



# FOREIGN INVESTMENT IN AUSTRALIA





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## I. INTRODUCTION

Australia welcomes foreign investment. Most small and mid-sized investments outside the residential real estate sector can be made by foreign persons or entities without any application for approval under Australia's regulatory and policy regime. However, some proposed investments do need approval.<sup>1</sup>

The Treasurer in Australia's Commonwealth (federal) Government is the Government Minister with responsibility for foreign investment approval. The Treasurer rarely prohibits an acquisition.<sup>2</sup>

Australia's legislative framework for foreign investment is comprised of the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* (**Act**) and the *Foreign Acquisitions and Takeovers Regulation 2015* (**Regulations**) made under the Act. The Foreign Investment Policy of the Commonwealth Government (**Policy**) outlines its approach to administering the Act and Regulations.

The attributes of an investment which may make it subject to the Treasurer's review include:

- whether the foreign acquirer is from the private sector, or is a State or State owned;
- the nature of the asset (some land acquisitions are more highly regulated);
- the value of the acquisition and the value of the entity in which the acquisition is being made; and
- in the case of shares and similar securities, the proportion that the securities being acquired comprise of the relevant class of securities.

The rules pursuant to the Act and Regulations allow the Treasurer to prohibit or impose conditions on a reviewable investment if he or she considers that the proposed investment would be contrary to Australia's 'National Interest'. Proposals are evaluated on a case-by-case basis. Factors relevant to the Treasurer's evaluation include national security, any potential impact on competition, the character of the investor, and the impact on the Australian economy and community.

The Treasurer is advised on foreign investment proposals and the potential national interest implications by the Foreign Investment Review Board (**FIRB**).

If you or your company is considering investing in Australia, it may be necessary to seek approval for the investment from FIRB.

<sup>1</sup> Technically, the Treasurer does not 'approve' a proposed transaction. He or she determines not to object to the transaction.

<sup>2</sup> For example, in 2014-15 the Treasurer considered 38,932 applications (over 37,000 related to real estate) and prohibited none of them.



## 2. WHO NEEDS TO SEEK APPROVAL IN AUSTRALIA?

### 2.1 Foreign Persons

Under the Act, a Foreign Person, which includes Foreign Government Investors, may need to seek approval for inbound investment in Australia.

A Foreign Person includes:

- an individual that is not ordinarily resident in Australia; and
- a foreign government.

Entities in which Foreign Persons have certain interests are also Foreign Persons. For example, a corporation in which an individual not ordinarily resident of Australia, a foreign corporation or a foreign government holds a Substantial Interest, or in which two or more persons (each of whom is an individual not ordinarily resident in Australia) have an Aggregate Substantial Interest, may also be a foreign person. The relevant test traces through multiple interposed entities, so that for example if Company A holds a Substantial Interest in Company B and Company B has a Substantial Interest in Company C, and a Foreign Person has a 20% interest in Company A, the Foreign Person will have a Substantial Interest in Companies B and C.

#### Substantial Interest

A person holds a substantial interest in an entity or trust if:

- for an entity – the person, alone or together with one or more of their associates, holds an interest<sup>3</sup> of at least 20% in the entity; or
- for a trust (including a unit trust) – the person and their associates hold a beneficial interest in at least 20% of the income or property of the trust.

#### Aggregate Substantial Interest

Two or more persons hold an aggregate substantial interest in an entity or trust if:

- for an entity – the person, alone or together with one or more of associates, holds an aggregate interest of at least 40% in the entity; or
- for a trust (including a unit trust) – the person and their associates hold an aggregate beneficial interest in at least 40% of the income or property of the trust.

Approval and notification requirements vary depending on the type of Foreign Person making an investment, as well as with the type of investment being made.

Different requirements apply to foreign government investors, and investors from countries with which Australia has a Free Trade Agreement (**FTA**).

Further information about FTA partners of Australia is set out in section 6.1.

<sup>3</sup> 'Interest' is defined differently for different contexts. It includes any legal or beneficial interest (sections 9-15 of the Act).



## 2.2 Foreign Government Investors

Foreign Government Investors are foreign governments and entities in which the government, their agencies or related entities from a single foreign country have a Substantial Interest.

Foreign Government Investors are generally subject to lower monetary thresholds for all types of proposed investments. This is because the Treasurer must consider whether the proposed investment is only commercial in nature, or whether it is a strategy to obtain broader political objectives that would be contrary to Australia's National Interest.

Generally, all Foreign Government Investors must obtain approval from the Treasurer before:

- acquiring a Direct Interest in an Australian Business;
- starting a new Australian Business;
- acquiring an interest in Australian land;
- acquiring a legal or equitable interest in a mining, production or exploration tenement (this applies irrespective of the duration of the tenement); and
- acquiring an interest of at least 10 per cent in securities in a mining, production or exploration entity,

regardless of the value of the investment.

### Direct Interest

A direct interest is generally:

- an interest of any percentage in an entity or business if the person who acquired the interest is in a position to influence, participate or control the entity or business;
- an interest of at least 10% in an Australian entity or business; and
- an interest of at least 5% in an Australian entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business.



<sup>4</sup> The total asset value for the foreign entity must be less than 1% of the value of the total assets of that entity and the total asset value must be less than \$10,000,000.

## 3. WHAT TYPES OF ACTIONS NEED APPROVAL IN AUSTRALIA?

There are three categories of actions that potential Foreign Persons need to be aware of:

1. Notifiable Action;
2. Significant Actions; and
3. Other actions.

### 3.1 Notifiable Actions

A Notifiable Action is a proposed acquisition by a Foreign Person and their associates of:

- a Substantial Interest (20% or more) in an Australian entity;
- a Direct Interest in an Australian entity or Australian Business that is an agribusiness; or
- an interest in Australian land.

The acquisition is only notifiable if the acquisition or the entity in which the acquisition is being made is above the relevant monetary threshold, as shown on the tables set out on page 9.

A Foreign Person who proposes to take a Notifiable Action must give a notice to the Treasurer before taking the action. If a Foreign Person undertakes a Notifiable Action without notifying the Treasurer, the Treasurer will have the authority to exercise his or her Unwind Power. Offences and civil penalties may also apply if a Notifiable Action is taken without a notice having been given.

Notifiable Actions are actions of particular concern to FIRB due to their potential impact on Australia's National Interest.

To determine whether the action you propose to take may constitute a Notifiable Action and require FIRB approval, refer to Section 4.

As an exception, the acquisition of a Direct Interest in an Australian entity that does not operate in the media, telecommunication, transport or military sector (sensitive sectors), does not amount to a Notifiable Action if only a non-material interest is acquired.<sup>4</sup>

This exception is only applicable where the Direct Interest is acquired by acquiring an interest in securities in a foreign entity. Further detail about sensitive sectors is set out in section 7.1.

### 3.2 Significant Actions

If the action you propose to take is not a Notifiable Action, it may be a Significant Action.

A Foreign Person who proposes to take a Significant Action is not required to notify the Treasurer before taking the action. However a Foreign Person may choose to notify the Treasurer of the proposed action to obtain confirmation from the Treasurer, in the form of a No Objection Notification, that the Treasurer will not object to the proposed action and will not exercise his or her Unwind Power.

Further detail about Significant Actions is set out in Section 5.

### 3.3 Other actions

A Foreign Person who proposes to take an action that is neither a Notifiable Action nor a Significant Action is not required to notify the Treasurer before taking that action, and the Treasurer has no authority to exercise his or her Unwind Power.



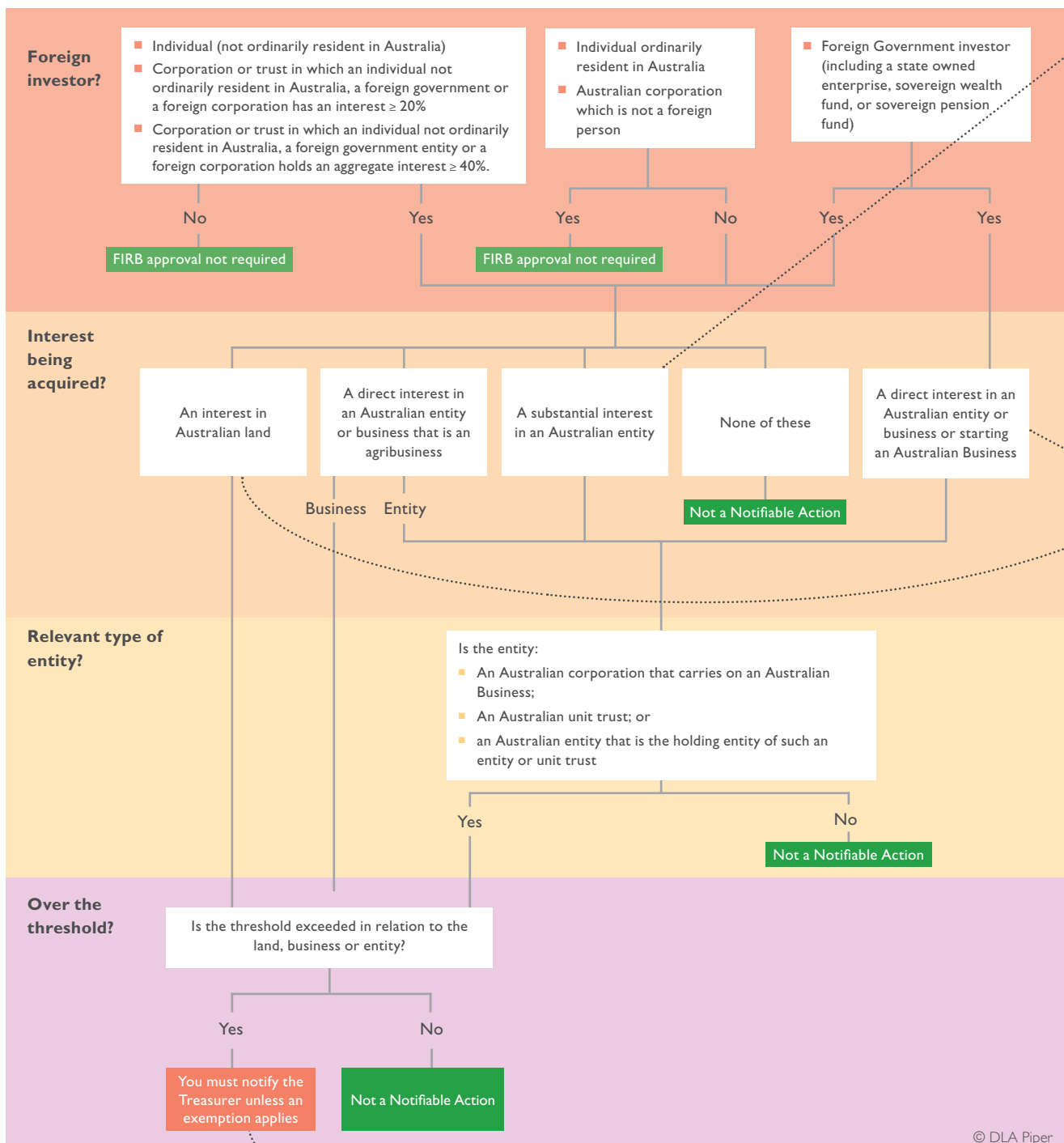


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## 4. NOTIFIABLE ACTION

To determine whether the action you propose to take may constitute a Notifiable Action and require FIRB approval, use the diagram below.







### Substantial Interest

A person holds a substantial interest in an entity or trust if

- for an entity—the person holds an interest of at least 20% in the entity; or
- for a trust (including a unit trust)—the person, together with any one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.

### Aggregate Substantial Interest

2 or more persons hold an Aggregate Substantial Interest in an entity or trust if:

- for an entity—the persons hold an aggregate interest of at least 40% in the entity; or
- for a trust (including a unit trust)—the persons, together with any one or more associates of any of them hold, in the aggregate, beneficial interests in at least 40% of the income or property of the trust.

### Australian land

Australian Land means agricultural land, commercial land, residential land or a mining or production tenement.

### Interest in Australian Land

An interest in Australian Land includes an interest in a share in an Australian land corporation or agricultural land corporation or an interest in a unit in an Australian land trust or agricultural land trust.

### Direct Interest

A direct interest in an entity or business is:

- (a) an interest of at least 10% in the entity or business; or
- (b) an interest of at least 5% in the entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business; or
- (c) an interest of any percentage in the entity or business if the person who acquired the interest is in a position:
  - (i) to influence or participate in the central management and control of the entity or business; or
  - (ii) to influence, participate in or determine the policy of the entity or business.

### Exemptions

See section 8 – ‘Exemptions to Notifiable Actions’.

## LAND PROPOSALS

Investor	Action	Threshold – value of enterprise or asset (not the amount paid for an interest) is more than:
All investors	Residential land	\$0
Privately owned investors from certain FTA countries	Agricultural land	For Chile, New Zealand and United States, \$1,094 million
		For China, Japan, Korea, \$15 million (cumulative)
		For Singapore and Thailand, \$50 million <sup>5</sup>
	Vacant commercial land	\$0
	Developed commercial land	\$1,094 million
Privately owned investors	Mining and production tenements	For Chile, New Zealand and the United States, \$1,094 million
		Others, \$0
	Agricultural land	\$15 million (cumulative)
Foreign Government Investors	Vacant commercial land	\$0
	Developed commercial land	\$252 million
		Low threshold land (sensitive land <sup>6</sup> ), \$55 million
	Any interest in land	\$0

## NON-LAND PROPOSALS

Investor	Action	Threshold — amount paid for an interest or the value of an entity or asset is more than:
Other investors	Business acquisitions (all sectors)	\$252 million
	Media sector	\$0
	Agribusinesses	\$55 million <sup>7</sup>
From FTA partner countries that have the higher threshold	Acquisitions in non-sensitive businesses	\$1,094 million
	Acquisitions in sensitive businesses <sup>8</sup>	\$252 million
	Media sector <sup>9</sup>	\$0
	Agribusinesses	For Chile, New Zealand and the United States, \$1,094 million For China, Japan, and Korea, \$55 million <sup>10</sup>
Foreign government investors	All direct interests in an Australian entity or Australian Business	\$0
	Starting a new Australian Business	\$0

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<sup>5</sup> Where land is used wholly and exclusively for a primary production business \$50 million (otherwise the land is not agricultural land).

<sup>6</sup> Low threshold land includes mines and critical infrastructure (such as an airport or port).

<sup>7</sup> Based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity.

<sup>8</sup> Sensitive businesses include media; telecommunications; transport; defence and military related industries and activities; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium; or the operation of nuclear facilities.

<sup>9</sup> For investments in the media sector, a holding of at least five per cent requires notification and prior approval regardless of the value of investment.

<sup>10</sup> Based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity.



## 5. SIGNIFICANT ACTIONS

### 5.1 What is a Significant Action?

A Significant Action is an action to acquire an interest in securities, assets or Australian land, or otherwise take action in relation to entities and businesses that have a connection to Australia, and that meets the relevant monetary threshold.

Different monetary thresholds apply to different types of Significant Actions as shown on the tables set out on page 9. A lower monetary threshold applies to acquisitions of businesses in sensitive sectors such as media and defence, acquisitions of Australian land and for acquisitions of interests in an agribusiness.

For an action to be a Significant Action, all of the conditions specified for the type of action must be met and the action must result in a change in control involving a Foreign Person or be taken by a Foreign Person. The conditions vary depending on the type of action and, in some cases, the particular circumstances, such as whether the target is an agribusiness.

If the action you propose to take is not a Notifiable Action, it may constitute a Significant Action.

The Treasurer has the right to review all investments made in Australia that are considered Significant Actions.

It is recommended that Foreign Persons notify the Treasurer of any proposal to take a Significant Action, in order to receive a No Objection Notification. Refer to section 5.3 for further information.

### 5.2 Types of Significant Actions

Types of actions that may constitute a Significant Action include:

- the acquisition of interests in the assets of an Australian entity or business (unless those assets are Australian land or are a direct investment in an Australian agribusiness); and

- entering into an agreement relating to the affairs of an entity or the alteration of an entity's constituent document which results in at least one senior officer of the entity being under an obligation to act in accordance with the directions of a Foreign Person who holds a Substantial Interest in the entity.

An acquisition of an interest in the assets of a business (other than Australian land assets or Australian agribusiness assets) which is not carried on by an entity (a corporation or trust) does not constitute a Significant Action unless the acquisition results in a change of control. Acquisitions of interests in partnerships or unincorporated joint ventures that do not result in a change of control are not Significant Actions, although the acquisition of an interest in a partner entity or a joint venture entity may be a Significant Action. Therefore, a conservative approach would be to apply to the Treasurer for approval.

### 5.3 Effect of not notifying the Treasurer

If a Significant Action has been taken which the Treasurer has not been notified of and the Treasurer later determines that the action is contrary to Australia's National Interest, the Treasurer can use his or her Unwind Power to make a disposal order to unwind the action or otherwise attach conditions to the transaction.

Foreign Persons can notify the Treasurer of any proposal to take a Significant Action (even if it is not a Notifiable Action), in order to obtain a No Objection Notification which provides confirmation from the Treasurer that he or she will not object to the acquisition. Where a No Objection Notification is given by the Treasurer, the proposal will be granted immunity for the next 12 months.

With this in mind, it will generally be in the best interests of a Foreign Person who is planning a Significant Action to notify the Treasurer and obtain approval to avoid any future complications.



#### 5.4 Effect of notifying the Treasurer

If a Foreign Person gives notice to the Treasurer of a Significant Action that is proposed to be taken, the proposed action must not be taken during the statutory period given to the Treasurer to make a decision, unless the Foreign Person is given a No Objection Notification. This period is generally 40 days after receipt of notice and payment of the application fee (which includes 30 days for the Treasurer to make the decision and a further 10 days to notify the applicant of the decision),

or may be an additional period of up to 90 days from the publication of an interim order. If the applicant considers the decision period required for the processing of their notice is insufficient, or they do not wish an interim order to be made, they can voluntarily extend the period. A timeline setting out the timing following lodgement of an application is set out in section 11.2.

Different rules apply to Foreign Government Investors, and investors from countries with which Australia has a free trade agreement (**FTA**).







## 6. OTHER INVESTORS

### 6.1 Free Trade Agreement Partners

Australia is a party to free trade agreements with the United States of America, Japan, Thailand, Chile, China, the Republic of Korea, Singapore, Malaysia and New Zealand (**Agreement Countries**).

Under these agreements, Australia has made commitments in respect of foreign investment screening, which includes the application of higher monetary thresholds for investors from certain countries.

Therefore investors from Agreement Countries that are either a 'National' or an 'Enterprise' of the Agreement Country are able to access the higher FTA thresholds for most types of actions.

An enterprise is generally an entity that is constituted and organised under the law of a country and that is carrying on business activities there. A national is an individual who is a citizen of a country or someone who is entitled to live indefinitely in that country.

In addition to this, investors from the United States, New Zealand and Chile benefit from higher monetary thresholds for investments in agribusiness, agricultural land, and mining and production tenements.

### 6.2 Private Equity Investors

Private equity sponsors will often be required to seek FIRB approval. This is common where they acquire a Substantial Interest in an Australian corporation which has a value that is above a prescribed monetary threshold, or where one or more of their limited partners are characterised as Foreign Government Investors.

The FIRB regime treats all Foreign Government Investors from the same country as 'associates' of one another regardless of whether or not they have actually acted in concert in regards to an investment. Due to the broad definition of Foreign Government Investor, (which for example by virtue of its definition includes sovereign wealth funds and statutory pension plans) and the fact that these organisations do not always act in concert, this can result in them being unknowingly caught by the requirement to seek FIRB approval. For this reason, it is important that private equity sponsors carefully evaluate the percentage interests held by each category of investor under the FIRB regime before acquiring an interest in an Australian asset.

Private equity sponsors should also consider whether it would be appropriate for them to apply for a business exemption certificate which will allow them to make one application seeking broad pre-approval for a program of investment activity, and eliminate the need for them to notify the Treasurer before each separate acquisition.

A business exemption certificate is suited to large investment funds, particularly those with low risk foreign government investors, and has the potential to significantly reduce the cost and regulatory burden of separate applications.

Refer to section 8.1. for further information about business exemption certificates.



# 7. INVESTMENT IN CERTAIN INDUSTRIES

## 7.1 Sensitive Sector Businesses

Sensitive Sector Businesses are those carried on wholly or partly in the sectors of (including a business relating to infrastructure for those sectors):

- media;
- telecommunications; or
- transport.

Sensitive Sector Businesses also cover businesses that wholly or partly involve:

- the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
- the development, manufacture or supply of, or the provision of services relating to, encryption, security and communications technologies;
- the supply of training or human resources to, the manufacture of military goods, equipment or technology for, or the supply of military goods, equipment or technology to, the Australian Defence Force or other defence forces; or
- the extraction of uranium or plutonium or the operation of a nuclear facility.

## 7.2 Agribusinesses

An Australian Agribusiness refers to an Australian entity or Business which carries on, or uses its assets fully or partly in, a business in any of the following industries:

- any class of Division A – Agriculture, Forestry and Fishing;
- meat processing;
- poultry processing;
- seafood processing;
- milk and cream processing;
- cheese and other dairy product manufacturing;

- fruit and vegetable processing;
- oil and fat manufacturing; or
- grain mill product manufacturing.

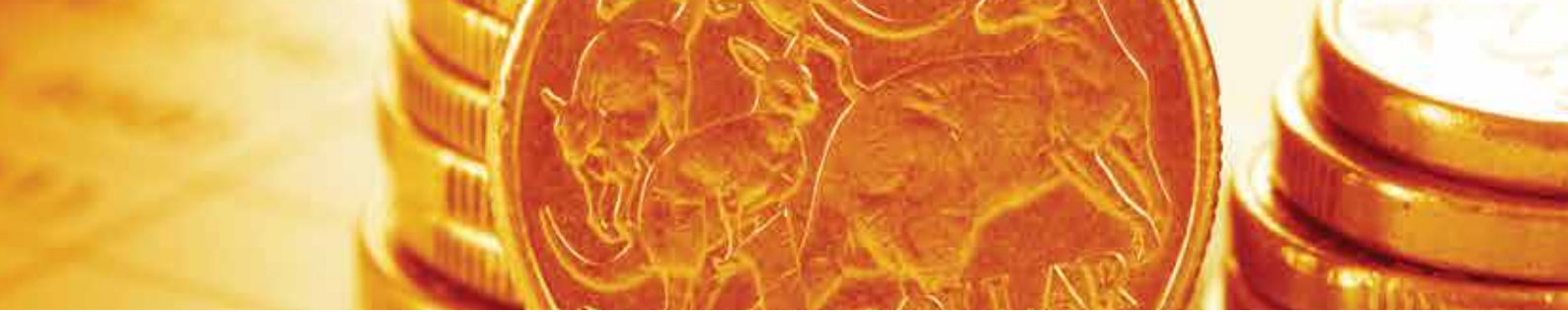
For an Australian entity to constitute an agribusiness there is the added requirement that:

- the value of the assets of the entity and its subsidiaries, used in carrying on the agribusiness must exceed 25% of the total asset value of the entity; or
- the entity and its subsidiary's earnings before interest and tax derived from the above classes, exceeds 25% of the total earnings for the entity (in the most recent financial year for which there are audited accounts).

For an Australian Business to constitute an agribusiness, the value of the assets of the business used in carrying on an agribusiness must exceed 25% of the value of the total assets of the business.







## 8. EXEMPTIONS TO NOTIFIABLE AND SIGNIFICANT ACTIONS

Certain acquisitions may be exempt from the Notifiable Action and Significant Action provisions in certain circumstances, including for:

- moneylending agreements as described in the Regulations;
- acquisitions by wills or devolution;
- certain interests held by foreign custodian corporations; and
- land acquired from government.

Certain actions or acquisitions are not covered by the Notifiable and Significant Action provisions when made in relation to an Australian entity. These are:

- investments in financial sector companies, except in relation to an acquisition of an interest by a foreign government investor;
- compulsory acquisitions and compulsory buy-outs of securities; and
- convertible instruments that include a requirement for loss absorption if the entity becomes non-viable.

Certain actions or acquisitions are not covered by the Notifiable and Significant Action provisions when made in relation to Australian Land. These are:

- acquisitions by persons with a close connection to Australia;
- certain acquisitions by certain funds and schemes;
- acquisitions in certain other circumstances specified by the regulations;
- certain acquisitions of interests in residential land; and
- acquisitions of certain easements.

### 8.1 Exemption Certificates

Foreign Persons (including Foreign Government Investors) may apply for a business exemption certificate which allows Foreign Persons to seek broad pre-approval for programs of acquisitions of interests in the assets of an Australian Business and/or securities in an entity, including interests acquired through the business of underwriting, over a period specified in the certificate. This allows for the pre-approval of multiple investments in the one application rather than the Foreign Person having to apply separately for each investment.

A foreign person may also apply for exemption certificates when acquiring interests in tenements and mining, production or exploration entities, and that interest is not an interest in Australian Land.







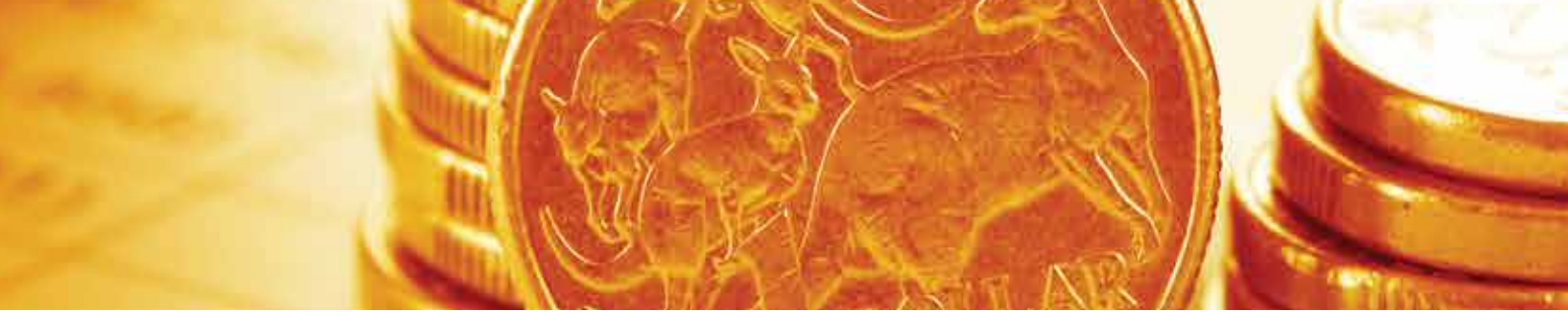
## 9. POWERS OF THE TREASURER

The Treasurer has the power to review foreign investment proposals and can:

- approve proposals unconditionally;
- approve proposals subject to conditions;
- prohibit proposals; or
- order that an action already undertaken be undone.

Where the Treasurer approves a proposed investment unconditionally, the proposal must be undertaken within 12 months of the approval.

The key consideration for the Treasurer in determining whether to approve a foreign investment is the possible implications for Australia's National Interest that may arise from the investment proposal. If a proposed action poses a risk to this interest, the Treasurer will consider whether this risk can be mitigated. If the risk can be managed, the Treasurer will approve the proposal but impose conditions to ensure the National Interest is protected.



## 10. TAX CONDITIONS

The Treasurer may impose tax conditions on foreign investors where it is determined that a particular foreign investment application may present a risk to Australia's revenue.

### 10.1 General conditions

The Treasurer may impose the following general conditions, unless and until a Termination Event occurs: that the applicant must:

- comply with Australia's tax laws in relation to the action, and any transactions, operations or assets in connection with the assets or operations acquired as a result of the action;
- provide any documents or information to the ATO;
- pay outstanding tax debts due under the tax laws of Australia; and
- provide an annual report to FIRB on compliance with these conditions.

If a proposal is considered to pose a particular tax risk, a further two conditions may be imposed. In such instances, the applicant may be required to:

- engage in good faith with the ATO to resolve any tax issues in relation to the transaction and its holding of the investment; and
- provide information as specified by the ATO on a periodic basis including, at a minimum, a forecast of tax payable.

### 10.2 Compliance by a Control Group

An applicant may also be required to use its best endeavours to ensure that entities in its Control Group comply with tax conditions, including the following:

- comply with Australia's tax law in relation to the action and any transactions, operations or assets in connection with the assets or operations acquired as a result of the action;
- provide any documents or information requested by the ATO; and
- pay any outstanding tax debt due under the tax laws of Australia.

### 10.3 Minimal tax risk

If the national interest would not be served by applying the tax conditions and any associated tax risk can be managed without the use of tax conditions, then they will not be applied.



## II. APPLICATIONS

### 11.1 Fees

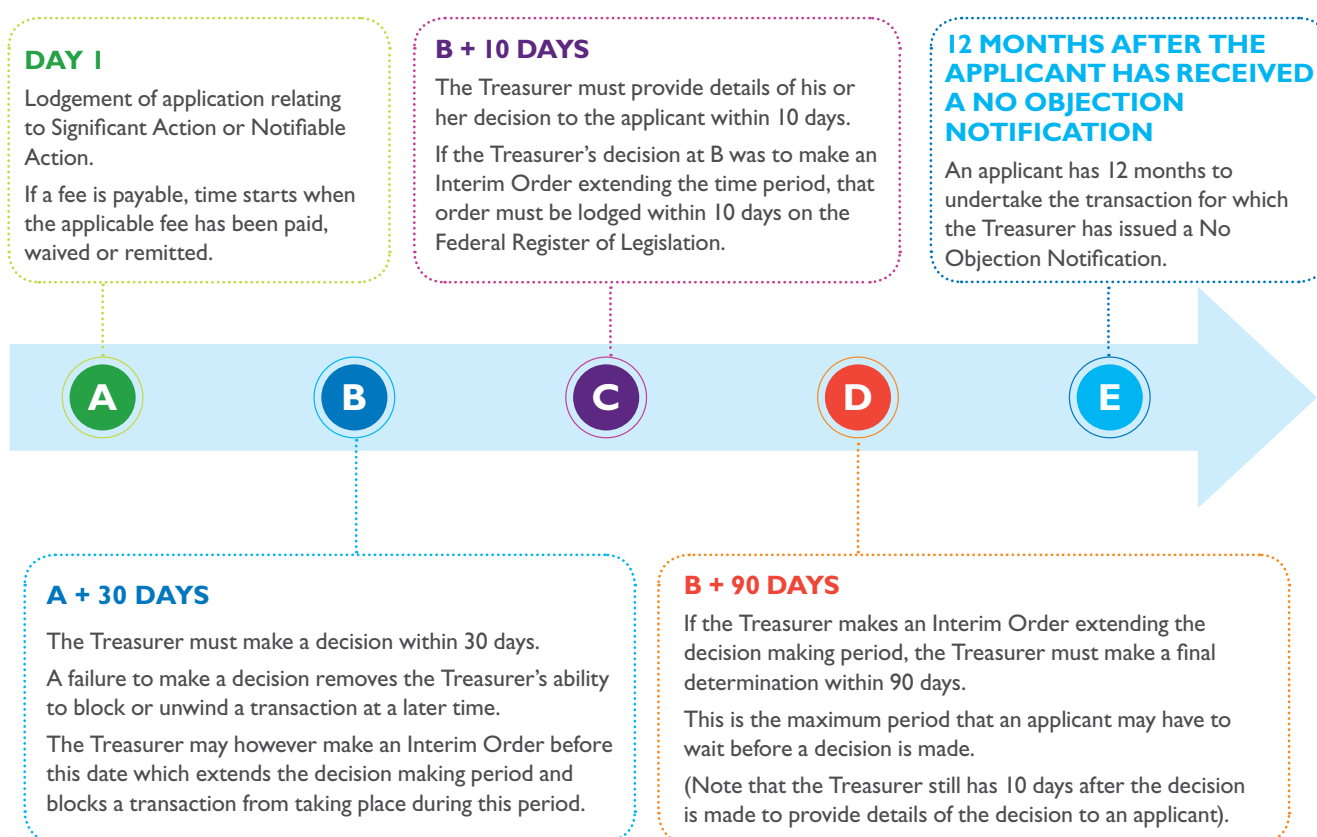
The *Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth)*, the *Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth)*, the *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streaming and Other Measures) Act 2017* and *Foreign Acquisitions and Takeovers Fees Imposition Amendment (Fee Streaming) Regulations 2017* prescribe the fees for applications made pursuant to the Act, including fees for giving notice of Notifiable Actions and applications relating to exemption certificates.

The period within which the Treasurer must make a decision will not start until the correct fee has been paid.

### 11.2 Timing

Once a Foreign Person gives notice to the Treasurer of a proposed action, the proposed action must not be taken during the period given to the Treasurer to make a decision, unless the Foreign Person is given a No Objection Notification.

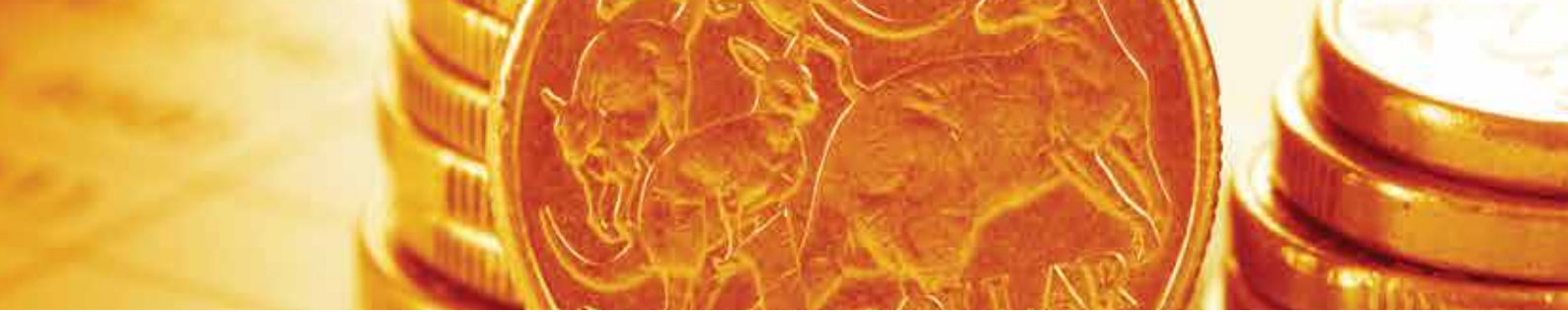
The following timeline sets out the timing following lodgement of an application:



#### Notes:

1. If the Treasurer makes a request for further information, the period is paused until the information is provided to the Treasurer. The day on which the information request is made, and the day on which the information is provided are not included in the 30 day period for the Treasurer to make his or her decision.
2. An applicant may themselves request an extension to the timeframe before the end of the 30 day period to avoid the publication of a public interim order and to provide the Treasurer with additional time to make a decision.





## 12. PENALTIES FOR BREACH

FIRB can impose penalties on foreign investors for breaches of Australia's foreign investment rules: for example for a failure to give notice before taking a Notifiable Action, taking a Significant Action before the prescribed time ends, or contravening a condition of approval or an exemption certificate.

For serious breaches where it is contrary to the National Interest to allow the investment to continue, the Treasurer may consider an order requiring disposal of the asset.

If a Significant Action has been taken which is contrary to the National Interest and the Treasurer has not been notified, the Treasurer can use his or her Unwind Power to make a disposal order to unwind the action.

A fee may be payable in relation to the disposal order (and related orders) made by the Treasurer. Furthermore, strict penalties (including criminal and civil penalties) can apply where a person fails to comply with an order. Failure to comply with an order may also result in the Treasurer initiating action in court to seek enforcement of the Treasurer's order.

For a breach of a condition, FIRB can also order the divestment of the action being taken. The breach may also attract further penalties under tax laws.

If a tax condition is breached, then an investor may be subject to prosecution or an application for a civil penalty order. It will depend on the breach and the circumstances surrounding it as to whether legal proceedings are commenced.





## 13. KEY TERMS

<b>Act</b>	means the <i>Foreign Acquisitions and Takeovers Act 1975 (Cth)</i> .
<b>Aggregate Substantial Interest</b>	<p>when two or more persons hold:</p> <ul style="list-style-type: none"> <li>■ for an entity – the persons and their associates hold an aggregate interest of at least 40% in the entity; or</li> <li>■ for a trust (including a unit trust) – the persons and their associates hold aggregate beneficial interests in at least 40% of the income or property of the trust.</li> </ul>
<b>Agreement Countries</b>	the United States of America, Japan, Thailand, Chile, China, the Republic of Korea, Singapore, Malaysia, and New Zealand.
<b>Agribusiness</b>	as defined in section 7.2 of this guide.
<b>ATO</b>	means the Australian Taxation Office.
<b>Australian Business</b>	means a business that is carried on wholly or partly in Australia for profit or gain.
<b>Australian Land</b>	means agricultural land, commercial land, residential land or a mining or production tenement in Australia.
<b>Control Group</b>	<p>an applicant’s control group consists of entities:</p> <ul style="list-style-type: none"> <li>■ that control the applicant (a controller);</li> <li>■ that a controller controls;</li> <li>■ that the applicant controls, which includes for the purposes of these conditions an entity that is the subject of the application.</li> </ul> <p>For the purposes of determining a control group, control has the meaning in section 50AA of the Corporations Act.</p>
<b>Direct Interest</b>	<p>in an entity or business is:</p> <ul style="list-style-type: none"> <li>■ an interest of at least 10% in an Australian entity or business;</li> <li>■ an interest of at least 5% in the Australian entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business; or</li> <li>■ an interest of any percentage in the entity or business if the person who acquired the interest is in a position to: <ul style="list-style-type: none"> <li>– influence or participate in the central management and control of the entity or business; or</li> <li>– influence, participate in or determine the policy of the entity or business.</li> </ul> </li> </ul>
<b>Enterprise</b>	means an entity that is constituted and organised under the law of a country and that is carrying on business activities in that country.
<b>FIRB</b>	means the Foreign Investment Review Board.
<b>Foreign Government Investors</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>■ foreign governments or government entities;</li> <li>■ a corporation, trustee of a trust or general partner of a limited partnership in which a foreign government or government entity holds a Substantial Interest; or</li> <li>■ a corporation trustee of a trust or general partner of a limited partnership in which foreign governments or government entities of more than one foreign country, together with one or more associates, holds an Aggregate Substantial Interest.</li> </ul>





<b>Foreign Person</b>	<p>includes:</p> <ul style="list-style-type: none"> <li>■ an individual who is not ordinarily resident in Australia;</li> <li>■ a foreign government; a corporation, trustee of a trust or general partner of a limited partnership in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a Substantial Interest; or</li> <li>■ a corporation, trustee of a trust or general partner of a limited partnership in which two or more persons (each of whom is an individual not ordinarily resident in Australia) hold an Aggregate Substantial Interest of at least 40%.</li> </ul>
<b>FTA</b>	means free trade agreement.
<b>National</b>	is an individual who is a citizen of a country or someone who is entitled to live indefinitely in that country.
<b>National Interest</b>	is not defined in the Act, however refers to the factors such as national security, competition, other Australian Government policies such as taxation, the impact on the economy and the community, and the character of the investor; that the Treasurer will consider when determining whether a proposed action is adverse to Australia's national interest. Additional aspects are considered for investments in the agricultural sector.
<b>No Objection Notification</b>	refers to a notification from the Treasurer stating that the Commonwealth does not object to the proposed action.
<b>Notifiable Action</b>	are actions that pose a particular degree of risk to Australia's national interest, and must be notified to the Treasurer. Refer to Section 4 to determine if the action you propose to take constitutes a Notifiable Action.
<b>Policy</b>	refers to Australia's Foreign Investment Policy.
<b>Regulations</b>	refers to the <i>Foreign Acquisitions and Takeovers Regulation 2015</i> (Cth).
<b>Significant Action</b>	are actions which generally pose a lower risk to Australia's national interest than notifiable actions, and may be optionally notified to the Treasurer. Refer to Section 5 for further information.
<b>Significant Agreement</b>	refers to an agreement relating to the leasing of, the letting or hire of, or the granting of other rights to use, assets of the business; or the participation by a person in the profits or central management and control of the business.
<b>Substantial Interest</b>	<p>means:</p> <ul style="list-style-type: none"> <li>■ for an entity – when a person holds an interest<sup>11</sup> of at least 20% in the entity; or</li> <li>■ for a trust (including a unit trust) – when a person, together with one or more associates, holds a beneficial interest in at least 20% of the income or property of the trust.</li> </ul>
<b>Termination Event</b>	occurs when an applicant ceases to hold the interest which was the subject of the FIRB approval, ceases to control (within the meaning of the Act) the entity or business the subject of the FIRB approval, or ceases to carry on an Australian Business the commencement of which was the subject of the FIRB approval.
<b>Treasurer</b>	refers to Australia's federal treasurer, being the government minister with responsibility for foreign investment approval.
<b>Unwind Power</b>	refers to the power of the Treasurer to order that actions that have already been undertaken, be unwound.

<sup>11</sup> 'Interest' is defined differently for different contexts (sections 9-15 of the Act).





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