

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF
THE PEOPLE’S REPUBLIC OF CHINA
ON AN INVESTMENT FACILITATION ARRANGEMENT

The Governments of Australia and the People’s Republic of China (“the Participants”) have reached the following understandings in relation to establishment of an Investment Facilitation Arrangement (IFA).

1. An IFA for a project will be established between the Department of Immigration and Border Protection (DIBP) of Australia, or its equivalent, and a project company (the “project company”¹) in accordance with the provisions of this Memorandum of Understanding (“MOU”).

Establishment of IFA

2. The project company will be eligible to establish an IFA where:
- (a) a single Chinese enterprise² owns 50% or more of the project company; or, where no single enterprise owns 50% or more of the project company, a Chinese enterprise holds a substantial interest³ in the project company;
 - (b) there is a proposed infrastructure development project (“the project”) by the project company with an expected capital expenditure⁴ of A\$150 million over the term of the project;

¹ A project company means either an Australian enterprise responsible for all the day to day oversight of the project, management of the vendors, or that initiates, finances and tenders for a major project; or a prime contractor that is an Australian enterprise and is responsible for the day-to-day oversight of the project and management of vendors and tradespeople.

² “Enterprise” means any entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organisation; and a branch of an enterprise.

³ “Substantial interest” is as defined in Australia’s Foreign Investment Policy, available at www.firb.gov.au, namely, ‘A substantial interest occurs when a single foreign person (and any associates – see section 6 of the *Foreign Acquisitions and Takeovers Act 1975* for the list of ‘associates’) – has 15 per cent or more, or several foreign persons (and any associates) have 40 per cent or more, of the issued shares, issued shares if all rights were converted, voting power, or potential voting power, of a corporation.

⁴ “Capital expenditure” means funds used by a Project Company to acquire or upgrade physical assets such as property.

- (c) the project is related to infrastructure development within the food and agribusiness; resources and energy; transport; telecommunications; power supply and generation; environment; or tourism sectors;
- (d) the project company is registered as a business in Australia;
- (e) the project company agrees to comply with all Australian laws and regulations, including applicable Australian workplace law, work safety law and relevant Australian licensing, regulation and certification standards; and
- (f) the China International Contractors Association (CHINCA) and the Department of Foreign Affairs and Trade of Australia (DFAT) have recommended the project and the project company meet the criteria in paragraphs 2(a) through 2(e).

3. In order to meet the requirement of paragraph 2(f), CHINCA will write to DFAT advising of a project company wishing to enter into an IFA for a project and will provide its recommendation that the requirements of paragraphs 2(a) through 2(e) have been met. DFAT will assess CHINCA's recommendation in a timely manner and, once satisfied the eligibility criteria have been met, within 20 days will notify DIBP in writing of its recommendation that the proposed project constitutes an eligible project ("eligible project") under the terms of this MOU and provide a copy of that notification to CHINCA. DFAT may request further information if necessary from CHINCA in respect of demonstrating the eligibility criteria have been met.

4. The areas which will be subject to negotiation between DIBP and the project company in respect of the eligible project will include:

- (a) the occupations covered by the IFA project agreement;⁵
- (b) English language proficiency requirements;
- (c) qualifications and experience requirements; and
- (d) calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold (TSMIT).

5. The project company may be asked to provide additional information by DIBP in respect of its requests for concessions in the above areas. Other than the areas referred to in paragraphs 4(a) through 4(d), the grant of visas will be subject to meeting all other Australian nomination and visa requirements.

⁵ Occupations eligible for coverage by the IFA project agreement will include occupations listed as skills levels 1-4 in the Australian and New Zealand Standard Classification of Occupations.

6. Following agreement between DIBP and the project company on the areas referred to in paragraph 4, an IFA will be executed in a timely manner in the form of a deed of agreement between DIBP and the project company. The IFA will set out guaranteed occupations and the terms and conditions against which overseas workers can be nominated for a temporary skilled visa for the purposes of the eligible project. The IFA will also record any requirements and conditions that the project company must comply with. There will be no requirement for labour market testing to enter into an IFA.

7. The IFA will be valid for four years from date of execution with the possibility of extension.

Issue of Visas under IFAs

8. Once the IFA is executed, direct employers (including, where applicable, the project company) on the eligible project can seek the endorsement of the project company to enter into a labour agreement under the IFA with DIBP to sponsor and nominate temporary skilled workers to be engaged on the project. A labour agreement will be entered into in a timely manner and will set out the number, occupations and terms and conditions under which temporary skilled workers can be nominated, consistent with the terms of the IFA, and the sponsorship obligations associated with the labour agreement, including any requirements for labour market testing.⁶

9. Employers will provide information as required by DIBP to meet the requirements for a labour agreement under the IFA.

10. Complete nomination and visa applications submitted under an approved IFA labour agreement will be processed in a timely manner.

11. All direct employers under an IFA and workers granted visas under an approved IFA labour agreement will be required to comply with applicable Australian laws, including workplace law, work safety law and relevant Australian licensing, regulation and certification standards.

Administrative Provisions

12. The operation of this MOU will be reviewed by the Participants within two years of its commencement.

⁶ Where labour market testing is required, employers may satisfy this requirement by demonstrating that they have first tested the Australian labour market and not found sufficient suitable workers. DIBP will make publicly available information on how any labour market testing requirements could be met.

13. Changes to this MOU may be made at any time by a written arrangement between the Participants through diplomatic channels. The date of effect of any such change will be stipulated in the diplomatic correspondence.

14. This MOU takes effect on the date that the Participants mutually determine and notify to each other in writing through diplomatic channels, and will remain in effect unless terminated.

15. Any disputes between Participants which may arise over the interpretation and/or application of this MOU will be settled through direct negotiations and consultations.

SIGNED in duplicate at Canberra on the 17th day of June 2015 in the English and Mandarin (standard Chinese) languages, both texts being equally authentic.

For the Government of Australia:

For the Government of the People's Republic of China: