The Joint Standing Committee on Immigration.
New Inquiry into the Business Investment and Innovation Program.

My apologies for presenting a submission in bullet point form; I am presently on a marketing campaign for Business Investment and Innovation applicants in China and time to make detailed submissions is not easy to find.

Comment 1.

PAM Gen Guide M

> *31.5 Carries on the business*
> *The definition of ownership interest for companies and partnerships requires the company or partnership to be carrying on a business.*
>
> *To be considered as 'carrying on a business' the company or partnership must have commenced business activities. For example, an applicant who was registered as a shareholder in a new company would not meet the definition to have an 'ownership interest' until the company commenced operating. The business must also continue to operate for the period of ownership assessment specified in the Regulations.*

This is at odds with normal business practice. A purchaser of an existing, ongoing business would normally establish a new company, into which the assets of an existing company would be incorporated.

It is unreasonable to put an investor into a position where he must undertake latent risks in an acquisition target.

The PAMs must be changed to enable investors to follow normal business procedures in Australia.

Comment 2.

Standards of Proof. Immigration is a civil matter, yet the Department exhibits an attitude that belies a attitude that it is a criminal matter.

In civil proceedings, the standard of proof is balance of probabilities.

In criminal proceedings, the standard demanded is that of beyond reasonable doubt.

The Department demands for evidence goes far beyond balance of probabilities; it approaches the criminal standard.

A competent migration agent can prepare an application, including all necessary third party reports (Hong Kong auditor, Hong Kong property valuer) in about one month. Yet it takes the department 12 to 18 months to determine an outcome.

The application forms submitted (what is your name, where do you live, when were you born) are evidenced by notarised passports, hukou, birth certificates, marriage certificates; there is minimal checking required.

The third party reports (auditor, property valuer) are not challenged, there is nothing to be done here.

What takes all of the time? Is it just make-work in the department offices?

Comment 3.

Department Information.

The department uses whatever channels it has to source information on applications. When there is an issue, the department does not provide procedural fairness; it's as if *Saeed* was never decided.

We have experience of the department, in writing, accusing a decent businessman of fraud. We requested the department re-issue its letter, requesting information they required but omitting the implication of fraud.

We requested access to the party who provided the information (we understand it to be a stock-broker who acted for our client) but the department "closed shop".

We pointed out that an allegation of fraud is an allegation of a criminal offence (*Migration Act s4A*) and that for such an allegation to be made, there should be strong and verifiable evidence, which my client should be permitted to cross examine.

This letter was met with a response from the Vice Consul – Immigration which can only be described as a whitewash.

Comment 4.

Wednesbury unreasonableness.

A client has been asked to produce evidence of turnover, profits and accumulation of capital going back many years.

In Australia there is an obligation to hold records for 5 years after the lodgement of a tax return, in China there is no obligation to retain records.

To request that a visa applicant produce documents to a standard more onerous than that in Australia, or China, where such documents may not have been retained, is so unreasonable that no reasonable decision maker could ask for that material.

Such unreasonable demands must stop.

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