

Via E-mail (FIRBStakeholders@treasury.gov.au)

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Manager
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**RE: Major Reforms to the Foreign Investment Review Framework
Submissions on Consultation**

BGIS Pty Ltd (“**BGIS**”) is pleased to make submissions in respect of reforms to the *Foreign Acquisitions and Takeovers Act 1975*. We sincerely thank you for the opportunity to participate in the consultation process.

BGIS, formerly known as Multiplex Asset Management Pty Limited, was formed in 2000. BGIS is a provider of real estate management services, including facility management services, project delivery services, and technical repair and maintenance services. BGIS has the privilege to manage real estate for its clients in the public sector, including federal and state governments, and in the private sector.

BGIS manages more than 79 million square feet of real estate across approximately 10,000 locations in Australia. BGIS acknowledges Aboriginal and Torres Strait Islander people as the traditional custodians of the land on which BGIS provides its services. BGIS pays its respects to their Elders, past and present. BGIS welcomes all people and pledges to be inclusive and non-discriminatory.

In managing the facilities for its clients, BGIS engages more than 3,100 suppliers in Australia, with a managed spend of more than \$600 Million with Australian businesses.

In 2019, the Facilities Management Association of Australia recognised BGIS in several categories at its FM Industry Awards for Excellence. In particular, BGIS was (i) a finalist for “*Excellence in FM*” in respect of its services to the NSW Department of Communities and Justice, (ii) a finalist for “*Sustainability and Environmental Impact*” for BGIS’s services for the Australian Department of Defence, and (iii) BGIS’s management accepted the top award for “*Leadership in Diversity in Industry*” for contributions to improving diversity in the workplace.

In 2020, BGIS was named the Australian Department of Defence’s “*2019 Base Services Contractor of the Year.*” The prestigious annual award was announced by the Deputy Secretary of Estate and Infrastructure, Steve Grzeskowiak, who commended BGIS for achieving a positive trajectory of continued improvement, service delivery, and cost management, amongst many other achievements.

BGIS applauds the introduction of reforms and measures to address national security risks, strengthen compliance and enforcement powers, and streamline investment in non-sensitive businesses. BGIS appreciates the opportunity to provide its perspective on the considerations set out in these submissions based on its experiences with procurement of services from subcontractors, consultants, and construction contractors.

1. “Critical Services” for the Department of Defence

One of BGIS’s clients is the Commonwealth of Australia represented by the Department of Defence (“**Defence**”). In 2014, Defence completed the signing of a suite of 10 contracts for supports at Defence bases, which was the largest single procurement of its type undertaken by the Commonwealth.

At the time, public disclosures estimated the contracts to be collectively worth about \$10 billion and *“cover the full range of key services for Defence bases – everything from routine maintenance and security to pest control, waste management, transport, and support to range and training areas.”*¹

BGIS, then known as Brookfield Johnson Controls, was privileged to be one of the 10 contractors to provide such services and manage the delivery of services to Defence by thousands of other Australian businesses.

Many Australian businesses may consider their services as critical services to Defence, such as routine maintenance and pest control. The draft National Security Business Regulations do not define “critical services” to defence. The legislation should clarify what are the intended “critical services” contemplated by Section 10A(2)(h) of the National Security Business Regulations, and whether it is only certain of those “critical services” that would constitute a “national security business.” For example, the legislation could and should reflect other public disclosures that “critical services” do not include ordinary services that are not particular to defence or the national intelligence community, and that the provision applies only when those “critical services” are intended for military end-use in activities that relate to (or may affect) Australia’s national security.

Without particulars of what constitutes “critical services” to defence, a whole range of ordinary service providers may be caught by, and apply inconsistently, the perceived meaning of “critical services.”

Recommendation – The legislation should define the “critical services” contemplated by Section 10A(2)(h) of the National Security Business Regulations (i) to exclude ordinary services that are not particular to defence or the national intelligence community, and (ii) to satisfy as a “national security business” only when those “critical services” are intended for military end-use in activities that relate to or may affect Australia’s national security.

2. “Start a national security business”

Many Australian businesses that will be “national security businesses” are foreign persons because their upstream ownership includes private equity funds comprised of passive foreign investors. These Australian businesses are vital to the delivery to Defence and other government organisations of goods and services, both critical and ordinary, in a reliable and safe manner.

The foreign persons that carry on any “national security business” and bid for new work will be adversely affected by a “notifiable national security action” with each of its tenders for new work. Their bids will be significantly disadvantaged (if not outright disqualified from the tender) for their inability to meet tight timelines for signing a contract, commencing work, or having to increase their prices for the costs associated with their repeated “notifiable national security actions.”

Currently, in respect of some tendered work, Australian businesses that intend to provide services in respect of government facilities, must either obtain a security clearance or already hold a security clearance. The legislation reforms could treat “national security businesses” similarly; a “national security business” should be deemed to not “start a national security business” to the extent it already carries on a “national security business” under any of the criteria in Section 10(A)(2).

Recommendation - The meaning of “starts a national security business” should be clarified such that an entity that is a “national security business” should be deemed to not “start a national security business” to the extent it already carries on a “national security business” under any of the criteria in Section 10(A)(2).

3. Exemption Certificates for Foreign Persons

BGIS is familiar with Australia’s foreign investment regime and the obligations of foreign persons and foreign government investors. BGIS’s upstream ownership has, for many years, included private equity funds consisting of purely passive investors and pension funds.

We understand that foreign investors whose funds are held within private equity funds may have no power to influence or direct the investment decisions of the private equity fund, let alone any power or influence or direct the downstream portfolio companies. These passive investors, which may include foreign investors and foreign government pension funds, within a private equity fund may change over time. These period changes may be relatively minor to ultimate ownership of, and unknown by, the Australian business conducting a “national security business.”

An Australian business that is deemed to be a foreign person due to its upstream ownership by passive investors within funds, may be faced with real problems. For example, an Australian business that is a foreign person bidding to win new business may be unable to comply with bid deadlines and additional costs consequence resulting from “notifiable national security actions” to which competing bidders are not subject. The impacts will have broader effects: procuring authorities will have narrowed fields of competing bids and potential delayed timelines; lessened competition in the Australian marketplace; and private equity funds and investors will have impediments to success where co-investment includes foreign persons.

The legislation should allow for exemption certificates to be sought by private equity funds or managers of private equity funds on behalf of the investment vehicle. Such a mechanism would reflect the passive nature of the investors within the fund and give predictability to the Australian business’s ability to compete in Australia without triggering a notifiable national security action with each change to upstream passive investors with funds.

Recommendation – BGIS recommends that exemption certificates be extended to the private equity fund as a whole, on behalf of those passive investors whose funds are held within.

BGIS is pleased to provide its perspective and trust that our comments are helpful. BGIS appreciates being engaged on the implementation of the reforms.

Yours Faithfully,



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¹ Australian Government Department of Defence. (06 August 2014). *Parliamentary Secretary to the Minister for Defence – Largest government procurement of services finalised*. [Press Release] Retrieved from <https://www.minister.defence.gov.au/minister/darren-chester/media-releases/parliamentary-secretary-minister-defence-largest-government>.