

MEMO# 33740

August 31, 2021

Response to the Australian Government's Consultation Evaluating the 2021 Foreign Investment Reforms

[33740]

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TO: ICI Members

ICI Global Members SUBJECTS: International/Global RE: Response to the Australian Government's Consultation Evaluating the 2021 Foreign Investment Reforms

The Treasury Department of the Australian Government is evaluating the operation of its recently adopted foreign investment reforms that went into effect on January 1, 2021 and issued a consultation seeking feedback by August 31, 2021.[\[1\]](#) The foreign investment reforms sought to address national security risks, while improving the operation of the foreign investment review framework. They updated the framework in three broad ways: addressed national security risks; strengthened the existing system; and streamlined investment in non-sensitive businesses. The Government's evaluation is required to be completed by December 10, 2021.

We submitted the attached letter requesting that the Government consider the following recommendations:

- The mandatory national security notification regime should include appropriate exemptions based on an investor's profile. Specifically, the Government should consider excluding regulated asset managers and regulated funds from the mandatory notification requirement for notifiable national security actions if they meet specified conditions, given that they are inherently unlikely to give rise to national security concerns.
- The Government should consider publishing a list of businesses that are national security businesses (at least for publicly listed companies). Such a list would ensure that foreign investors are aware of the businesses that the Government intends to be within the scope of the obligation and avoid foreign investors unintentionally neglecting to submit a notification.
- The minimum fee of \$2,000 (regardless of the size of the transaction) should be applied to transactions undertaken on behalf of regulated funds because such investments are not being made to obtain control.

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endnotes

[1] The consultation is available at: <https://treasury.gov.au/consultation/c2021-193739>. See ICI Memorandum 33715, dated August 4, 2021, at: <https://www.ici.org/memo33715>, for a summary of the consultation (members only).

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