

Article Information

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Significant temporary changes to foreign investment review board (FIRB) requirements

Temporary changes to Australia's foreign investment review framework require the Foreign Investment Review Board's prior clearance of all foreign investment proposals relating to Australian businesses and assets.

Treasurer Josh Frydenberg has announced that with effect from 10:30pm on Sunday, 29 March 2020, temporary changes have been made to the foreign investment review framework overseen by the Foreign Investment Review Board (**FIRB**) to ensure appropriate oversight of all foreign investment in Australia for the duration of the coronavirus pandemic.

The new measures announced by the Treasurer are intended to safeguard Australian businesses and assets from predatory foreign takeovers in the wake of the coronavirus pandemic and ultimately to protect Australia's national interest as it deals with the economic fallout from the crisis.

The Treasurer has confirmed that these measures are not intended to block foreign investment in Australia; FIRB will still be reviewing and approving foreign investment proposals where it is considered appropriate having regard to the national interest.

Key amendments

Monetary thresholds

The monetary thresholds above which foreign investment proposals will require FIRB approval have all been reduced to \$0, effectively requiring FIRB to approve each and every attempt by a foreign person to invest in an Australian business or asset that is otherwise subject to the *Foreign Acquisitions and Takeovers Act 1975 (Act)*.

Prior to these changes, a number of monetary thresholds were in place ranging from \$0 to \$1,192 million and were based on factors such as the type of investor (i.e. privately owned investors or foreign government investors), the type of asset being acquired (i.e. land, agribusiness, non-sensitive businesses or sensitive businesses such as media, telecommunications or defence businesses) and the location of the investor (i.e. investors from countries with which Australia has a free trade agreement).

Timeframe for reviewing applications

The Treasurer will be asking applicants to extend the timeframe for reviewing their foreign investment applications for up to six months (increased from a period of 30 days) to account for the greater number of applications expected to be considered by FIRB. While the Treasurer previously had the ability to extend the statutory deadline with the consent of applicants, lengthy extensions will now become the norm. FIRB is however noting that applications may be processed in less than six months. This extended timeframe will apply to all new and most existing applications as at 29 March 2020.

Effect on foreign investment proposals and applications

All new foreign investment proposals that are subject to the Act will now require FIRB approval, regardless of their value

or the nature and origin of the foreign investor.

This will mean that numerous proposals by foreign investors that previously fell outside of the FIRB regime due to their value being below the monetary thresholds, will now require FIRB approval.

For transactions that have already been entered into but not completed, the lowering of the monetary thresholds will not require foreign investors to now seek FIRB approval for those transactions.

Importantly, the existing exemptions from the FIRB regime will remain in place.

Foreign investors should expect material delays in approvals from the current timelines that parties have been working to. The Treasurer has advised that priority will be given to urgent applications for investments that directly protect and support Australian businesses and Australian jobs, taking account of any commercial deadlines related to those proposed investments.

This will be an important consideration in framing any application and any commercial imperatives or broader economic impacts associated with the timing of an application will need to be separately brought to the attention of FIRB.

Key takeaways

The Treasurer has announced the following temporary changes to the foreign investment review framework effective from 10:30pm on Sunday 29 March 2020:

1. the monetary threshold for foreign investment proposals requiring FIRB approval has decreased to \$0; and
2. FIRB will be requiring a period of up to six months (increased from 30 days) to review and process new and existing applications.

As at the date of this article, no legislation or guidance has been released on the changes.