

Treasurer’s liberalisation measures should go deeper

Swan’s foreign investment reforms leave much to be desired, **STEPHEN KIRCHNER** writes

The federal Treasurer, Wayne Swan has announced measures to liberalise Australia’s regulatory regime for foreign direct investment. While a step in the right direction, the reforms do nothing to address the continued uncertainties created by the Treasurer’s open-ended discretion to reject foreign investment proposals under the Foreign Acquisitions and Takeovers Act.

The Government’s reforms are the most significant liberalisation of Australia’s regulatory regime for foreign direct investment since the Australia-United States Free Trade Agreement came into effect in 2005. It follows last week’s announcement by New Zealand’s National Party-led Government that it will liberalise its scrutiny of foreign direct investment applications, placing increased competitive pressure on Australia in attracting foreign investment.

The Government’s reforms will reduce the number of foreign investment proposals requiring

screening by combining the current four thresholds for review into a single threshold of a 15 per cent stake in businesses worth \$219 million or more. The new single threshold will also be indexed to inflation to ensure that the screening process no longer becomes increasingly restrictive by default.

Potential US investors will still be subject to the higher threshold of \$953 million under the Australia-US Free Trade Agreement that is already indexed to inflation.

The higher single threshold will reduce the number of business applications requiring approval by around 20 per cent, reducing costs and uncertainties not only for foreign investors but also the Australian vendors of domestic assets.

However, the Government has missed an opportunity to deliver a more substantial reform of Australia’s foreign investment

regulatory regime. In particular, the Government could have raised the new single review threshold to converge with the more liberal benchmark set by the Australia-US Free Trade Agreement.

More seriously, the reforms do not address the problems that Australia’s regulatory framework presents for larger investment proposals that will still be caught in the screening process. At the heart of these problems is the enormous discretion the Treasurer continues to enjoy under the Foreign Acquisitions and Takeovers Act to reject foreign investment applications on the basis of an open-ended “national interest” test.

This discretion causes enormous uncertainty for foreign investors, while adding nothing useful to the overall regulatory framework for business investment in Australia. The Foreign Investment Review Board

already defers to the Australian Competition and Consumer Commission on key economic issues. The only purpose the national interest test serves is to provide a mechanism for political intervention in the market for the ownership and control of Australian equity capital. The Treasurer has increasingly used this discretion to micro-manage business in Australia by attaching conditions to foreign investment approvals. Many of these conditions are redundant because they merely reiterate legal obligations with which all businesses operating in Australia must comply, regardless of ownership.

But some of these conditions have been absurdly prescriptive, ranging from governance arrangements to the levels of output and employment to be maintained at specific mining operations. These conditions are explicitly protectionist in intent, with

the Treasurer stating that they are aimed at protecting local jobs. Swan has increasingly turned foreign investment policy into an arm of domestic industry and employment policy. The message to foreign investors is that large investment proposals must not only run the gauntlet of ministerial approval, but also comply with politically determined ministerial directions not otherwise mandated by Australian law.

Indeed, the Treasurer has even sought to micro-manage Australian investment in China through the conditions attached to Ansteel’s acquisition of an increased shareholding in Gindalbie Metals. Among other conditions, Ansteel must maintain agreed levels of Australian participation in a pellet plant in China’s Liaoning Province.

The foreign investment approvals process lacks transparency and is not

subject to administrative or judicial review. This can only lead to foreign perceptions that foreign direct investment approvals in Australia are the outcome of a political process rather than the impartial application of the rule of law. These perceptions are likely to be as damaging to Australia’s reputation as they have been to China’s.

Further reform is needed to remove ministerial discretion from the process. This could be done by making the Foreign Investment Review Board an independent statutory body able to make binding recommendations to the Treasurer.

The current national interest test also needs to be replaced.

Australia already has a robust framework for the regulation of business investment, regardless of ownership. We should put more trust in that framework rather than ministerial discretion.

■ **Dr Stephen Kirchner** is a research fellow at the **Centre for Independent Studies** and the author of *Capital Xenophobia II*.

Recipe for a grab at power

MOISES NAIM

The world no longer digests military coups as well as it used to. But now there’s a new way for autocrats to cook up a grab for power. This new recipe relies more on lawyers than on lieutenant colonels, and uses referendums and constitutional amendments, rather than tanks and assaults on presidential palaces, as key ingredients. But the result is the same: a dictator who retains power for a long time.

As with all dishes that sweep the world, each country prepares this feast with its own spices. The formula that led to elections in Zimbabwe that kept Robert Mugabe in power after 29 years, for example, was more pungent than the one used in Russia, where despite elections and a new president, Vladimir Putin still pulls the strings.

In Iran, where they like their politics seasoned with religion and where the supreme chef, Ali Khamenei, described the overwhelming electoral victory of President Mahmoud Ahmadinejad as “a divine sign”, civilian militias beating protesters are a key additive.

In Latin America, an essential flavour has been the manipulation of the constitution. In Honduras, Manuel Zelaya tried to follow this recipe by rewriting his country’s laws to stay in power for a second term, but the result was indigestion and a genuine, if flawed, attempt to inoculate a nation against the ravages of this dish. Here, then, is the new recipe for autocrats around the globe.

- Ingredients:
- Millions of poor people.
 - Lots of inequality.
 - Unimaginable poverty coexisting with unfathomable wealth.
 - Injustice, social exclusion and racial discrimination.
 - Abundant corruption.
 - Complacent political and economic elites who are sure that, “We are in control; nothing will happen here.”
 - Discredited political parties.
 - An apathetic middle class, disillusioned about democracy, politics and politicians.
 - A parliament, judiciary and armed forces weakened by prolonged marinating in a brew of indolence, inefficiency and corruption. It should be easy to buy a judge, senator or general.
 - Media companies whose owners use them to promote their own commercial or electoral interests.
 - A foreign superpower neutralised or distracted by other priorities and congested with too many international emergencies.
 - An international public with a severe case of attention deficit disorder and general lack of interest in the details of how other nations are governed.
 - An external enemy easy to denounce as a threat to the nation. The CIA is ideal. A neighbouring country also works. Or immigrants with a different skin colour. If not, there are always the Jews and the Mossad.
 - “People’s militias” that are well armed, well trained and ready to break the heads of those who dare to protest against the regime. These militias need not be numerous. It is enough for their thuggish members to intimidate the population through beatings, assassinations, kidnappings and other acts of violence.
 - Preparation:
 - Shake well the population’s poorest segment with a fiercely polarising campaign. Rinse away harmony while bringing social conflicts to a boil.
 - Come to power through a democratic election, facilitated by corrupt and discredited political rivals and a good vote-buying team.
 - After winning that first election, hold other ones, but don’t lose any. Elections aren’t about democracy – they’re the garnish on your dish.
 - Change the top military command by promoting officers loyal to the president. Spy on all of them, all the time.
 - Do the same with judges and magistrates.
 - Launch a campaign to change the constitution through a popular referendum. Coerce public employees to vote and make sure that some in the opposition campaign against participating in the referendum.
 - The new constitution should guarantee any and all rights to its citizens, especially the poorest, while minimising their duties and obligations. Bury inside the new constitution provisions that weaken or eliminate the separation of powers, concentrate authority in the president and allow for his indefinite re-election.
 - Discredit, minimise, co-opt, buy and repress the political opposition.
 - Control the media. Tolerate a few tiny outlets that are critical of the government but have a limited reach. They will be your cover against accusations that there is no freedom of the press.
 - Repeat step number three. Indefinitely.
 - Bon appetit!

Washington Post

■ **Moses Naim** is the editor-in-chief of *Foreign Policy* magazine.

N-clouds over a US umbrella

Some are questioning the value of extended deterrence, despite North Korea’s unpredictability, **MICHAEL RICHARDSON** writes

In the Cold War, the United States protected its allies from possible attack by a nuclear-armed Soviet Union by threatening a devastating nuclear response. This policy became the foundation for extended deterrence.

Although the Cold War is long gone, the assurance offered to non-nuclear allies by the so-called US nuclear “umbrella” remains. It still covers over two dozen major allies. They include member states of NATO as well Asia-Pacific countries that have long-standing mutual defence treaties with the US, among them Australia, Japan, South Korea.

Defence white papers issued by Australian governments at least as far back as 1994 have stated that Australia will continue to rely on the US to deter any nuclear threat or attack on Australia.

The latest white paper, published in May, said that stable nuclear deterrence was expected to be a feature of the international system for the foreseeable future, and that in this context extended deterrence would continue to be viable.

It added, “The challenge will be to deter rogue states of concern, some of which may develop a level of capability in terms of long-range ballistic missiles, coupled potentially with WMD (weapons of mass destruction) warheads.

“Iran and North Korea, and possibly others in the future, will continue to pursue long-range ballistic missile programs that pose a direct, though remote, risk to our own security.”

Extended deterrence was designed not just to protect non-nuclear allies such as Australia but also to assure them that it was unnecessary to develop their own nuclear weapons.

This has helped to limit the number of states known to have nuclear arms to nine – the five nuclear powers acknowledged in the non-proliferation treaty (Britain, China, France, Russia and the US), plus India, Israel, Pakistan and North Korea.

However, in Asia, the value of extended deterrence is being called into question by several recent developments.

Chief among them is North Korea’s detonation of two nuclear explosive devices since 2006, most recently in May, its declared intent to make more nuclear weapons and never abandon the program, and its parallel testing of a wide range of missiles that may one day be armed with nuclear warheads as well as the North Korea’s existing extensive stocks of chemical and biological weapons.

Unlike the former Soviet Union, North Korea is seen by its neighbours as unpredictable and possibly even prepared to use WMD. In such a situation, how effective is US extended deterrence likely to be and what does it mean in practice?

Would any US response to a North



Korean attack involve nuclear arms or only conventional weapons? And could such a response achieve its aim of destroying a leadership and military assets in reinforced shelters deep underground?

North Korean belligerence has been accompanied by another

unsettling development: the Obama Administration’s strong push for nuclear disarmament.

While Japan and South Korea welcome eventual abolition of nuclear arms in principle, they worry that it may dilute US willingness and capacity to deter an attack and

respond resolutely if it occurs. Also in the background is China’s rising power and influence, and its often-stated objection to US offers of extended deterrence to allies.

China says that its objection is based on the principle that nuclear weapons should be used solely in

self-defence. China believes that the US nuclear umbrella covers Taiwan (which it regards as a renegade province) as well as Japan, its rival for eminence in Asia.

In this climate of uncertainty, some conservative Japanese and South Korean politicians have argued

that their countries should have nuclear weapons for self-protection.

If this were to happen, other Asian countries might follow, triggering a nuclear arms race that would destabilise the region and undermine economic growth.

Since 1968, Japan has been formally committed to three non-nuclear principles of not possessing or producing nuclear arms, and not permitting their entry into the country.

In March, Yukio Satoh, a leading Japanese strategic thinker, said that Japan’s adherence to these principles depended largely on the credibility of the US-Japan Security Treaty and America’s commitment to defend Japan from any offensive action, including nuclear threats.

He added, “A unique feature of the Japan-US security arrangements is that there have been no consultations on how American extended deterrence should function, nor even any mechanism put in place for such consultations.”

To arrest this dangerous drift, the US sent senior officials to Tokyo for talks last month. They gave an assurance that the US commitment to protect Japan was “absolutely unshakeable”.

The two sides also agreed to establish an official framework for discussions on how the nuclear umbrella should function and other deterrence measures.

A similar consultation channel is expected to be set up by the US and South Korea.

The US aim is to discourage growth of pro-nuclear sentiment in Asia and send a clear message not only to North Korea but to other potential nuclear proliferators, such as Iran, that any aggressive moves against its neighbours would bring a strong response, including possible use of nuclear weapons.

Whether Japan or South Korea would approve a nuclear response is questionable. Recently South Korea ruled out the redeployment of US nuclear arms on its soil, despite North Korea’s nuclear program.

South Korea and the US say that all US nuclear weapons were withdrawn from South Korea in 1991, one year before the two Koreas agreed to keep the peninsula nuclear-free.

However, other measures are being put in place to strengthen Japanese and South Korean defences against possible attack.

Both countries are being provided by the US with extra interceptor rockets that can be fired from land and warships to destroy incoming missiles.

The US is also reminding allies as well as adversaries that although it seeks universal nuclear disarmament, it will keep its weapons for as long as others have them.

■ **The writer** is a visiting senior research fellow at the **Institute of Southeast Asian Studies** in Singapore.

Don’t allow foreign power to rule our elections

Australian democracy should not be undermined by foreign donations, **NORM KELLY** writes

There are long-established laws in place to prevent foreign investments that are against the Australia national interest. Why then should we continue to allow foreign individuals and organisations to have an unrestricted ability to influence one of the country’s most important institutions – our democratic elections – through unlimited donations to political campaigns?

The Rudd Labor Government has attempted to prohibit foreign donations to political parties, but has previously been blocked by the Coalition in the Senate. It will again attempt to place a ban on foreign donations in the next session of Parliament. Andrew Norton (“Petty politics on foreign donations”, August 3, p15) has suggested that the current unfettered access for foreigners to influence our political parties and elections should be allowed to continue. I would argue that there are sufficient ways for foreigners to participate in Australian political debate without the need for making donations.

The reality is that major individual and corporate donors expect something in return for their money – primarily they are purchasing access and influence. For example, donors may wish to persuade ministers and MPs about legislation relevant to their interests, gaining access not available to non-donors.

It is not surprising then that the Britain-based gambling operation Belfair made donations to the Labor and Liberal parties at a time when it was trying to have legislation changed to allow it to operate in Australia.

Worse, donations may be used for undue influence or corrupt behaviour, for example to facilitate the issuing of visas.

In 2003, Labor Senator Nick Bolkus was caught in his attempt to disguise a foreign donation intended to facilitate an immigration visa. These are concerns irrespective of whether the donor is Australian or foreign. But at least Australian donations can

be more readily traced to the original source, as occurred in the Bolkus “cash-for-visas” scandal.

Although not of itself corrupt, foreign donations provide foreign interests with undue influence, which increases the chances of corruption. This is compounded by the secrecy of all large donations, whether domestic or foreign, with amounts under \$11,200 not subject to public disclosure (an initiative of the Howard government).

It is uncommon for a governing political party to introduce electoral law reform that will disadvantage itself, and one of Labor’s motives to ban foreign donations may have been the \$1 million donation the Liberal Party received from British Lord Michael Ashcroft in the lead-up to the 2004 election.

In the case of foreign donations, however, there is no clear partisan advantage for one particular side of politics.

Labor, Liberal and the Greens all

receive significant donations from foreign sources. For example, in 2006-07, the Labor Party received at least \$200,000 from foreign donations.

The current proposal from the Rudd Government provides for foreign citizens living in Australia to continue to be able to make donations. This appears fair.

Such residents are subject to Australian laws and are economic and cultural contributors to Australian society – it is reasonable that they be allowed to contribute monetarily to political activity, even if unable to vote (whether permanent residents should be entitled to vote is a separate issue).

Conversely, a blanket prohibition on donations from Australian citizens living overseas (using overseas funds), which is also included in the Government’s legislation, is unfair (on this point I’m in agreement with Norton).

In a nice twist, current MP Melissa

Parke, who was pre-selected for the seat of Fremantle in 2007 while living in New York, would not have been able to contribute to her own campaign under the proposed prohibition (at least not by using her US funds).

If citizens are qualified to stand for election, or to vote (which under Australia’s electoral laws would mean they intend returning to Australia to live), they should be entitled to participate financially in an election campaign by donating to a political party or candidate.

A similar provision occurs in Ireland, where there is a ban on foreign donations, but with the exception of Irish citizens living overseas. This would be a sensible change to the Rudd Government’s current Bill.

Many countries currently ban foreign donations, generally on the rationale of limiting undue foreign influence.

In addition to Ireland, countries

currently with bans include the United States, Canada, Mexico, Britain, and France. New Zealand limits foreign donations to \$NZ1000.

Newer democracies, such as Papua New Guinea, Afghanistan and Russia, also have acknowledged the need to restrict outside influences by banning foreign money.

A ban on foreign donations does not mean a closed mind on international issues or interests. It is not about protectionism, as Norton argues.

It is about ensuring that Australia’s robust democracy, that rightly allows foreign students to protest in our streets, is not undermined by the weight of money from vested foreign interests.

International environmental groups and companies such as Belfair would still be able to lobby for legislative change, but more likely will have to do it in a more transparent manner.

■ **Dr Norm Kelly** is a member of the **Democratic Audit** of Australia at the **Australian National University**.