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Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Committee Secretary

Foreign Acquisitions and Takeover Legislation Amendment Bill 2015 and related bills

Thank you for the opportunity to provide further comment on the *Foreign Acquisitions and Takeover Legislation Amendment Bill 2015* (FATA bill) and related bills.

We have consistently and strongly supported Government's initiative to review and streamline the operation of the FIRB rules. Throughout the consultation process we have raised and resolved many issues directly with Government which would have had significant adverse impacts on investment and Australian business.

There is in fact only one major issue regarding FIRB application fees that is a concern to the Property industry.

The Property Council remains opposed to the FIRB application fees proposed, particularly as they apply to residential property. The fees are unjustifiably high, and in our view do not accurately reflect the administrative cost of the new processes.

We otherwise support the Federal Government's intent to strengthen the enforcement of Australia's foreign investment rules. In particular, we support the collection of more accurate data on foreign investment into Australia, with an emphasis on understanding the role of such investment in the residential property market and its impact on housing costs.

Our support for the legislation is based on the considerable comfort Government has provided to industry that critical issues impacting FIRB operation will be resolved through the new draft regulations.

We have been assured the regulations resolving these issues will be finalised in the near future, and we look forward to reviewing these in further detail. These issues include:

1. Exclusion of commercial transactions from FIRB approval process requirements

Commercial transaction should not require FIRB approval as they are generally not considered counter to the national interest and such requirements would otherwise place an unreasonable additional administrative burden on both government and industry.

Consultation with government has confirmed that the Regulations will exclude commercial transactions under \$252 million (pegged to CPI) from FIRB approval processes. For transactions where investors are from "agreement countries" (Reg 36 and 37), it is understood that transactions under \$1.094 billion will be excluded.

2. Exemption of existing transactions from extended 'foreign persons' definition

The proposed extension of the definition of 'foreign person' to include foreign governments is reflected in the legislation.

While the Property Council appreciates the intention of these changes, existing domestic funds may be adversely impacted and jeopardise existing global investments if the definition is not prospective.

Government has confirmed that the extended 'foreign persons' definition will be prospective only.

3. Amendment to 40% foreign investor thresholds

The issues with the proposed changes to foreign investor thresholds are twofold.

In the first instance, the requirements for listed trusts and companies to inform Treasury immediately of changes in their share register (that would result in a greater than 40% foreign ownership), and freeze such transactions, is an impossible notification compliance burden.

The organisations will not know of the transaction on a listed market until it has been finalised.

Government has confirmed that the threshold reporting requirements will be amended to ensure that notification can take place after the transaction takes place without risk of penalty.

The second issue is that the 40% foreign investor threshold continuously puts trusts and listed companies at risk of breach, where the threshold is exceeded despite no single foreign person holding a controlling or significant interest.

Any breach of the threshold will create a requirement on these companies or trusts to undertake FIRB approval for any subsequent transactions, and may place them at risk of penalties for transactions that are already underway.

Government has confirmed that the Regulations will exclude foreign investors with less than 5% interest from the total 40% threshold calculation (Reg 32).

Once implemented, these proposed new measures will substantially improve the FIRB process for commercial investments and ensure there are no unintended impacts for Australian homebuyers who might otherwise be forced to pay FIRB fees where they buy a house from a residential developer.

At this point, we are working off the assurances provided by Government.

The Property Council looks forward to further engagement with Government as the Regulations to support this legislation are progressed. In the meantime, if you have any queries, please do not hesitate to contact our offices on [REDACTED].

Kind regards

Andrew Mihno
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Property Council of Australia