

Media Release

Foreign real estate investment in Australia - forced sell-offs and losses tarnish Australia's image

Monday March 7, 2016. The announcement earlier this year that the Australian federal government ordered the sale of additional properties bought in contravention of Australia's foreign investment rules continues to reverberate both locally and overseas. Many are asking how such a situation was allowed to develop, said Connect ASEAN (Connect) founder and Principal Paul Tynan.

In November 2015 it was reported that 19 properties needed to be sold for breaches of the FIRB regulations with the ATO scrutinising more than 1044 cases with 532 of these under 'active investigation'. By January this year purchases under investigation had increased to over 1500 and those under active investigation had climbed to more than 800 with properties ranging in price from \$200,000 to \$5 M predominantly in Victoria and Queensland

Where were the checks and balances to protect consumers and buyers; and how did so many people from different countries and backgrounds get the same wrong message about foreign investment in Australia's residential property market, asked Paul Tynan.

To make matters worse, the overseas buyers are required to compulsorily divest their acquisitions and many will incur financial losses, whether by reason of fluctuations in the real estate market, distressed sale situations, stamp duty or foreign currency movements.

The current investigation into the growing list of over 1500 foreign property transactions around Australia by buyers from Canada, China, India, Malaysia and the USA not only highlights the depth of the problem but also the need to undertake appropriate homework and for expert advice said Paul Tynan.

How could so many real estate purchases be processed without any of the professional advisers highlighting the legality of the transaction and eligibility of overseas buyers asks Paul Tynan?

"This raises a more fundamental issue on the role of real estate agents. We are told that real estate agents are agents of the vendor and not purchasers. But the scale of the potential loss incurred by the foreign owners surely calls for a review of this assumption".

Australian law suggests that an agency relationship can arise without any contractual provision operating between the parties. Could the real estate agents in the cases under investigation have been agents of the purchasers by reason of the relationship and dealings between the real estate agent and the foreign investor? If so, shouldn't they have been under a duty or an obligation to inform the foreign investors that without a FIRB clearance or condition precedent in the contract they are in breach of Australian FIRB laws?

What about the conveyancer or lawyer advising the foreign purchasers. As a result of their special skill and expertise shouldn't they have highlighted the deficiencies in the contract?

Using financial services sector as an example, Paul Tynan said, "In certain sections of the financial services sector financial advisers and brokers may be regarded as agents for both sides of the transaction, albeit at different times. Had this situation occurred within the advice sector of the financial services industry, advisers would have to defend their conduct or be banned; commissions, fees and charges reimbursed; the dealer groups they represented investigated by ASIC with

potential restrictions and penalties applied to their AFSLs; and if a major institution was also involved, they may be faced with enforceable undertakings or high level investigation”.

Having regard to the potential losses facing the foreign investors, the question of whether the real estate agents were acting as agents of the foreign investors is a logical first step in seeking to attribute liability. Similarly the role of the conveyancer and lawyer in these transactions should be reviewed. This may be the only way for a foreign investor to recoup their potential loss.

Paul Tynan concluded, “Completing any business transaction can be complicated at the best of times. But when the transaction involves the cross-border sale and transfer of assets and money, it requires a much deeper and broader understanding of all the factors and potential pitfalls that are involved.

“In the end, the fees and charges of reputable and experienced adviser is a wise investment of time and money by all parties”.

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Pictured below Mr Paul Tynan, Connect ASEAN presenting at a bilateral trade information event in Melbourne

