

Senate Rural and Regional Affairs and Transport References Committee

**Questions on Notice – Tuesday, 9 April 2013
PERTH**

Inquiry into the Examination of the Foreign Investment Review Board National Interest Test

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
REFERENCES COMMITTEE**

Inquiry into the Foreign Investment Review Board National Interest Test

Public Hearing Tuesday, 9 April 2013

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Questions Taken on Notice - Grow SA

1. HANSARD, PG 7

Senator RUSTON: On notice—you do not have to do it now—I would be really keen to get an idea from the whole-of-supply-chain that you are referring to what your wish list would be from a horticultural perspective in terms of ending up with applying the national interest test to the horticultural industry interest test. What would you do that would encourage the necessary investment into horticulture that you obviously need to go forward and meet all these wonderful things that the Australian government is saying—being the food bowl of the world and feeding the Asian century et cetera? What are the things that we should be doing to support the delivery of the outcome of the rhetoric that we are hearing? You do not have to answer that now, but in due course, as you work through that, I would be very interested to see what you want.

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Questions Taken on Notice – Hassad Australia

1. HANSARD, PG 45

CHAIR: Okay. As I said, if I am off the page, just yell out. We are very grateful for the evidence you provided earlier at the old parliament house, the straight-up-and-down approach to it. Is the capital from the Qatari government a passive loan to Australian corporate entity?

Mr McKeon: No. Hassad Australia is an Australian registered company. It does have a shareholder loan established to finance its activities here in Australia. There is provision, longer-term, to actually repay that loan.

CHAIR: Yes. You are going where I want to go. So what is the status of the loan from the Qatari government to the Australian entity?

Mr McKeon: Can you please explain what you mean by 'status'?

CHAIR: What I would like to know is: is it on commercial terms or is it a passive investment?

Mr McKeon: I would have to say it is a passive investment, going by your criteria. But if I can take that question on notice I am quite happy to provide further detail on that.

Senator EDWARDS: What hurdle rate does it have to achieve?

CHAIR: Yes. What I am getting it is that we have taken evidence in written form from the Australian Taxation Office that, where a foreign sovereign investor makes a passive investment—if yours is a passive investment—then, if the loan is eligible for any interest, it is tax-free back to the sovereign entity. Do you have servicing arrangements for the debt that the Australian entity has created with the Qatari government?

Mr McKeon: I would have to take that question on notice. Sorry, I cannot answer that one off-hand.

CHAIR: We would even be prepared to go in camera, if you would like. Obviously, one of the things the committee—and as I said, we welcome Hassad's candour—is really concerned about is foreign capital, which is welcome in Australia, being in the commercial market, and part of that is being also captured by the revenue base without distorting the capital base. So if you could take that on notice and let us know, and if necessary you can respond in camera if you think it is getting too close to commercial confidentiality. We would be interested to know what the arrangements are in terms of servicing the Qatari capital.

Mr McKeon: I am quite happy to take that on notice and to provide a response.

Senator EDWARDS: Mr McKeon, I too appreciate your candour and being so forthright, and coming today. But do you understand what we are looking for? Is there a hurdle rate which you have to achieve annually on the investment of your shareholder?

Mr McKeon: Again, I would have to come back to you on that. I cannot answer that one off the cuff.

2. HANSARD, PG 46-47

CHAIR: Thank you very much. So, if we have gone through that process and we have agreed on a price and I have signed the confidentiality agreement, and I go down to the Illabo pub, get pissed and let it be known to someone that I have signed up, and someone says, 'I'll give you \$500 an acre more,' what is the penalty for breaching the confidentiality clause?

Mr McKeon: Basically none at all, because the heads of agreement is a non-binding agreement. It is actually stated on it that it is a non-binding agreement. But in all our dealings Australia wide we have only ever had that happen once.

CHAIR: But are you prepared to put it on the record that, sure, you sign them up to a confidentiality agreement, but if they want to breach the confidentiality agreement there is no penalty? You do not say, 'Well, we're not going to buy the property from you'? Or, if someone else comes along and offers them \$500 an acre more, they are free to sell?

Mr McKeon: Again, I would have to take that one on notice, but the basic principle is that, if there is no maliciousness in the intent of the person in breaking that confidentiality agreement, there is really no recourse for the person—

CHAIR: That is fair enough.

Mr McKeon: they had the agreement with to seek a penalty for it. But, if there is maliciousness and it does cause damage, obviously there may be some recourse.

CHAIR: You can take that on notice...

3. HANSARD, PG 48

Senator EDWARDS: On a point of clarification from earlier, when Senator Heffernan was looking for what I would describe as the hurdle rate that the Qatari government requires of you on an annual basis: when you said you will have to take that on notice, was that about the question of actually giving us that information or about looking to try to understand what it was that your shareholders require?

Mr McKeon: It is understanding exactly what your question would be. We are given a hurdle rate we aim to achieve within a business plan. That is the return on investment we will give to our investor in the longer term. When it comes to actual taxation law, I am sorry, but I do not have the knowledge in that area to answer your question correctly, so I would prefer to take it on notice and provide you with a correct answer.

4. HANSARD, PG 48

Senator EDWARDS: To take another Australian public company, AACo, the second largest landholder in this country, as an example, they have shareholders and have to report to them every six months as required by the ASX rules. With foreign investment are you likely to be in a more favourable position with patient capital than perhaps a company reporting on the ASX in the same agricultural pursuit?

Mr McKeon: We are an Australian registered company, so we must adhere to all Australian taxation laws in relation to how we operate. I am not qualified in this area to answer it fully for you, but I am more than happy to have that fully answered for you. But the simple answer is that we are an Australian registered company and must operate by Australian law.

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Questions Taken on Notice – Hassad Australia

1. HANSARD, PG 45

CHAIR: Okay. As I said, if I am off the page, just yell out. We are very grateful for the evidence you provided earlier at the old parliament house, the straight-up-and-down approach to it. Is the capital from the Qatari government a passive loan to Australian corporate entity?

Mr McKeon: No. Hassad Australia is an Australian registered company. It does have a shareholder loan established to finance its activities here in Australia. There is provision, longer-term, to actually repay that loan.

Hassad Australia: The investment made by Hassad Food Company Q.S.C. into Hassad Australia is not likely to qualify as a passive investment in the context of the tax treatment of Sovereign Wealth Fund investments. As the investment is made for commercial purposes, with a profit objective and the investor has a direct interest in the management of the properties the investment is unlikely to be considered as passive.

Hassad Australia is therefore subject to the same taxes as any other commercial organisation operating in Australia.

CHAIR: Yes. You are going where I want to go. So what is the status of the loan from the Qatari government to the Australian entity?

Mr McKeon: Can you please explain what you mean by 'status'?

CHAIR: What I would like to know is: is it on commercial terms or is it a passive investment?

Mr McKeon: I would have to say it is a passive investment, going by your criteria. But if I can take that question on notice I am quite happy to provide further detail on that.

Hassad Australia: The investment is not a passive investment. The investment has been financed directly by the shareholder and is a mixture of share capital and loans. The shareholder loans have been provided to assist the establishment of the business and ensure it is a profitable investment. These are standard international practices for the funding of such a business. As mentioned above, Hassad Australia is a commercial venture for Hassad Food Company with the objective of becoming a sustainable and profitable business. The profits made by Hassad Australia will be subject to Australian corporate income tax. The shareholder loans will comply with Australian Thin Capitalisation laws and any interest paid on these loans will be on arm's length terms under Australian transfer pricing rules. Further, as Hassad Food's investment is not likely to be considered to be passive for the purposes of the tax treatment of Sovereign investments, any

interest payment is subject to the Australian domestic rate of withholding tax (currently 10%) being the same rate of tax other typical private or public investors would be levied by the ATO on interest payments paid on foreign debt (in the absence of a double tax treaty).

Senator EDWARDS: What hurdle rate does it have to achieve?

Hassad Australia: Hassad Australia aims to achieve a return on investment which is within the top quartile of operational performance for the agricultural enterprises in which it participates. This typically is an EBITDA return on assets of 8-12%pa on average including capital gains.

CHAIR: Yes. What I am getting it is that we have taken evidence in written form from the Australian Taxation Office that, where a foreign sovereign investor makes a passive investment—if yours is a passive investment—then, if the loan is eligible for any interest, it is tax-free back to the sovereign entity. Do you have servicing arrangements for the debt that the Australian entity has created with the Qatari government?

Mr McKeon: I would have to take that question on notice. Sorry, I cannot answer that one off-hand.

Hassad Australia: The investment is not a passive investment. Any interest paid to Hassad Food Company in Qatar will be subject to the domestic rate of Australian withholding tax and also comply with Australian thin capitalisation & transfer pricing rules.

CHAIR: We would even be prepared to go in camera, if you would like. Obviously, one of the things the committee—and as I said, we welcome Hassad's candour—is really concerned about is foreign capital, which is welcome in Australia, being in the commercial market, and part of that is being also captured by the revenue base without distorting the capital base. So if you could take that on notice and let us know, and if necessary you can respond in camera if you think it is getting too close to commercial confidentiality. We would be interested to know what the arrangements are in terms of servicing the Qatari capital.

Hassad Australia: The arrangements are commercial in confidence but are not inconsistent with the terms that exist with other typical Australian inter-company loan arrangements for a commercially operated subsidiary.

Mr McKeon: I am quite happy to take that on notice and to provide a response.

Senator EDWARDS: Mr McKeon, I too appreciate your candour and being so forthright, and coming today. But do you understand what we are looking for? Is there a hurdle rate which you have to achieve annually on the investment of your shareholder?

Mr McKeon: Again, I would have to come back to you on that. I cannot answer that one off the cuff.

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Mr McKeon: Basically none at all, because the heads of agreement is a non-binding agreement. It is actually stated on it that it is a non-binding agreement. But in all our dealings Australia wide we have only ever had that happen once.

Hassad Australia: The Term Sheet agreement is non-binding (except for the confidentiality and exclusivity provisions) and HA would not be able to require the vendor to continue with the sale. However, if the confidentiality clause was breached, HA would weigh the quantum of the loss suffered by HA as a result of the breach of confidentiality and make a commercial decision as to whether there would be any merit in enforcing its contractual rights against the vendor.

CHAIR: But are you prepared to put it on the record that, sure, you sign them up to a confidentiality agreement, but if they want to breach the confidentiality agreement there is no penalty? You do not say, 'Well, we're not going to buy the property from you'? Or, if someone else comes along and offers them \$500 an acre more, they are free to sell?

Mr McKeon: Again, I would have to take that one on notice, but the basic principle is that, if there is no maliciousness in the intent of the person in breaking that confidentiality agreement, there is really no recourse for the person—

CHAIR: That is fair enough.

Mr McKeon: they had the agreement with to seek a penalty for it. But, if there is maliciousness and it does cause damage, obviously there may be some recourse.

CHAIR: You can take that on notice...

Hassad Australia: Should Hassad Australia suffer any direct or indirect loss as a result of a breach of the CA and the confidentiality provisions of the Term Sheet, it will be a commercial decision as to whether Hassad pursues the vendor for the breach.

3. HANSARD, PG 48

Senator EDWARDS: On a point of clarification from earlier, when Senator Heffernan was looking for what I would describe as the hurdle rate that the Qatari government requires of you on an annual basis: when you said you will have to take that on notice, was that about the question of actually giving us that information or about looking to try to understand what it was that your shareholders require?

Mr McKeon: It is understanding exactly what your question would be. We are given a hurdle rate we aim to achieve within a business plan. That is the return on investment we will give to our investor in the longer term. When it comes to actual taxation law, I am sorry, but I do not have the knowledge in that area to answer your question correctly, so I would prefer to take it on notice and provide you with a correct answer.

Hassad Australia: Hassad Australia aims to achieve a return on investment which is within the top quartile of operational performance for the agricultural enterprises in which it participates. This is typically an EBITDA return on assets of 8-12%pa on average including capital gains.

Hassad Australia will be subject to corporate income tax on profits. Any interest paid to Hassad Food Company in Qatar will be subject to the domestic rate of Australian withholding tax and also comply with Australian thin capitalisation and transfer pricing rules. As such, Hassad Australia is subject to the same tax rates and laws as any other typical private or public investors in investing into Australia.

4. HANSARD, PG 48

Senator EDWARDS: To take another Australian public company, AACo, the second largest landholder in this country, as an example, they have shareholders and have to report to them every six months as required by the ASX rules. With foreign investment are you likely to be in a more favourable position with patient capital than perhaps a company reporting on the ASX in the same agricultural pursuit?

Mr McKeon: We are an Australian registered company, so we must adhere to all Australian taxation laws in relation to how we operate. I am not qualified in this area to answer it fully for you, but I am more than happy to have that fully answered for you. But the simple answer is that we are an Australian registered company and must operate by Australian law.

Hassad Australia: Hassad Australia is a private company in the same position as any private company in Australia and not subject to ASX Listing Rules. As with any private company, the issue of shareholder loans (whether local or foreign) and the terms upon which they are based, may be more favourable or less favourable than an ASX listed company in order to establish and sustain a viable business. It is the objective of Hassad Australia to be profitable and any profits in Australia will be subject to Australian corporate income tax. Hassad Australia has discharged all its tax obligations and will continue to do so.