

25 February 2022

John Breusch
Foreign Investment Division
Treasury
Langton Cres
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By email: FIRBStakeholders@treasury.gov.au

Dear John

2022 Foreign Investment Reforms - Exposure Draft Regulations

The Property Council welcomes the opportunity to provide comments to Treasury on the exposure draft regulations which amend the *Foreign Acquisitions and Takeovers Regulation 2015* and are designed to reduce regulatory burden by clarifying certain aspects of the foreign investment framework and streamlining some less sensitive types of investment.

We welcome the Government's ongoing commitment to improving the foreign investment review framework both with this initial regulatory package and the broader package of reforms to be undertaken in the second half of 2022. We look forward to contributing to this more holistic reform process and will engage with Treasury through a separate submission.

Comments on the exposure draft regulations

We strongly support the immediate set of regulatory amendments to the foreign investment regime as a response to the findings in the final report on the evaluation of the 2021 reforms. Our comments below address a number of the proposed changes that are most relevant to our members.

Raising the control threshold in unlisted land entities

The raising of the control threshold for foreign persons who acquire an interest in an unlisted Australian land entity from 5 per cent to 10 per cent (which aligns the control thresholds for listed and unlisted Australian land entities) is a change that we fully support. This change will allow for greater investment to flow into the property sector that is non-sensitive and should be encouraged. By raising the threshold for unlisted entities to that of listed entities, this creates a level playing field for investors and fund managers across both types of asset classes.

Acquisition of interests without an increase in the proportionate share or unit holding

We also welcome the intended improvements whereby FIRB approval isn't required for acquisition of interests in securities where the proportionate share or unit holding will not increase as a result of that acquisition.

However, the draft regulations state that an objective test of belief based on 'reasonable grounds' would need to be met for the exemption to apply, with only a relatively simple example given.

It is not clear to us why this particular test and wording has been used to provide for an exemption.

If it is the case that this 'reasonable grounds' test may provide some flexibility for investors that intend to abide by the rules based on a reasonable belief but are impacted by unforeseen circumstances (e.g. co-investors that do not provide capital as expected or agreed to), then this should be further expanded on in the explanatory memorandum.

Given the overall intent is to reduce the need to go through FIRB approval for investors, the lack of clarity in the draft regulations may mean that practically applying the test is difficult and investors will still go for FIRB approval to mitigate any perceived risk.

Additional clarity can be achieved by giving examples of such cases or circumstances in the regulations/explanatory memoranda to ensure the effectiveness of these regulations.

Moneylending exemption

Amendments in the exposure draft regulations to expand the moneylending exemption to cover non-stock or mutual entities are welcome. We will raise issues and recommendations with respect to improving the moneylending exemption further in the Tranche 2 consultation.

Further consultation

We look forward to contributing to the Tranche 2 consultation that will allow for a greater scope of reforms and improvements to the foreign investment review framework in the second half of 2022.

If further consultation with the Property Council is required on these immediate changes, or if you would like to discuss any aspect of this submission, please contact Kosta Sinelnikov on 0422 168 720 and ksinelnikov@propertycouncil.com.au or myself on 0400 356 140 and bngo@propertycouncil.com.au.

Yours sincerely



Belinda Ngo
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