

Inquiry into foreign investment proposals

Answers to Questions on Notice

Yun Jiang

Question from Acting Chair (Senator O’Neill): Yun Jiang’s connection to the China Policy Centre, including data about her background

Answer

I am the current Secretary of the China Policy Centre. I am also one of the editors of the China Story blog and, along with Adam Ni, produce the China Neican, a weekly policy-focused China analysis newsletter. I have published widely on China-related topics and has been quoted in several major national and international press, including ABC, BBC, Al-Jazeera, Wall Street Journal and Washington Post.

I am also a senior research officer at the Australian National University, working on geoeconomics. In this role, I bring together academics, government officials, and businesses to advance the understanding and discussion of geoeconomics, including issues such as education, technology, research, cyber, trade and investment.

Prior to joining the ANU, I was a policy adviser in the Australian Government, having worked in the Department of the Prime Minister and Cabinet, the Treasury, and the Department of Defence. My policy experience covers international economy, trade, multilateral institutions, foreign investment, critical infrastructure, Commonwealth-state relations, economic diplomacy, and military diplomacy. During my time in government, I led a project on integrating economics and national security, and contributed to improving China literacy in the public service.

I speak English and Mandarin fluently.

Inquiry into foreign investment proposals

Answers to Questions on Notice

Yun Jiang

Question from Senator Patrick: China's foreign investment regime

Answer

Please note that I do not have expertise on China's foreign investment regime and therefore cannot provide detailed and specialised advice on it.

China's Foreign Investment Law came into effect on 1 January 2020, along with related implementing regulation and interpretation. In general, this new foreign investment regulatory regime represents a more liberal and streamlined approach to foreign investment.

Some highlights of the new foreign investment regime include:

- A negative list: foreign-invested enterprises are to be treated the same as local companies unless they are in industries on the prescribed list. They have equal rights to participate in government procurement. Project-by-project approval is not required unless the investment is in industries on the prescribed list.
- Intellectual property protection: administrative measures should not be used to compel technology of transfer.
- A general principle that China will not expropriate foreign investment, except in exceptional circumstances.

On paper, this all looks very positive. However, some doubts remain. For example, the new law mentions a national security review process but do

not provide further details on this process. There are also questions around enforcement, especially at local government levels.

It is important to note that despite what appears to be a turn towards a more open regulatory regime for foreign investment, the business environment in China, whether for foreign-invested enterprises or local companies, is still very restrictive, when compared to Australia. This is especially the case for “strategic” or “sensitive” industries. In these industries, China’s model resembles state capitalism, where the Chinese Government has very close relationships with few big businesses, and therefore has significant influence, if not control, over much of business decision-making.

I would like to take this opportunity to caution against any policy decision in Australia based on “reciprocity”. Australia should be confident in its open economic system. While being careful about mitigating against possible threats is important, making policies purely on the basis of “reciprocity” would mean Australia’s economic system would end up closer to China’s state capitalism in which the state has significant control over the economy.

Inquiry into foreign investment proposals

Answers to Questions on Notice

Yun Jiang

Question from Acting Chair (Senator O’Neill): exposure draft of the Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020

Answer

The Foreign Investment Reform (Protecting Australia’s National Security) Bill 2020 is a good opportunity to update Australia’s foreign investment regulatory framework, with a much needed focus on national security.

The ‘call-in’ power and ‘last resort’ power are significant additions to the power of the Treasurer with regards to foreign investment screening.

Foreign investors, like all investors, prefers certainty in regulatory environment. While these two powers add uncertainty for foreign investors, they may be necessary to safeguard Australia’s national security. However, the Treasurer should provide as much certainty as possible to the market.

There are a few ways to the government can foster better business environment for investors:

- **Timeliness:** Ensuring decisions are made in a timely manner, including for decisions made under ‘call in’ power. The 30-day decision period should be the benchmark. Decisions should not take years.
- **Transparency:** Where ‘call in’ or ‘last resort’ powers are used, a full justification of their usage should be provided, at the minimum to the investor, and if possible, to the public.

- More guidance should be issued on the last resort power, including examples where such power can be triggered when ‘broader circumstances change’, as this is extremely broad. Such potentially broad exercise of power deserves closer scrutiny.
- Clarify issues around access and storage of personal information and data, as this will become an increasingly important area for all types of businesses.