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Investing in Australia: Key Foreign Investment Changes

Australia has long welcomed foreign investment to support economic growth and innovation. Ease of doing business, sound governance and strong institutions have been the hallmarks of Australia's foreign investment attractiveness. With foreign investment flows almost halving through the global economic crisis of 2020¹, international investors are evaluating the effectiveness of an economy's COVID-19 response position to buffer investment decisions. The Australian Federal Government has taken a proactive position to preserve and protect Australia's attractiveness to foreign investors.

From 1 January 2021, Australia has a revamped foreign investment framework (the Foreign Investment Review Board "FIRB" regime) to facilitate foreign investment while balancing Australia's national security. The new regime affects both existing and new foreign investors.

Key Takeways

- » Removal of the temporary \$0 monetary screening threshold for all foreign investments, this was introduced in March 2020 in response to the coronavirus (subject to the exception below);
- » Return to the general monetary threshold of \$275 million which applies to most business acquisitions and acquisitions of interests in Australian developed commercial land by private foreign investors (variations apply to non-private foreign investors and in respect to certain businesses such as media, mining and agriculture);
- » Introduction of FIRB pre-investment approval requirements for all (that is \$0 threshold) investments in sensitive national security land or businesses (including starting a business) regardless of value, including:
 - critical infrastructure (including critical electricity, ports, water and gas assets);
 - manufacture or supply of defence or national security related goods, services, technology;
 - any business with land situated in proximity to Defence or national security installations;
 - any business that owns, stores, collects or maintains sensitive data relating to Australia's national security or defence.

(Note, includes where a business or entity owned by a foreign person starts to carry on a "sensitive national security business").

- » Loosening of rules for foreign investment funds that have Foreign Government Investors where there are no management rights, influence or control over the investment or operational decisions;
- » "Call in" and "last resort" powers for the Treasurer eg if he considers that an action may pose a national security concern ("call in powers") or where a statement made in an application to FIRB was false or misleading or business activities change since the approval was given ("last resort");
- » Money lending generally does not require FIRB approval;
- » Foreign government investors are subject to specific rules.



The Implications

Clearly prospective foreign investors into Australia need to comply with the new FIRB requirements. Existing foreign investors into Australia (whether in sensitive industries or otherwise) must also monitor even passive movements in their investments, as these may now trigger obligations under the foreign investment regime.

Why Hall Chadwick

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¹Source: Global Investment Trends Monitor 36, October 2020, UNCTAD. Legislation references: The Foreign Acquisitions and Takeovers Fees Imposition Amendment Act 2020 (Cth) ("Fees Amendment Act") and the Foreign Investment Reform (Protecting Australia's National Security) Act 2020 (Cth) ("FIR Act"). © 2021 Hall Chadwick Melbourne Pty Ltd ABN 88 081 186 40. Liability limited by a scheme approved under Professional Standards Legislation. This is issued as a helpful guide to readers and for their private information. Points herein are general comments only and do not constitute or convey advice per se. Additionally changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas.

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