

Resources

August, 09

Reforms to Australia's Foreign Investment Framework

On 4 August 2009 the Australian Treasurer announced proposed reforms to Australia's foreign investment framework, which the Government aims to introduce in September 2009. The aim of the proposed reforms is to reduce compliance costs and disincentives on foreign investment in Australian businesses.

The proposed reforms will increase the monetary thresholds above which investment in Australian businesses must be reviewed by the Foreign Investment Review Board. This will ensure that the Government does not become involved in uncontroversial business transactions. The Treasurer, in his announcement, stated that "not one new business application has been rejected for more than a decade".

Under the proposed reforms the Government will:

- replace the four current thresholds for investment in private business with a single threshold of 15% in a business worth \$219 million or more. This means private foreign investment in Australian businesses below \$219 million can proceed without review;
- index the new, single threshold on 1 January every year to keep pace with inflation and to prevent foreign investment screening from becoming more restrictive over time; and
- abolish the existing requirement that private investors notify the Government when establishing a new business in Australia valued at above \$10 million.

This Alert is intended as an alert only. It does not purport to be a comprehensive advice. Readers should seek professional advice before acting in relation to these matters.

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The current and proposed thresholds are set out in the following table:

Current Thresholds	Proposed Thresholds
Foreign Investor – Interest in an Australian business \$100 million (not indexed)	\$219 million (ALL indexed on 1 January each year to the GDP price deflator in the Australian National Accounts for the previous year)
Foreign Investor – Offshore Takeover \$200 million (not indexed)	
US investors only – Sensitive sector acquisition \$110 million (indexed)	
US Investors only – Offshore Takeover \$219 million (indexed)	
US Investors only – Interest in an Australian business \$953 million (indexed)	\$953 million (indexed on 1 January each year to the GDP price deflator in the Australian National Accounts for the previous year)
Foreign Investor – establishing a new business \$10 million (not indexed)	Abolished

The proposed amendments to Australia's foreign investment framework will not affect the current requirements in relation to real estate investment proposals or investment by foreign government entities. When negotiating agreements for foreign investment in Australian mining tenements, parties to the transaction should be aware that such an agreement could trigger notification requirements, and legal advice should be sought to ensure compliance with foreign investment requirements.

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