Australian Government
Department of Home Affairs

TechFIT
TECHNOLOGY FOREIGN INTERFERENCE TASKFORCE

Bad-faith Investors

We must protect Australia's technology edge

Australia is a leading science and technology innovator with valuable strategic alliances across the world and a breadth of human talent.

Investment in Australia's technology industry drives innovation, productivity, job creation, and the commercialisation of new technology and capabilities. This investment is crucial to our economy and your commercial success - but capital raising can be challenging and risky.

Bad-faith investors are companies or individuals that invest in your company to cause immediate or future harm to your business and our national security. This type of investment may be motivated by business interest or direction from a foreign power.

The impacts of bad-faith investors are complex, damaging and cumulative. Their actions undermine the commercial viability of our technology companies and give threat actors a strategic advantage.

The threat is real. The impacts are real. Consider the risks when seeking investment.

WHO?

Geostrategic competition between nation-states is increasing and technology is at the centre of this struggle.

The top targets are:

- Artificial Intelligence
- Biotechnology
- Quantum
- Dual-use technologies
- Foundational technologies

WHY?

The ability to own, control or otherwise influence certain technologies is of immense strategic value to foreign powers.

Motivations for bad-faith investors include:

- Strategic advantage
- Supply chain influence
- Technology or Intellectual Property transfer and theft
- Data harvesting
- Reputation and legitimacy

HOW?

Bad-faith investors will use both traditional and non-traditional investment methods such as:

- Direct investment
- Indirect or obfuscated investment
- Venture capital and private equity
- Sovereign wealth funds
- Joint ventures or consortiums
- Research funding

Business Impacts

Strategic, commercial and reputational loss
Bad-faith investors use influence to force a company to act outside its interests.

Unwanted technology, data or IP transfer
Bad-faith investors use access to exfiltrate sensitive technology, data, or IP for their own benefit.

Degraded commercial viability
Bad-faith investors exert pressure or influence to reduce a company's commercial viability and enhance their own market position.

Reduced supply chain resilience
Bad-faith investors exert pressure or influence to manipulate or control supply chains for their own benefit.

Eroded national strategic and technology edge
Bad-faith investors use influence or control to disrupt Australian innovation and undermine our world-leading edge in key sectors.

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Investor due diligence can help protect businesses from bad-faith investors

1. BEFORE INVESTMENT

Before seeking investment, organisations should consider their security posture, risk appetite, and risk management processes.

Your security posture will need to change as the company changes. It is important to regularly assess, review, and update security controls to account for these changes. Some things which can help before seeking investment are:

- Identifying your crown jewels
- Creating physical and virtual barriers
- Establishing a risk management program
- Knowing the threat landscape

2. DURING INVESTMENT

Businesses are often under pressure to raise capital quickly. This should not stop you from conducting comprehensive due diligence checks. These checks should consider the source, network, approach and behavior of capital, and any conditions attached to it.

Consider using the FOCI Risk Assessment Guidance vendor review questionnaire to inform this due diligence.

Source
Understanding where investment comes from is necessary to assess its risk profile.

Behaviour
Approach and actions of investors can suggest true intentions and indicate risk.

Network
Complex networks can be used to hide involvement and investor identity, intentions and influence.

Conditions
Certain conditions or attachments to capital can introduce risks that can be leveraged by a malicious investor.

3. AFTER INVESTMENT

Remember that due diligence information is point-in-time. Malicious actors may engage in good faith initially but subsequently change their behaviour and act or make requests outside agreed terms.

Consistent review is crucial to keep investor information accurate and support the implementation of realistic risk management actions on a continuous basis.

Hypothetical Case Study

Biotek-XYZ, an Australian biotechnology company, is conducting a capital raise to support its research and development activities.

During the capital raise they are approached by Crit-Tech Ventures, a foreign venture capital fund. Crit-Tech Ventures offer $10 million (AUD) for a 30% share in Biotek-XYZ. This offer is significantly greater than any other offers.

1. Biotek-XYZ uncovers that Crit-Tech Ventures has received investment from a foreign state-owned enterprise.
2. One of Crit-Tech Venture's directors has ties to a company which has links to the foreign country's military. These relationships were not disclosed by Crit-Tech Ventures.
3. Biotek-XYZ raises this with Crit-Tech Ventures, who threatens to withdraw their offer if it is not accepted within 72 hours.
4. Crit-Tech Ventures also request access to existing project information over email to validate Biotek-XYZ's research is worth their investment.
5. Biotek-XYZ notice that Crit-Tech Ventures have requested a board seat and ongoing access to Biotek-XYZ facilities and systems, including access from foreign locations, in the contract.

Analysis and Risk Mitigations

Crit-Tech Ventures are displaying indicators of concern from a bad-faith investor perspective.

- **Obfuscating foreign links**
- **Deadline used to exert pressure**
- **System access and board seat requests**
- **Disproportionate Funding amount**
- **Information requested before signing a contract**

Note: These indicators do not always mean additional risk, but if they are present you should consider investigating further and implementing mitigations.

Having identified these indicators of concern, Biotek-XYZ should now select and implement different strategies to manage this risk.

1. **Pivot to a different capital source** — For example, trusted domestic VC firms, state, territory or Commonwealth investment funds, or other entities.
2. **Engage specialist support** — Legal, financial or other specialists can help review the investment details and support risk management activities.
3. **Implement controls to reduce risks** — Technical, contractual and administrative controls can help reduce risk likelihood and impact.

The Australian Government reviews investment proposals under the *Foreign Acquisitions and Takeovers Act 1975* to be satisfied that they are not contrary to Australia's national interest or our national security. Investors can voluntarily opt into the framework through the Foreign Investment Portal.

For more information on Australia's foreign investment policy go to https://foreigninvestment.gov.au/