

Legal Alert

Commercial

30 March 2020

COVID-19:

Temporary changes to foreign investment (FIRB) approval requirements

On 29 March 2020, the Australian Government announced temporary changes to foreign investment approval requirements in Australia, for the purposes of protecting the national interest while the coronavirus outbreak puts intense pressure on the Australian economy and Australian businesses.

Effective immediately, all monetary thresholds that previously applied to foreign acquisitions have been reduced to \$0, ensuring that all acquisitions that are subject to the *Foreign Acquisitions and Takeovers Act 1975* (Cth) will require approval, regardless of the value of the acquisition or the nature of the foreign investor.

Deadlines for FIRB decisions will also be extended from 1 month to 6 months, but priority will be given to the assessment of urgent applications for investments that protect and support Australian businesses and Australian jobs.

Removal of monetary thresholds for FIRB approval

On Sunday 29 March 2020, the Australian Government announced further measures to protect the Australian economy and Australian businesses during the coronavirus outbreak.

These included changes to the foreign investment review regime administered under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**).

The key change is to remove all monetary thresholds for notification to the Treasurer that previously applied to foreign acquisitions.

As such, effective immediately, any foreign acquisition of Australian assets that is subject to the FATA will require approval from the Treasurer, regardless of the value of the asset, the value of the transaction or the nationality of the foreign investor.

This change is intended to ensure that the Treasurer can assess proposed foreign acquisitions of interests in Australian land and Australian businesses on a case-by-case basis, and prevent opportunistic foreign takeovers of these assets while business and asset owners are under intense cash-flow pressure due to the coronavirus outbreak.

The Government has stated that the change is temporary and will remain in place “for the duration of the current crisis”.

Applications will continue to be submitted to the Foreign Investment Review Board (**FIRB**).

The types of acquisitions that will be impacted

Foreign acquisitions that will require approval include:

- Acquiring an interest in an exploration or mining production tenement
- Acquiring a direct (20%) interest in an Australian company or business
- Arrangements amounting to a ‘change in control’ (including where a foreign person will be in a position to direct senior officers of the company)
- Acquiring an interest in land (ie title to land)
- Acquiring an interest (as lessee/licensee) in a lease or licence > 5 years
- Acquiring an interest in a profit a prendre agreement (being a right to take something off the land or take something out of the soil of the land) > 5 years
- Acquiring an interest in a profit-sharing agreement (sharing of profits or income from the use of, or dealings in, the land) > 5 years
- Acquiring shares in an ‘Australian Land Corporation’ (being an entity with land valued > 50% of total assets).

The previous thresholds

Up until the announcement, no monetary thresholds applied for acquisitions made by Foreign Government investors (being Government entities, corporations with a Government entity shareholder with a stake in the corporation of 20% or more, and corporations over whose decisions a Government entity has a right of veto). As such, the position for these investors remains the same.

However, a range of monetary thresholds have until now applied to private foreign companies and foreign individuals, depending on the nationality of the investor as well as the nature of the interest being acquired.

Foreign investors who previously relied on these thresholds will now be required to seek approval via FIRB.

Extended decision deadlines

The Treasurer's deadline for decisions on proposed foreign acquisitions will be extended from 1 month to 6 months as part of the temporary measures.

That being said, FIRB has indicated that it will prioritise assessment of urgent applications for investments that protect and support Australian business and Australian jobs, and the extension of the deadline to 6 months will not necessarily mean that it will take 6 months to obtain a decision.

Assessment considerations

While a wider range of proposed transactions will be assessed as a result of these measures, the assessment considerations will remain the same. As such, each acquisition will be assessed using the same national interest test as is the current practice.

Please note: this information is current as of 30 March 2020. The speed with which COVID-19 is spreading and the varied responses both internally within Australia and externally change on a daily basis. It is important that you regularly keep up to date with all relevant information and be prepared to respond as the landscape in which the virus is moving changes.

For updated COVID-19 legal issues and considerations [please access our website.](#)

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