

1 April 2020

**Urgent**

The Hon Josh Frydenberg MP  
Federal Treasurer  
Commonwealth Government of Australia  
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**Changes to Australia's foreign investment framework announced this week – impact on venture capital, private equity and private credit investment flows into Australian businesses**

Dear Treasurer

I am writing to you on behalf of the \$60B private capital investment industry in Australia, and the close to 200,000 domestic workers directly employed by the businesses that we invest into. Our 200 member firms comprise private equity, venture capital and private credit funds, as well as domestic and international investors into those funds, and leading corporate advisors.

Firstly, I would like to congratulate you and the Morrison Government for the measured and decisive steps you have taken so far in responding to the global COVID-19 pandemic that has changed every dimension of our daily lives. The impact of this virus on Australian businesses, and our broader economy, will clearly be significant and enduring for many months and years to come. At times like this we all want, and expect, to see our Federal Government taking whatever action is necessary to safeguard our collective interests in the long-term, even where there are some consequential short-term implications that we must all do our best to manage and solve for.

We understand the importance of the temporary policy changes you announced in recent days to implement stricter controls within the foreign investment framework during the evolving and fluid circumstances arising from COVID-19. We are broadly supportive of the changes, and we are pleased that you have clearly indicated that these changes are temporary in nature.

We do, however, want to ensure that the more expansive regime continues to support the flow of investment capital into Australian businesses, especially during this period of high volatility and uncertainty. Our industry is entirely focussed on maintaining and supporting the viability of the businesses into which we invest and protecting as many Australian jobs as possible during this ongoing period of instability for our community and the economy.

By way of brief background, a significant number of private capital investment funds within Australia currently fall outside the scope of the Foreign Acquisitions and Takeovers Act 1975 (Cth), and because of that their investment activities have typically not attracted the additional compliance and regulatory processes associated with FIRB approvals. There is another group of investment funds within our industry who do fall



within the current regime by virtue of the breadth of the 'foreign government investor' rules which apply to a broad-base of institutional investors such as public pension funds and sovereign wealth funds offshore.

For those funds who are foreign government investors, the businesses into they invest (the 'portfolio companies') are in turn considered foreign government investors. Foreign government investors are already subject to \$0 thresholds but are still affected by the changes as a result of potential delays in reviewing and approving applications.

Moreover, the breadth of the changes announced a few days ago will effectively bring the remaining venture capital, private equity and private credit investment flows into Australia within scope of the expanded framework, requiring approval for what would be widely considered low-risk transactions, previously not subject to the operation of the FATA.

The private capital industry has for many years been an advocate for a strong and dynamic foreign investment policy regime that carefully balances the need for appropriate protections to the national interest, while at the same time, maintaining the confidence and support of offshore investors. As you know, those offshore investors play a vitally important role in providing much-needed capital to support the growth of Australian businesses and jobs across every sector of our national economy.

Many of my member firms have expressed concern about the potential downstream implications of the changes to the framework announced earlier this week.

Their primary concern is that the changes have the potential to lead to a significant slow-down in the capacity for inbound capital to be immediately injected into Australian businesses – from early stage innovative startup businesses right through to larger businesses and corporate groups – that require access to capital and emergency funding at this time to allow them to continue to remain viable, and to retain their workforce amidst the forced and effective shut-downs across countless business sectors.

The changes seem likely to capture a wide range of activities within our industry including low value 'bolt-on' type acquisitions, as well as 'business as usual' activities such as the entering into commercial office and retail leases, and possibly even the incorporation of new subsidiary companies within existing groups.

Additionally, internal reorganisations would likely be within scope of the expanded regime, and there is some uncertainty about the potential for the regime to extend to convertible notes and the taking of security.

One of the most pressing considerations for our industry is the fact that business recapitalisations – typically constituting 'emergency funding' scenarios – will be a necessary and vitally important mechanism to support the ongoing viability of countless Australian businesses in the current environment. The emergency nature of such funding is driven by the current economic and market environment and goes directly to maintaining the viability and security of jobs within existing businesses. The more expansive framework introduces the potential for delays in the granting of approvals in such cases.

Our private capital investment industry understands clearly the importance of maintaining heightened scrutiny on inbound investment into Australia during the current economic and market volatility we are all confronting. In our view, the need for that closer scrutiny must be weighed against the need to ensure that investment flows remain open, transparent and stable, thereby enabling our investment industry to continue to support portfolio companies during this uncertain time. We want to do everything we can to continue to support our portfolio companies from a strategic management point of view, and we need to be able to do everything we can to support them with appropriate capital injections to keep them viable as well.

With your support, I would like to encourage FIRB and the Treasury to work with our industry to put in place administrative processes that would help to ensure that practical and pragmatic steps are established to deliver on the government's policy objectives in this area. The key issues for which we seek appropriate administratively workable solutions include:



1. Prompt and timely consideration of foreign investment applications, especially in circumstances where capital is ultimately sourced from upstream passive investors who are domiciled in jurisdictions with which Australia has well-established long-term relationships. In this area, we would like to seek commitments that approval processes can continue to be promptly managed by FIRB and its consult agencies and, in broad terms, will be finalised nearer to around 30 days rather than the proposed longer timeframe of up to 182 days. Our suggestion is that FIRB and the Treasury establish a small dedicated private capital investments team, with dedicated resources on-hand to expedite applications for approval from venture capital, private equity and private credit funds within the Council's membership.

Given the nature of private capital investment strategies, we propose raising with FIRB the possibility of establishing a form of expedited screening process, perhaps involving a 'deemed approval' after 10 days for certain categories of foreign persons, including foreign government investors, to invest in assets that are not sensitive and valued below the previous, non-FTA monetary thresholds available for private foreign persons. An approach like this may be suited to investors who have been through the FIRB process in the last three years, and who have a history of positive and proactive regulatory engagement. We believe the screening process could be shortened in this type of situation because FIRB and its consult agencies would only need to consider the target/asset in question, rather than undertake a detailed analysis of the applicant.

This abbreviated process would also be highly valuable for venture capital investors into Australia who play a vital role in supporting the continued growth of our innovation ecosystem through investments into early stage startup businesses seeking access to growth and scale-up funding rounds, typically in very short timeframes. Maintaining a competitive framework for venture investors into our innovation ecosystem is critically important to Australia's long-term growth in many key established and new industry sectors such as technology and internet, as well as biomedical discoveries and commercialisation.

2. Providing clarity and guidance in respect of a number of typical fact-pattern scenarios (examples of which are being formulated now for discussion with FIRB and the Treasury) which are likely to be prevalent in the approach taken by private capital investors to injecting new capital into existing portfolio companies who require access to emergency funding to assist with meeting day-to-day obligations and securing the ongoing employment of their existing labour force. New capital investment alongside the Government's new JobKeeper Program will go a long way towards safeguarding the jobs of millions of Australians across the economy.
3. FIRB should provide a broad-based waiver of application fees in the current economic environment, recognising the importance of injecting as much capital as possible into businesses, rather than diverting scarce financial resources to cover fees and levies paid to government agencies. An alternative option is to consider waiving, or reducing significantly, the fees associated with applications to FIRB that only arise as a direct result of the more expansive framework and the removal of monetary thresholds announced this week.

Over coming days we will engage further with FIRB and the Treasury to continue to explore how these new changes to the foreign investment framework can be made to work in a practical way that allows vitally important capital to continue to be invested into Australian businesses to keep them viable during this period of unprecedented and sustained economic volatility. I would be grateful if you and your office could offer your



support for these conversations with FIRB to help alleviate any unnecessary hurdles that might get in the way of devising practical and workable administrative processes.

On behalf of the entire private capital investment industry, we encourage you and the Prime Minister to continue to do everything within your power to maintain strong foundations on which we can all work together to rebuild our economy over the months and years ahead.

We look forward to participating in any future discussions in this area, or in any other area of policy that we can provide helpful support. If you or your team would like to discuss any of these issues further, please do not hesitate to contact me on +61 404 080 832.

Yours sincerely

Yasser El-Ansary  
Chief Executive