens living abroad (Australia, 2023a, p. 6).

2.2.3 Acquisitions covered by a different legislative scheme

Certain types of investment are covered by separate legislation and also impose restrictions on foreign investment. These include investments in the banking sector; investments in Australian international airlines, airports and airlines operating in Australia; Australian-registered ships and Telstra (Australia's major telecommunications operator) (Australia, 2023a, p. 6-7).

2.3 National interest review

As discussed above, the principle in screening is that investment is permitted unless specifically prohibited by the Treasurer, or permitted subject to conditions. The test is that investments will not be contrary to the national interest or national security, determined on a case by case basis. In practice, most investments which progress to a determination are permitted to proceed (Australia, 2023a, p. 6-7).

Although the legislation does not set out criteria or standards for national interest review, it is the practice of the Australian government to issue and update the policy, which sets out a number of factors that the government considers important in assessing whether a proposed investment may be contrary to the national interest. Although the factors are not weighted, the nature of the investment (for example, where the investment is in an entity with significant market share) and the impact of the investment (such as an investment that enhances economic activity) and the importance of Australia's market-based system are all taken into account (Australia, 2023a, p. 8).

The factors are as follows.

1) National security: this category traditionally related primarily to defence but has been expanded as described in more detail below.

2) Competition: this includes an examination of both domestic and global impacts on competition. The bid by United States company Archer Daniels Midland to acquire Graincorp Ltd, a deregulated monopoly

company which controlled 85% of grain exports on the eastern seaboard, was rejected largely on these grounds (Hockey, 2013).

3) Other Australian government policies (including tax revenues, environment and critical technology).

4) Impact on the economy and the community: in 2011, the government rejected a bid by Singapore Exchange Limited to acquire ASX Ltd (Australia's main stock exchange) on the basis that it would be contrary to Australia's national interest to "diminish Australia's economic and regulatory sovereignty over the ASX" (which would include losing full control over clearing and settlement functions) in the absence of very substantial benefits for Australia (Swan, 2011).

5) Character of the investor: this includes an examination of whether the investor operates on a transparent commercial basis, corporate governance and adequate and transparent regulation supervision, with close examination given to government owned entities in particular.

6) Investments in the agricultural sector: the government looks at the effect of the proposal on such matters as availability of resources including water; land access and use, production and productivity, the effect of a proposal on Australia's ability to remain a reliable supplier; biodiversity and employment prosperity. It is also expected that Australian investors will be offered an equal opportunity to purchase agricultural land before it can be acquired by foreign person. Accordingly, an initial proposal by a Chinese company to acquire Kidman Station, the largest agricultural holding company in Australia, was rejected. The sale to a majority Australian owned acquirer, in which the Chinese investor took a minority interest, was later approved (Morrison, 2016a).

7) Investments in residential land: this is a highly contested area in the Australian community and government policy therefore supports the construction and development of new buildings, with the ability of foreign investors to buy to established dwellings very restricted.

8) Investments by foreign government investors: there is a zero threshold for investment of this kind. The Australian government considers whether an investment by a foreign government investor is purely commercial or is designed to further foreign government political or strategic objectives that may be contrary to Australia's national interest. Relevant to this consideration is whether there is actual control by foreign government or whether the foreign government investor operates on a "fully arms-length and commercial basis" (Australia, 2023a, p. 10), in

which case the proposal is much more likely to be approved. Factors such as the existence of external partners, governance, listing of the company on an Australian exchange, size, importance and potential impact are all relevant.

2.4 National security review

The imposition of a separate and tighter test in relation to certain types of foreign investment in 2020 follows an increased focus by the government on the concept of national security. This is reflected in the enactment of legislation related to protection of critical infrastructure and legislation designed to monitor foreign influence in certain sectors,[5] as well as government initiatives such as the Critical Minerals Strategy – most recently revised in 2023 (Australia, 2023d, appendix A). This emphasises foreign investment through strategic partnerships with the United States, Japan, the Republic of Korea, the United Kingdom, India, France, Germany and potentially the EU. The legislation is careful not to refer to any particular country in relation to national security concerns. However the increase in focus on national security coincided with a period of major difficulties in trade and diplomatic relations between Australia and China (Wilson, 2021) and the rejection of a number of investment proposals from Chinese companies. It also followed a period of sustained growth in Chinese investment in Australia (Australia, 2022) and coincided with a worldwide increase in the focus on national security in investment regulation (UNCTAD, 2019) – much of which was and is directed at Chinese investment (Brennan and Vecchi, 2021; Chorzempa, 2022).

Since national security is incorporated in the national interest test, the requirement for a separate national security review applies only where an investment is not otherwise subject to screening. As with the national interest test, proposed investments are assessed on a case-by-case basis and the Treasurer may reject a proposed investment, or impose conditions, if he or she considers that it is contrary to the national security of Australia. The test considers whether an investment would affect Australia's ability to protect its strategic and security interests. Its scope potentially allows for review of a wide group of investments and proposed investments. Investments may also be "called in" for review even if they are not subject to notification and, in exceptional circumstances, the treasurer may impose conditions or require divestment if a national security risk emerges. The treasurer, very unusually, may also exercise what is called the "last resort power," allowing him or her to review actions notified after 1 January 2021, even if the action has been deemed to be approved, approved with conditions or has an exemption certificate. The Treasurer must be "reasonably satisfied" that

5. Security of Critical Infrastructure Act 2018; Foreign Influence Transparency Scheme Act 2018.

there has been a material change of business structure or organisation or he or she must have become aware of a relevant material, false or misleading statement or omission, and be reasonably satisfied that this poses a national security risk. The treasurer may then impose conditions, prohibit an action or, as a last resort, order divestment of the relevant asset (FATA, pt. 3, div. 3).

FATA requires mandatory notification if a foreign person proposes to start a national security business, acquire an interest in a national security business or an entity that engages in a national security interest, acquire an interest in national security land or acquire an interest in an exploration tenement in respect of national security land (FATA, s55B). “National security” is not a defined term. The terms “national security business” and “national security land” are, however, defined in the regulation.

National security land includes land or buildings used by the Defence Force or the Defence Department and land which is known or could, on the making of reasonable inquiries be known to be used by a national intelligence agency (Regulation, Reg. 5).

A “national security business” includes a business carried on in Australia which is known or could, on the making of reasonable inquiries, be known to be a business which is responsible for or holds a critical infrastructure asset, as defined in the Security of Critical Infrastructure Act 2018; a telecommunications carrier or certain carrier service providers; developer, manufacturer or supplier of critical goods, technology or services for defence and intelligence use (including for a foreign country); an entity that stores or has access to, or collects or stores, classified information or personal information of defence and intelligence personnel disclosure of which could affect national security (Regulation, s8AA).

Recent amendments to the Security of Critical Infrastructure Act 2018 created a very expansive concept of critical infrastructure assets. A national security business may include businesses in a wide range of sectors, including gas, water, maritime ports, financial services, energy, food, health services, data storage or processing, higher education and research, utilities (water and sewage), airports, air transport and cargo, telecommunications, broadcasting, domain names, freight and public transport (Australia, 2023c). Each of these categories contains a number of sub-categories and may set out particular entities which are included in the category. In summary, the potential reach of these provisions is very broad.

2.5 Other: exemption certificates and review

An investor may voluntarily make a notification in order to avoid being called in and may apply for an exemption certificate stating that the proposed investment is not contrary to the national interest or otherwise not subject to review. This also applies to national security review. In addition, an investor may ask for review of a national security decision by the Administrative Appeals Tribunal (FATA, s130A).

2.6 Post-investment monitoring: registers of foreign ownership

An issue that has arisen as a result of Australia's strict rules on various types of investment, particularly residential real property, and the increasing tendency to issue approvals subject to conditions, has been compliance, combined with a perceived need for the government to have more and better information on foreign ownership of land and other assets. As a result, the government set up a number of registers, such as the Registers of Foreign Ownership of Water Entitlements and Foreign Ownership of Agricultural Land, administered by the Australian Taxation Office. Pursuant to Part 7A of FATA, a new Register of Foreign Ownership of Australian Assets commenced operation on 1 July 2023.[6] Very generally, the Register requires foreign persons to register if they acquire a direct or indirect interest or take an action in relation to land, water, mining, media or a business that would be notifiable or significant under FATA. Changes must also be registered (Australia, 2024c).

In response to the perceived issue of foreign investors acquiring residential land or units which are not occupied or made available for tenancy, the legislation also imposes a vacancy fee (FATA, s115A).

The Australian government has been increasingly active in enforcing payment of fees and compliance with mandated conditions, as well as carrying out audits and reviews. The broad powers set out in the legislation include the power to order divestment (exercised most frequently in relation to purchases of residential property), impose penalties and pursue civil or criminal penalties, if necessary, although criminal action against investors appears to be rare (FIRB, 2021, cap. 4).

3 DISCUSSION

There are a range of issues which arise from the Australian approach.

3.1 Complexity

As can be seen from the summary above, the Australian rules relating to screening of foreign investment have become increasingly complex as the volume and focus of investment into Australia has changed. The number of legislative documents dealing with the scheme has increased from one relatively short Act

6. Australian Taxation Office website, Foreign Investment in Australia, available at: https://www.ato.gov.au/General/Foreign-investment-in-Australia/. Accessed on: Feb. 1, 2023.

of Parliament and accompanying regulations to a detailed and often amended regulatory scheme which is quite unfriendly to an ordinary investor. Although guidance can be obtained from the comprehensive (and promptly updated) materials on the government website, from lawyers specialising in this area, and through discussions with the FIRB itself, determining whether FIRB must be notified, whether an approval is required or an application (or application for exemption) lodged, has become increasingly difficult and expensive.

In practice, most foreign individuals making an investment in Australia are seeking to buy residential property, and the rules for this, which are based on visa status and whether the property is new (that is, open for investment) or an established property (restricted) are quite straight-forward. In addition, small or medium sized investments in businesses investments (rather than land) should also not be an issue, due to the lower thresholds. Although the ever-expanding concept of national security makes this more difficult to predict. For larger investments and investors, however, the scheme can be time-consuming to navigate.

3.2 Thresholds

The differences in the thresholds which govern whether an investment is significant or notifiable in particular sectors have become increasingly problematic.

First, there are different thresholds depending on how the particular acquisition is categorised. Although when looking at the policy on the macro level, it is clear how these differences have developed, with areas such as residential and agricultural land constituting areas of particular sensitivity, the rationale for the different ceilings for different types of investment is not self-evident.

Secondly, thresholds are determined according to the type of investment entity, with all investments by government investors subject to review. Although this is not specifically directed at Chinese investors, since many other states have state-owned companies and investment entities, in recent years this has had a more significant impact on Chinese companies, due to the dominance of the state-owned sector in Chinese minerals and energy investment (Tomasic and Xiong, 2017). There seems, however, to be no good reason for all acquisitions in this category, no matter how insignificant, to be subject to high level review.

Thirdly, Australia's agreements in its FTAs have introduced an unfortunate level of differentiation in the thresholds applicable to investors from particular nations. As can be seen from the summary above, there are significant differences between different countries. It cannot be assumed that these differences will be ironed out over time, as newer partners negotiate for the benefits accorded to earlier partners, while government policy in relation to, for example, agricultural land and businesses, has resulted in the imposition of lower thresholds on more recent partners. Although the logical answer is to grant all investors (including investors from non-FTA countries) the same thresholds, unification in some sectors seems unlikely even though the government has significant control over these thresholds. Indeed, in 2020, all thresholds were temporarily reduced to zero in order to safeguard the national interest due to the impact of covid-19 on the economy (Frydenberg, 2020).

3.3 Case by case review

The government maintains its view that case by case review is the best method by which to look at particular investments. This is certainly advantageous when changing circumstances (such as very large amounts of foreign investment in particular industries and fields) presents new and difficult issues, as it allows the government to take an evolving approach to new investments. For example, a government policy imposing restrictions on foreign ownership in electricity assets (Morrison, 2018) developed from the imposition of these restrictions in an earlier case (Morrison, 2015). The case by case review also allows the government to respond to community concerns, which are specifically referred to in the policy, in view of the sometimes heated public debate in relation to particular foreign investment proposals.

However, although the case by case approach gives government flexibility in responding to new, unique or particularly controversial issues, it arguably does not contribute to certainty or the rapid and inexpensive resolution of investment applications. In particular, it would be preferable for statements of principle or changes to the policy to be made pre-emptively.

3.4 National security

The increased emphasis on national security, enactment of national security legislation and the rapid expansion of economic sectors where national security concerns may be implicated has added an additional layer of screening and review for foreign investments. Although a method exists whereby investors can seek clarification on whether screening is required, the time and costs involved in administration are likely to increase substantially. In addition, as national security review is applicable to all investors in national security land or a national security business, regardless of nationality or threshold, the question has been raised whether these wide-ranging provisions may breach one or more of Australia's FTAs (McCalman, 2022).

3.5 Transparency

Information in relation to approvals, the value, number and type of investments and investigation of compliance and so on was provided by the FIRB in its annual reports and now by the Treasury and ATO in other public documents and reports available on their websites. FIRB annual reports show, for example, that formal rejections of investment proposals are rare (FIRB, 2021). They do not, however, set out the grounds of refusal or describe in any detail the conditions that are attached to large and important proposals. A short version of decisions made by the treasurer can be found in press releases by the relevant Treasurer, but these are often brief and not particularly descriptive. They may not, for example, include the ultimate foreign ownership of the investor (Morrison, 2015) or the full reasons for a rejection of the imposition of conditions. The rejection of the offer of "foreign investors" (known to be State Grid – a Chinese company – and Cheung Kong – Hong Kong) for a majority interest in Ausgrid (the New South Wales electricity distribution network), for example, was rejected on national interest grounds with a vague reference to national security (Morrison, 2016b). An article published some three years after the decision claimed that the reason for the veto was the role of Ausgrid in supplying power to highly restricted United States-Australia military base in the Northern territory (Hartcher, 2018).

What this means in relation to controversial proposals is that the press, the public and potential investors are left to speculate on the reasons behind particular decisions. It is not clear what explanations are made to the potential investors behind the scenes, but clearer statements of the reasoning behind particular decisions would certainly assist in creating a perception of certainty in the system.

4 CONCLUSION

Notwithstanding these comments on potential issues with the Australian screening process, large amounts of FDI come into Australia each year, in the form of acquisitions of existing businesses and the investment of new capital. As noted above, rejections of investments on national interest or national security grounds are rare. The regime for small and medium business acquisitions, and, indeed, most acquisitions and investments, is relatively straight-forward. However, the review process for screening of large proposals, proposals relating to land and potentially sensitive areas, particularly those with national security implications, has become increasingly complex and potentially time-consuming. On-going requirements relating to registration and compliance after the investment is made have also increased considerably. The complexity of the system, however, is in large part due to amendments and changes made in response to the flow of investment and consideration of the role of foreign ownership in what is a relatively small nation with the aim of ensuring that foreign investment makes a positive contribution to the economy and furthers Australian interests as well as those of the foreign investors. While steps could and may be taken in the future to improve the efficiency of the system, therefore, it seems unlikely that the underlying principles of the case-by-case screening system will change materially in the near future.

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