Chinese Exit Bans in Commercial Disputes in the Context of ChAFTA Review and the Need for an Australian Review and Negotiation Strategy

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Purpose

This submission respectfully urges the Australian Government, including the Department of Foreign Affairs and Trade, to undertake a formal review of Chinese commercial counterpart's potential and actual use of exit bans in commercial disputes in the People's Republic of China as part of its ChAFTA review efforts. The Australian Government should consider negotiating exit ban protections, exemptions, waivers, or minimum procedural safeguards for Australian nationals and Australian businesses operating in or travelling to China. DFAT should attempt to convince its Chinese counterparts that, due to Australia's effective and impartial legal court system which is open to enforce foreign arbitral awards and foreign contracts, such exit bans on Australian citizens in the context of commercial disputes are unnecessary. The potential for such exit bans to be enforced against Australians in commercial disputes make the competing markets such as Vietnam, Indonesia, Thailand, India more attractive especially in the case of sourcing and procurement business. The potential threat of exit bans has a material chilling effect on companies' willingness to invest in and trade with China. Australia does not impose exit bans on Chinese citizens in the context of purely commercial disputes. It would be useful for Chinese and Australian government officials to engage in discussions on this issue.

The issue is no longer theoretical. Public legal commentary and official Chinese legal materials show that Chinese law allows a foreign national to be prevented from leaving China where there is an unresolved civil case and a Chinese court has made a decision prohibiting exit. This creates a material sovereign-risk issue for Australian companies, directors, officers, staff, and professional advisers engaging in normal cross-border commerce with China.

Why a Review Is Needed

China's legal framework expressly permits restrictions on a foreigner's departure in unresolved civil matters. Article 28 of the Exit and Entry Administration Law provides: "**有未了结的民事案件，经人民法院决定不准出境的**," meaning that a foreigner may be barred from exiting where there is an unsettled civil case and a people's court has decided that the person may not leave. Scholarly and practitioner commentary further explains that Chinese courts may use civil-procedure and enforcement powers to impose or support travel restrictions in debt and commercial disputes.

This matters because the practical use of exit bans can extend beyond classic criminal or national-security cases into ordinary business disputes, including contract disputes, debt claims, and enforcement matters. Reports and legal commentary describe cases in which foreign executives only discovered the existence of an exit restriction at the airport, and

in some instances such measures have been characterised as commercial pressure tactics.

For Australian businesses, this creates several serious policy concerns:

- It raises the personal risk of travel to China for directors, executives, managers, and technical employees involved in contract performance or dispute resolution.
- It may distort commercial bargaining by allowing a private dispute to escalate into a restriction on liberty of movement.
- It can deter Australian firms from sending staff into China even where trade and investment ties are otherwise commercially desirable.
- It may reduce confidence in dispute resolution where the Australian party fears that attendance in China could create personal coercive leverage unrelated to the legal merits of the dispute.

Given the importance of the China market to Australia, and the continuing relevance of the China-Australia Free Trade Agreement, this is a suitable subject for a focused government review rather than leaving Australian firms to manage the risk individually and in private.

Why This Is a Trade and Investment Issue

Although exit bans arise through domestic legal and court processes, their effects are squarely commercial. They alter the risk profile of cross-border contracting, dispute resolution, executive travel, and supply-chain governance. A measure that can prevent an Australian executive from leaving China during a private commercial dispute is functionally relevant to trade, investment, and services access, even if it is formally characterised as a domestic legal measure.

Australia has previously used trade diplomacy, bilateral engagement, and legal frameworks to address barriers or risks affecting exporters, investors, and service suppliers. A review of exit-ban usage in China would therefore fit comfortably within Australia's broader trade-risk, commercial-diplomacy, and investor-protection agenda.

Matters the Review Should Examine

A formal review could usefully consider the following questions:

1. How frequently are foreigners, including business executives, made subject to exit bans in China in connection with civil and commercial disputes?
2. In what kinds of commercial cases are such measures being sought or used, including unpaid debt, supply disputes, shareholder disputes, and enforcement proceedings?
3. What procedural safeguards currently exist under Chinese law, including notice, review rights, proportionality standards, and time limits?

4. What specific exposure do Australian companies and Australian nationals face, including sectors, transaction types, and role-based exposure for travelling staff?
5. Whether ChAFTA, ancillary bilateral mechanisms, consular arrangements, or a side protocol could be used to seek stronger protections for Australians in purely commercial disputes.

What Australia Should Seek From China

A full exemption from commercial-dispute exit bans for Australians would be the strongest outcome. Australia could also pursue a structured package of protections. A pragmatic negotiating agenda could include:

- A bilateral commitment that Australians will not be made subject to exit bans in purely commercial disputes unless there is clear evidence of fraud, asset dissipation, or deliberate evasion of court process.
- Mandatory advance prompt notice to the Australian Embassy or relevant consular officials where an Australian national is proposed to be made subject to an exit restriction in a commercial matter.
- A right to expedited judicial review of any exit restriction affecting an Australian citizen or Australian-resident executive in a commercial case.
- A requirement that commercial-dispute exit restrictions be time-limited, proportionate, and used only as a last resort.
- A ChAFTA side letter, protocol, or interpretive instrument making clear that business-mobility commitments should not be undermined by coercive use of commercial-dispute exit bans.

If a full waiver is not presently negotiable, Australia should at least seek a formal assurance that Chinese courts and authorities will not use exit bans against Australians merely as leverage in ordinary debt recovery or contract disputes.

There are well understood legal pathways for the enforcement of China based arbitral awards and contracts in the Australian legal system (this is not always the case for other countries). Exit bans in purely commercial disputes between Australian and Chinese businesses are not a positive factor if the goal is to expand trade relations.

Why Government Action Matters

Individual Australian companies can include contractual clauses discouraging counter-parties from seeking exit bans, but such clauses arguably cannot override Chinese domestic law and are not an adequate substitute for state-to-state engagement. This is therefore a matter where only government can realistically improve baseline protection for Australians.

A review would also help the Government provide clearer travel and commercial guidance to Australian businesses. At present, many firms may not fully appreciate that a

private commercial dispute in China can create a real risk of a departure restriction for travelling personnel. Better guidance, backed by diplomatic engagement, would improve commercial certainty without undermining legitimate dispute resolution.

Request

It is respectfully requested that the Australian Government as part of the ChAFTA review:

- undertake a review into the use of exit bans in commercial disputes in China;
- consult with business groups, legal practitioners, insurers, and trade bodies;
- publish guidance on commercial-travel and dispute-resolution risks in China for Australian businesses;
- and pursue, through the ChAFTA review mechanisms or associated bilateral legal and consular channels, an exemption, waiver, or robust minimum procedural safeguards for Australians in purely commercial disputes.

Australia and China have an important economic relationship. Precisely because that relationship matters, commercial actors need confidence that ordinary business disputes will be resolved through law and process, not through restrictions on personal departure.

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