REIT TAKEOVERS – AN EVALUATION OF BARRIERS TO ACTIVITY

Hugh Zochling * and Matthew Phipson
University of Technology, Sydney, PO Box 123 Broadway, NSW 2007
hugh.zochling@uts.edu.au
matthew.phipson@uts.edu.au

ABSTRACT

The global financial crisis in September 2007 resulted in the most significant downturn in global real estate markets in decades. Listed real estate markets were particularly affected, as the combination of high leverage and collapsing real estate values led to massive erosion of shareholder value and investment confidence. The Australian real estate investment trust (A-REIT) market suffered one of the largest downturns relative to its global peers. Currently the downturn appears to be abating, with most A-REITs having undertaken a process of balance sheet reconstruction, via asset sales, equity raisings and debt reduction. However, many A-REITs continue to trade at a significant discount to underlying net asset values. Such circumstances typically provide takeover opportunities that may unlock significant value. However, despite the potentially attractive values, we have seen limited recent takeover activity in Australia. This paucity of A-REIT takeovers suggests there may be barriers to such activity. This research examines the barriers to takeovers currently existing in the A-REIT market.

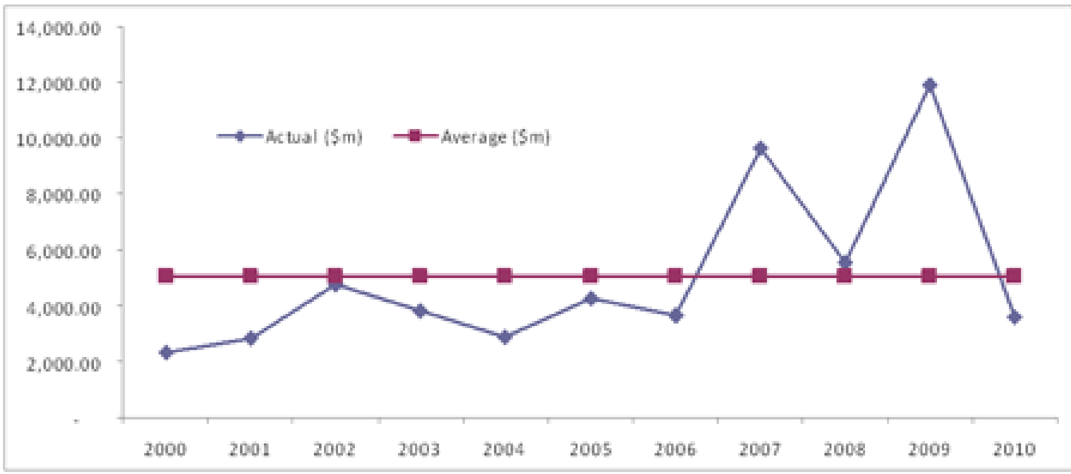
Keywords: REITs, A-REITs, discount to net asset value, takeover

* Attending conference

1. Introduction

The 2007 global financial crisis produced the most significant downturn in global real estate markets in decades. Capital for real estate transactions became scarce restricting the ability of the sector to maintain growth. The withdrawal of capital quickly resulted in a fall in property values which was compounded when highly geared investors, particularly REITs, were forced into asset sales to meet deleveraging targets imposed by their financiers. A-REITs experienced combined asset value declines in excess of $22 billion in FY09 and FY10 (PKF, 2010). Asset sales by REITs were supplemented by large scale capital raisings, often at highly dilutionary prices, to restore balance sheet strength. Almost $30 billion in new equity was raised by A-REITs in the post GFC period (see Figure 1).

Figure 1: Calendar year equity capital raisings by A-REITs - 2000 to 2010

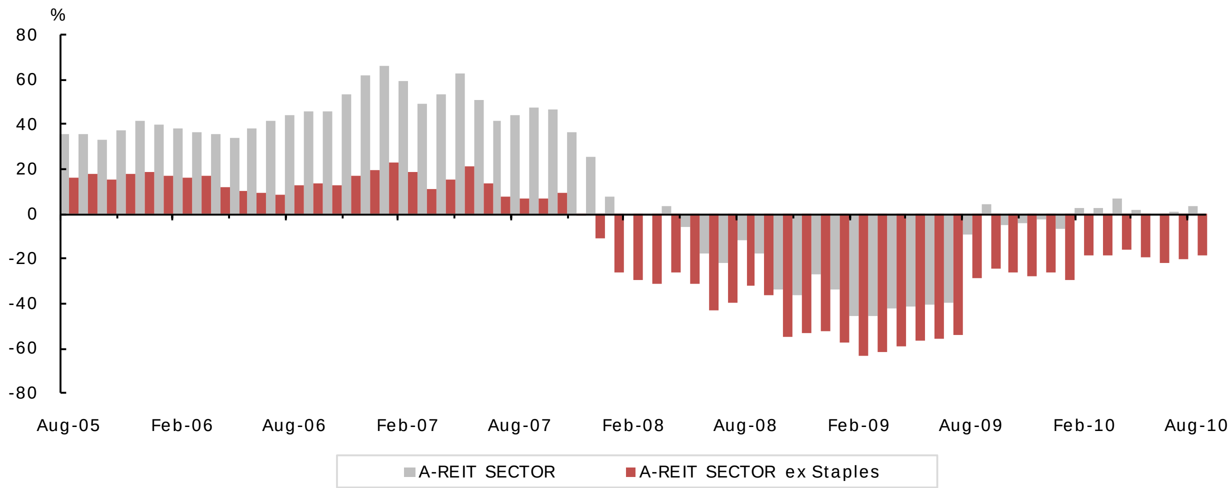


Source: J.P. Morgan, Bloomberg

By end 2010, A-REIT’s had largely completed their balance sheet repair work. Real estate markets had also stabilised, which was being reflected in A-REIT portfolio revaluations showing stable and in some cases marginally improving values.

However, despite the improved outlook for A-REITs and real estate markets in general, the A-REIT sector has continued to trade at significant discounts to stated net tangible asset values (NTA) (see Figure 2). At 30 June, 2010, 81% of A-REITs were trading at a discount to their NTA, of which 45% had a discount of 40% or more. The five largest discounts to NTA were Galileo Japan Trust (93%), APN European Retail Trust (83%), ING Real Estate Entertainment Fund (81%), ING Real Estate Community Living Group (80%) and Multiplex Prime Property Fund (75%) (BDO, 2010).

Figure 2: A-REITs Historical Premium / Discount to Net Tangible Asset Value



Source: Aegis (2010)

Where significant NTA discounts exist, this may present potentially lucrative A-REIT takeover opportunities, whereby entities with access to sufficient capital can acquire REITs and hold the assets or sell them in an orderly fashion to unlock value. According to Barkham and Ward (1999), REIT securities have traditionally traded at a discount to underlying net tangible asset values and such a discount can be partially attributed to the costs associated with transacting real estate (Draper and Paudyal, 1991). However, if this discount exceeds the cost of selling a REIT's underlying assets, investors can realise abnormal profits through acquisition.

However we have not recently seen this opportunistic investment strategy implemented in Australia to any significant extent suggesting that barriers exist.

This research will explore the barriers to REIT takeover activity in Australia. In the first instance, the research will identify from the literature and consider traditional barriers to REIT takeovers. Secondly, the issue is explored in semi-structured interviews with 2 industry executives with previous A-REIT takeover experience.

2. Barriers to REIT Acquisitions

A review of the literature surrounding takeovers has identified the following key barriers to REIT takeover activity.

Obtaining Shareholder Support

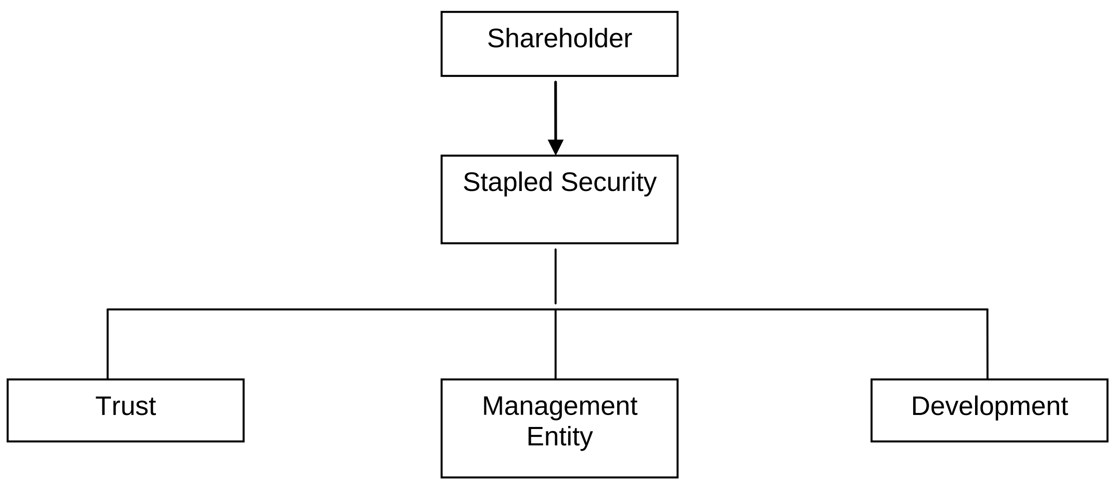
Obtaining shareholder support is the first barrier faced in a REIT acquisition and the target entity's shareholders will often force the acquirer to pay a premium for control in a takeover scenario (Garrigan and Parsons, 1997). In addition, a REIT's share price will generally increase as the probability of acquisition increases (Brauer, 1988). This is supported by Pratt (1966) who observed that REIT discounts close in on underlying net asset values when there is speculation of liquidation.

Therefore, obtaining the support of shareholders and its associated cost does not prohibit acquisition activity, but will often make it more expensive for the acquirer.

Managerial Control

Managerial control is a second barrier to acquiring a REIT, the degree of which depends on whether the REIT is externally or internally managed. An externally managed REIT has a manager which is a separate entity to the trust itself. An internally managed REIT, or stapled security, is one in which the shareholders are given an equivalent number of non-separable units in the trust and shares in the management entity (Higgins, 2008).

Figure 3: Structure of Internally Managed REITs



Source: Higgins (2008)

The internally managed model aligns the interests of the shareholders and the trustee by stapling the management entity to the trust. In contrast, external managers usually have no stake in the trust and are driven by management fees which are often levied as a percentage of funds under management (Higgins, 2008).

The struggle to maintain control by external managers often means that an externally managed REIT is unlikely to be acquired even though it may provide great benefits for shareholders (Brauer, 1988). External managers will typically act to protect their management fees and may decline acquisition bids, even if the bid is lucrative for shareholders. Large fund discounts regularly exist for REITs which demonstrates the difficulty faced by shareholders in convincing management to accept acquisition bids (Draper and Paudyal, 1991).

In the case of internally managed REITs, Ghosh and Sirmans (2005) identify that where REIT CEO's influence board member selection, motivated by self–preservation they are likely to appoint supportive directors. This suggests that the lack of a truly independent board may also act as a barrier to REIT takeover, as also identified by Shivdasani (1993).

Concentration of Ownership

The Trade Practices Act (1974) can potentially create a third barrier to REIT acquisitions. The Act prohibits takeover activity if it substantially lessens competition in the marketplace. Section 50 (2) of the Trade Practices Act (1974) states:

"A person must not directly or indirectly:

1. acquire shares in the capital of a corporation; or
2. acquire any assets of a corporation

if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in the market".

The Australian Competition and Consumer Commission (ACCC) is the Australian government department responsible for ensuring compliance with the Trade Practices Act. According to ACCC (2008), Section 50 (3) of the Trade Practices Act provides a list of factors which are considered when assessing whether a merger or acquisition will substantially lessen competition:

1. “ The actual and potential level of import competition in the market;
2. The height of barriers to entry to the market;
3. The level of concentration in the market;
4. The degree of countervailing power in the market;
5. The likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;
6. The extent to which substitutes are available in the market or are likely to be available in the market;
7. The dynamic characteristics of the market, including growth, innovation and product differentiation;
8. The likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor; and
9. The nature and extent of vertical integration in the market”.

According to Latimer (2006), the ACCC follows a structured, five stage evaluation process when determining whether a merger or acquisition would substantially lessen competition in the marketplace. The proposed M&A transaction must pass this evaluation process to receive ACCC approval and authority to proceed. The process is outlined as follows:

1. Market Definition – The market in which the product is sold is to be identified;

2. Market Share – The concentration of market share is to be assessed. A high level of concentration will exist if it results in one of the following:
   - the four largest entities having market share of at least 75% and the merged entity having market share of at least 15%; or
   - the merged entity having market share of more than 40%;

3. Import Competition – The level of import competition in the market is to be measured. Low import competition is more likely to result in a lessening of competition;

4. Barriers to Entry – The extent of barriers to enter the market are to be analysed. High barriers to entry are more likely to result in a lessening of competition; and

5. Structural and Behavioural Market Features – Key attributes that are specific to the market in which the merger activity will occur (Latimer, 2006).

FIRB Approval

Another potential barrier to a REIT acquisition is obtaining Foreign Investment Review Board (FIRB) approval. FIRB is the Australian government department responsible for administering the Foreign Acquisition and Takeovers Act (1975) and will form an obstacle to offshore investors looking to acquire an Australian REIT. FIRB approval, however, is generally viewed as a largely administrative process and should not prevent a REIT acquisition from occurring.

FIRB must be notified of the following acquisitions regardless of the value of the transaction or nationality of the acquirer:

- All vacant non-residential land;
- All residential real estate;
- All shares or units in Australian urban land corporations or trust estates; and
- All direct investments by foreign governments or their agencies (FIRB, 2009).

Development Land

FIRB has different regulations for the acquisition of residential and commercial development sites. The regulations tend to be more stringent for residential development sites, however approval is generally granted on the following conditions:

- Continuous construction must commence within 24 months of acquisition; and
- At least 50% of the purchase price or market value of the land, whichever the greater, must be spent developing the land (FIRB, 2009).

Approval for foreign investment in commercial real estate is generally granted if the following conditions are met:

- Continuous construction commencing within five years; and
- At least 50% of the purchase price or market value of the land, whichever the greater, must be spent developing the land (FIRB, 2009).

Developed Commercial Real Estate

FIRB approval is required if a foreign investment in developed commercial real estate exceeds the thresholds shown in Table 1 (below).

Table 1: FIRB Commercial Real Estate Thresholds

\$5,000,000	Developed non-residential real estate, where the property is subject to heritage listing.
\$50,000,000	Developed non-residential real estate, where the property is not subject to heritage listing.
\$219,000,000	An investor acquires an interest in an Australia business or an interest in an offshore company that holds Australian assets or conducts business in Australia and the Australian assets of the target company are valued at or above the threshold (non-US investors).
\$953,000,000	An investor acquires an interest in an Australia business or an interest in an offshore company that holds Australian assets or conducts business in Australia and the Australian assets of the target company are valued at or above the threshold (US investors)

Source: FIRB (2009, p.6)

Barriers to Hostile Takeovers

A takeover can either be hostile or friendly; however in the case of REITs, hostile takeovers are more difficult to execute as REITs will often adopt anti-takeover provisions. According to Garrigan and Parsons (1997), the most common anti-takeover provisions found in REIT structures are excess share provisions and poison pills.

An excess share provision restricts the number of shares an individual entity can own in a REIT. This threshold is usually a percentage of the total shares issued by the REIT, for example 10%. If an entity acquires more shares in the REIT than the threshold, the acquirer will lose their voting rights and will not receive a dividend for those shares held above the threshold (Garrigan and Parsons, 1997).

Similarly, Campbell et. al. (2001) found that a statutory limit of 9.8% on the amount of shares that can be acquired in a US REIT by any shareholder was also a significant barrier to hostile takeovers by reducing the influence of block shareholders.

Poison pills are another anti-takeover mechanism employed by REITs. If an entity purchases shares in excess of an established poison pill threshold, other shareholders have the opportunity to purchase the shares at a substantial discount. Therefore, poison pill provisions can rapidly dilute the equity of a purchaser who exceeds the threshold (Garrigan and Parsons, 2007).

In the case of some REITs, anti-takeover provisions such as excess share measures and poison pills may make friendly takeovers the only viable method of acquisition.

3. Research Methodology

This research was completed using qualitative grounded theory under the Strauss Approach (Charmaz, 2006). As such, semi-structured interviews were used as the primary data gathering method.

The two interviewees chosen for this research were experienced in REIT acquisitions. More specifically, both were involved in the following acquisitions:

- Investa Property Group’s 2003 acquisition of the Principal Office Fund; and
- Morgan Stanley Real Estate’s 2007 acquisition of Investa Property Group.

It should be noted that these were 2 different types of takeovers. The first takeover was in the public domain, involving a publicly owned bidder. In contrast, the second takeover effectively involved a privatisation of the takeover target. Consequently, the takeover strategies and execution thereof were different.

The semi-structured interviews featured a series of open-ended, unbiased questions that formed part of a broad examination of the REIT takeovers. The questions related to the subject matter of this research paper are detailed below:

a) Were there any barriers faced when acquiring the REIT?

b) What were these barriers?

c) How were they addressed?

d) What is currently preventing Australian REITs from being acquired?

Questions a) b) and c) attempt to identify barriers that are faced in REIT acquisitions and explain whether such barriers can be overcome.

Question d) attempts to explain specific barriers to entry in the current economic environment.

It is acknowledged that the respondents' answers are specific only to their experiences of the above takeovers representing a limitation of this research.

4. Data Analysis

Background

Interviewees were asked to respond to the series of open-ended questions and were invited to apply such questions to their experiences in the Investa Property Group takeover of the Principal Office Fund and the Morgan Stanley takeover of Investa Property Group. An outline of these takeovers is as follows:

Investa Property Group takeover of the Principal Office Fund - 2003

Between the 20th of June 2003 and the 2nd of October 2003, Investa Property Group successfully acquired the Principal Office Fund. According to the Australian Taxation Office (2009), Principal Office Fund investors received consideration of:

- $19.13 for every twelve Principal Office Fund units held; or
- $5.70 plus seven Investa Property Group stapled securities for every twelve Principal Office Fund units held.

Due to resistance from Principal Office Fund shareholders, the offer period was extended and the bid price increased. A time line of events prior to, during and after the offer period is as follows:

- On the 23rd of May 2003, Investa issued a notice of substantial shareholding in the Principal Office Fund to the ASX. At the time, Investa held 8.4% of the units in the Principal Office Fund;
- On the 20th of June 2003, Investa made its initial offer of seven Investa stapled securities and $4.86 cash for every twelve Principal Office Fund units held. The closing date for the offer was the 21st of July 2003;
- On the 7th of August 2003, Investa increased the cash component of its offer by $0.04 per unit;
- On the 1st of September 2003, the offer was accepted by 90% of the Principal Office Fund shareholders;
- On the 2nd of October 2003, the remaining units in the Principal Office Fund were compulsorily acquired by Investa (de-listed, 2005).

Morgan Stanley takeover of the Investa Property Group - 2007

Between the 31st of May 2007 and the 4th of September 2007, Morgan Stanley managed funds successfully acquired Investa Property Group. Investa shareholders received $3.08 for each stapled security held (Australian Taxation Office (2009)) The acquisition was completed under a scheme of arrangement and a timeline of key events in the acquisition process is as follows:

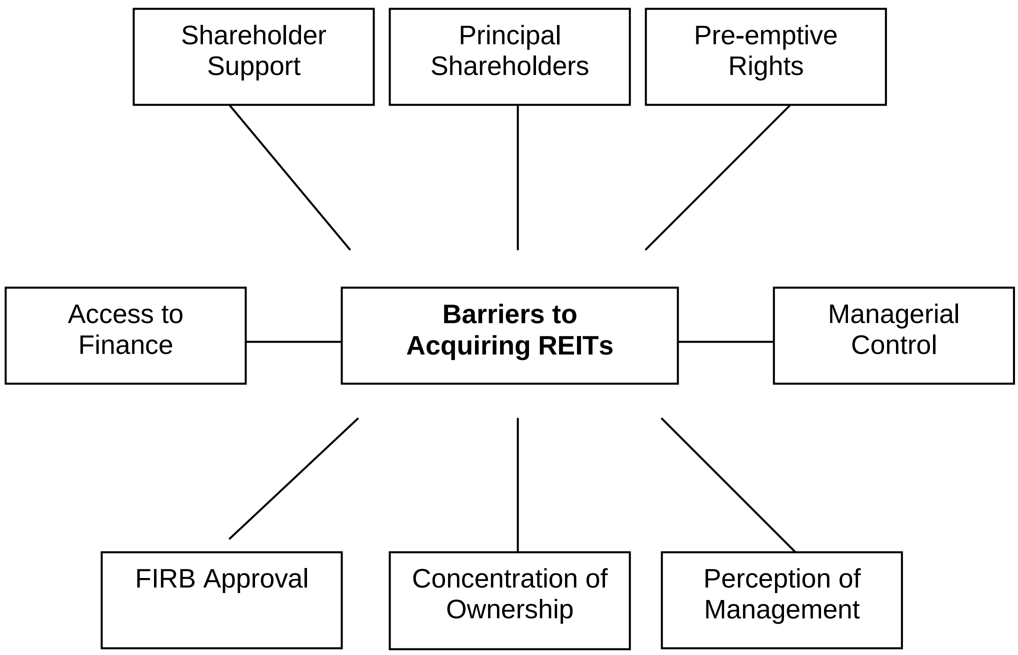
- In early March 2007, Morgan Stanley commenced initial negotiations with the Investa board;
- On the 31st of May 2007, Investa announced the Morgan Stanley offer of $3.08 per Investa stapled security. Investa recommended the offer to its shareholders;
- In August 2007, Investa shareholder meetings were held;
- In September 2007, the acquisition was consummated. (de-listed, 2007)

Morgan Stanley paid a 56% premium to underlying net tangible asset value to obtain control of Investa Property Group (Bloomberg 2007), noting that the Group included significant commercial and residential property development business, partly explaining the NTA premium.

Barriers to REIT Acquisitions

The interviews conducted have revealed a number of barriers that were faced during the Investa Property Group takeover of the Principal Office Fund and the Morgan Stanley takeover of Investa Property Group. These barriers are identified in Figure 4 (below) and a discussion of each follows.

Figure 4: Barriers to Acquiring REITs



Shareholder Support

The first barrier to a REIT acquisition is obtaining the support of shareholders. If the target REIT's shareholders are not supportive of the takeover bid, the acquirer will have to increase their offer to win shareholder support. This does not preclude REIT acquisitions, but often results in a negotiation around price.

Price was one of the primary concerns in the Investa hostile takeover of the Principal Office Fund. Some of the major Principal Office Fund investors were opportunistic and Investa had to increase their offer a number of times throughout the bid. The bid dragged on for a number of months, costing Investa significant time and resources. The increased offer and extended bid period made the acquisition significantly more expensive for Investa than was initially anticipated.

In contrast, the Investa takeover by Morgan Stanley was completed via a scheme of arrangement, a court approved legal process, based on a price supported in advance by major shareholders and management.

Principal Shareholders

The second barrier to a REIT acquisition is the principal shareholders of the target REIT. A principal shareholder is an entity that holds more than 10% of the total shares in another entity. In most cases, unless an acquirer has the support of such shareholders, an acquisition will be impossible. The shareholder register can be studied to identify principal shareholders and support from such shareholders should be attained early in the acquisition process.

Pre-emptive Rights

A pre-emptive right is the right to purchase an asset in preference to any other entity. When Investa acquired the Principal Office Fund, pre-emption rights were a major barrier and were quite difficult to negotiate. Some of the co-owners of building’s in which the Principal Office Fund had a stake, had the first right of refusal to Principal's stake, if it was sold.

Managerial Control

Another barrier to a REIT acquisition is the conflict of interest between management, who generate fees through managing the REIT, and the shareholders of the REIT. When Investa acquired the Principal Office Fund it was a hostile takeover and the battle between Investa and the management of the Principal Office Fund remained a relatively harsh and public confrontation until the acquisition was consummated. This struggle for control led to Investa having to increase their offer a number of times throughout the bid to win the support of shareholders.

Perception of Management

A further barrier to a REIT acquisition is the perception of the acquirer's management expertise. When Investa acquired the Principal Office Fund, there was an initial market perception that Investa would not be capable of managing A grade and Premium grade assets. Investa was cognisant of this obstacle and bolstered its property management team to address market concerns.

Concentration of Ownership

The concentration of ownership is another potential barrier to a REIT acquisition. In Australia, the ownership of investment grade office and industrial real estate is relatively segmented, whereas the direct ownership of Australia's major shopping centres is concentrated with comparatively few major players. Therefore, retail REITs are the most likely to face concentration of ownership issues under the Trade Practices Act (1974) when acquiring other REITs.

FIRB Approval

FIRB approval is also a potential barrier to a REIT acquisition. FIRB approval is required when offshore investors make Australian based investments. Therefore, if overseas investors are undertaking an Australian REIT acquisition, they must seek prior approval from FIRB.

When Morgan Stanley acquired Investa, FIRB was one hurdle that had to be overcome to complete the acquisition. Morgan Stanley was successful in their FIRB approval and according to interviewees, it did not act as a major barrier to the acquisition.

Access to Finance

Another barrier to a REIT acquisition is access to finance. In the current economic environment, bank and non-bank financial institutions are being very conservative in their capital allocations to commercial real estate lending. As a result, sourcing debt funding in the quantum required for a REIT acquisition is extremely difficult and is currently preventing Australian REIT acquisitions.

According to interviewees, the debt to equity equation in most Australian REITs requires further balancing out before financial institutions become comfortable lending money to them again. With rolling valuations and a significant lack of large commercial assets transacting in the marketplace, there is uncertainty around reported asset values and the subsequent gearing levels of REITs. The corollary of this is questionable reliability of stated NTAs and the implied current discounts of REIT market prices to NTAs. This may also be a barrier to REIT takeover activity.

Conflicts of Interest

Conflicts of interest between the acquirer, target entity and financial institutions are another barrier to obtaining finance in a REIT acquisition. When Investa acquired the Principal Office Fund, a late hurdle was faced when a financial institution which had approved funding for the transaction, deemed that they could not support the acquisition as they had an existing relationship with the Principal Office Fund.

To avoid this barrier preventing a REIT acquisition, the acquirer must identify early in their due diligence process if there are any reasons that institutional stakeholders, including financiers, won't support the acquisition, particularly through actual or perceived conflicts of interest.

Whilst a number of barriers to REIT acquisition have been identified, the significance of each to a potential takeover will depend on the specific circumstances of any target. That said, ultimately the success of any takeover is dependent on the shareholder support, making it the most significant barrier. However, in the current economic environment, access to finance is proving to be the greatest challenge according to interview respondents.

5. Conclusions and Implications for Further Research

The review of key literature and data analysis conducted in this research has revealed a number of barriers to acquiring A-REITs including; obtaining shareholder support, principal shareholders, pre-emptive rights issues, managerial control, the market's perception of the existing management, concentration of ownership in specific asset classes, obtaining FIRB approval, access to finance, conflicts of interest between various stakeholders and anti-takeover mechanisms. Whilst all of the above barriers play a role in determining whether a REIT acquisition will be possible, it is likely that access to finance is the largest barrier preventing an A- REIT acquisition in the current economic environment.

This research has also demonstrated that REIT acquisitions are complex real estate transactions and due to their nature, all REIT acquisitions contain barriers. Some of these barriers, such as the support of shareholders, will be faced in all REIT acquisitions. Other barriers, such as FIRB approval, will be unique to particular acquisitions depending on the location and asset class in which the acquirer and target operate.

Whilst a large amount of research has been conducted on mergers and acquisitions for general business activities, there is limited research specifically on A-REIT acquisitions. It is hoped that this research will encourage further research in the A-REIT acquisition field and will act as a starting point for that research.

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