FINANCIAL REVIEW

SE Features - Features

# HD China challenge

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WC 1,959 words
PD 10 June 2014
SN The Australian Financial Review
SC AFNR
ED First
PG 44
LA English


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Exclusive Foreign Investment Review Board chairman Brian Wilson tells Anne Hyland that Australian fear of Chinese buyers is overblown and managing the politics on both sides is key to getting the most out of the relationship.

As Brian Wilson, the Foreign Investment Review Board's chairman, completes his third tour of China, the long shadow of that country remains over one of Australia's most important regulators.

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In the future, FIRB's most contentious decisions will most likely be around growing Chinese investment in Australia, particularly from state-owned companies. Already, Chinese investment in Australia is a hot button topic both with the public and politicians, particularly in the sensitive sector of residential property. A federal government inquiry is under way to determine whether Australia's foreign investment rules for residential property are adequate.

The public and political anxiety around China exists for many reasons. It is a relatively new and rapidly growing investor and an aggressive one. It differs to previous investors from Asia, such as the Japanese, in that companies from China typically want majority ownership or operational control of Australian companies.

By comparison, when Japanese trading companies first began investing in Australia in significant numbers they usually would take a minority interest in a resource company that was enough to get them a seat at the decision-making table.

As one former FIRB employee explains: "There weren't that many examples where the Japanese wanted to buy the whole lot or to in fact run the places. They just wanted to be there to have a seat at the table and make sure they got their share of the exports. Now the Chinese are very different to that. They have a strong preference in most cases for having majority ownership and if possible total ownership. They do like to control the operations of the companies they are involved in – not just to have a seat at the table. They are different to what we saw in the past coming out of Asian investors. And, since so many of the Chinese companies are owned by the central government or by governments of the provinces, that makes people nervous."

Such nervousness has been interpreted by Chinese investors as Australia being difficult to do business with or even that it doesn't like Chinese investors.Dispelling dangerous myths

Wilson says these are some of the "myths" that he has been trying to dispel in his recent visit to China, which took him from Beijing through central China to Shanghai.

Such visits are unusual for FIRB. Wilson doesn't recall previous chairmen regularly touring a foreign country to explain to politicians and business people Australia's foreign investment regime and FIRB's role in it.

In doing so it has put him in the odd position of helping polish the federal government's "open for business" shingle.

"It's slightly unusual for a regulator to be also involved in the investment promotion message," Wilson admits.

But the former investment banker, who became chairman in April 2012 and has been on the board for six years, sees it as important. And the Chinese want it too, says Malcolm Brennan, special counsel for King & Wood Mallesons.

Brennan says there was a misunderstanding in China that FIRB makes the final decision on sensitive foreign investment deals. "When we finally woke up there was a perception problem in China, the question was what do we do? We send the Treasurer over. We send the head of the Department of Treasury over. The Chinese politely said, 'That's all wonderful but we want to hear from FIRB'. The belief offshore is that it is FIRB that makes the decision. We've got to break some of these myths. The decision making is at the Treasurer level. The Treasurer tends to be a little Teflon-coated when it comes to this area because everyone points at FIRB instead. At the end of the day it is a Treasurer's decision."

Brennan adds that Wilson has done well to raise the level of understanding of FIRB's role: "Brian's done pretty well. He's put more of a human face out there."

Since taking on the FIRB role Wilson has set about changing the regulator, wanting to shine a light on its activities to the Australian public and to foreign investors alike, to avoid FIRB continually being tarred "with the shadowy, secrecy brush".

Wilson says his focus on China and the desire to educate politicians and businessman there on the regulator's role is because one day China will become an even more significant foreign investor in Australia, if history is a guide.

Typically countries that have been substantial trading partners with Australia eventually become large foreign investors. This, Wilson says, is what happened with the United Kingdom, the United States and Japan.Largest trading partner

China is now Australia's largest trading partner but in 2013 it was only Australia's eighth-largest foreign investor, if you exclude Hong Kong. The Australian Bureau of Statistics figures show that China invested $32 billion last year, compared with the US at $658 billion, the UK at $563 billion and Japan at $131 billion.

But what Wilson and others are watching is the trend. In the past decade, while US foreign investment in Australia doubled, China's grew tenfold.

FIRB compiles its own statistics but they are measured by approvals. In financial year 2012-13, FIRB's approvals for foreign investment show that China was the third-largest country investor by value – $15.8 billion – after the US and Switzerland.

In the past decade, there have been contentious moments for proposed Chinese investment in Australia, such as the bid by Chinalco to buy up to 18 per cent of Rio Tinto, which fell over in 2009. Then there was last year's decision by the Abbott government to uphold the previous Labor government's ruling to prevent Chinese telco Huawei bidding for work on the national broadband network because of security concerns.

These are exceptions rather than the rule. More often foreign investment by China has been waved through. Last year, the Abbott government approved China's State Grid Corporation's investment in critical electricity and gas distribution assets on Australia's east coast. State Grid agreed to buy 19.9 per cent of the listed SP AusNet and 60 per cent of Jemena, both from Singapore Power, for $7.5 billion.

Treasurer Joe Hockey also scrapped a set of foreign ownership conditions that prevented Chinese group Yanzhou from taking full ownership of Australian coalminer Yancoal.GrainCorp-ADM veto

Those two decisions came amid the Abbott government's rejection of US companyArcher Daniels Midland's $3.4 billion takeover bid for GrainCorp. It was nixed on the grounds that it was not in the national interest.

In a further sign that the attitude towards Chinese foreign investment is shifting, Prime Minister Tony Abbott signalled he was considering a deal for China in which the zero threshold that applied to all bids by state-owned companies, meaning they had to be referred to FIRB, could be lifted.

This was in April and a marked change from July 2012 when Abbott, then opposition leader, gave a speech in Beijing warning it would rarely be in Australia's interest to support a foreign government or its agencies buying control of an Australian business.

 

But as Australia seeks to conclude a free-trade agreement with **China** by the end of this year – it has been in negotiation for almost a decade – Abbott confirmed that private **Chinese** investors could also be offered the same deal as their Japanese, South Korean and American counterparts, in which the threshold for bids that would be scrutinised by FIRB would be lifted from $248 million to $1.08 billion.

However, in the free trade agreements with Japan and South Korea the threshold for private investment in agricultural land was set at $15 million and in agricultural businesses at $53 million.

It's been flagged this condition will also apply to **China** in a free-trade agreement.

FIRB hasn't seen agricultural land sales valued under $248 million unless the proposal was to sell to a foreign government.Selling off the farm?

However, growing public and political concern that Australia is "selling off the farm" is considered the trigger behind these recent changes on agricultural land **purchases** in the free-trade agreements.

Wilson says foreign investment in **residential property** and agricultural land are currently the two most sensitive sectors in the public mind.

In decades gone by public concern in terms of foreign investment has waxed and waned. In the 1970s, it centred on US companies buying Australian manufacturers. In the 1980s it was Japanese companies buying tourism operators and land. Both of those periods triggered government legislation.

More recently anxiety has been around **Chinese** companies buying Australian resource companies and now **Chinese** investment in **residential property** and foreign investment in agricultural land.

"History has demonstrated that areas become sensitive and then cease to be sensitive," says Wilson. "It's important therefore to not keep building large expensive edifices to deal with everything that might be a short-term concern otherwise we would have many, many systems. The one thing FIRB and the Foreign Acquisitions and Takeovers Act has done with its undefined national interest test is it has been able to flexibly move with the times."

The argument is also that a more cumbersome system might deter foreign investment.

The national interest test that FIRB applies broadly looks at a foreign investment deal's effect on the community, economy and national security; its effect on competition domestically and internationally; if it complies with Australian law and regulation, and the character of the investor.

To be knocked back a foreign investment deal has to be judged to be against the national interest by that test. Wilson describes this as a review rather than rules-based process. "I'm very much of the view of codifying a national interest test would be a huge mistake."

There have been calls for FIRB to scrutinise more closely investment in **residential property**. As well, there's bipartisan support among federal politicians for the establishment of a national register of agricultural land to monitor foreign ownership.

"The underlying rationale for having a register of agricultural land, which is supported by both sides of Parliament, is to shine a light on the subject. Things in the dark often seem much more scary than they are," Wilson says. "The US had a similar issue back in the late 1990s where there was a lot of concern in America about foreigners buying up their land. They did put a register in place and what they found was the extent of foreign ownership of agricultural land in the US was much, much smaller than they thought and it took away all that community concern."

Wilson says it's up to government to determine how it will implement such a register but notes that given each state and territory has a land register that it's possible a "couple of check boxes" could be added within those existing systems to determine the nationality of the **purchaser**. However, the use of nominee companies complicates this process.

Foreign investment, since colonisation, has helped build Australia. says Wilson. "We need foreign investment but we have a process to avoid foreign investment coming in, in a way that is contrary to our national interest." It's a delicate balancing act for FIRB and the Abbott government now that there are new players in the game, who are making foreign investment once again an issue of public interest.

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**AN** Document AFNR000020140609ea6a00019

 