



COVID-19 factsheet

Changes to FIRB framework due to COVID-19

LATEST NEWS ON FIRB CHANGES

The key changes and latest information as at 3 April 2020:

- reduction of monetary thresholds to \$0.00
- application fees will apply at the current level relevant for the type of interest being acquired. Submissions have been made to FIRB suggesting that lower fees should apply to applications for interest that would not have been caught but for the reduction in the thresholds
- the statutory timeframe for reviewing applications has increased from 30 days to six months
- applications will be triaged based on various factors, including the scale and materiality of the transaction and whether Australia jobs will be created or supported
- a large number of applications is expected to come from commercial leasing transactions. FIRB will be giving consideration as to how to deal with leasing applications, including in relation to variations of existing leases, exercise of lease and so on. Consideration may also be given to whether categories of 'low risk' leasing matters that can be dealt with expeditiously
- FIRB is increasing its internal resources and capabilities to deal with the expected increase in applications. FIRB is also bolstering resources in its compliance division, particularly in relation to residential real estate.

The authors are members of a consultative committee that includes FIRB, Treasury and ATO and meets to discuss matters dealing with the FIRB regulatory framework and, more recently, the changes noted above. If you would like further information, please contact us.

CHANGES IN DETAILS

INTRODUCTION

The Federal Treasurer has announced temporary changes to the foreign investment review framework to protect Australia's national interest as the country deals with COVID-19. These changes are expected to remain in place for the duration of the COVID-19 crisis and will allow the Federal Government to safeguard the national interest by overseeing all relevant proposed investment proposals.

LOWERING OF MONETARY SCREENING THRESHOLDS

As part of the temporary changes, the Treasurer has reduced the monetary screening thresholds to \$0 for all foreign investment under the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA).

This means that any:

- acquisition of a developed commercial land
- acquisition of agricultural land
- lease of Australian land which exceeds five years in length.

by a foreign person, for the purposes of the FATA, will now require FIRB Approval.

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 and telecommunications)
- the location of the investor (i.e. investors from countries with which Australia has a FTA).





The impact of the announced changes can be summarised as follows:

Acquisitions of "Substantial Interests" in Australian entities or businesses			
Investor	Action	Previous threshold	New temporary threshold
Privately-owned investors	Acquisitions in entities and businesses	\$275m (\$1,192m for FTA country investors in non-sensitive sectors)	\$0
	Media sector	\$0	Unchanged
	Agribusinesses	\$60m (\$1,192m for FTA country investors)	\$0
Foreign Government investors	All direct interests in an Australian entity or Australian business	\$0	Unchanged

Land Proposals			
Investor	Action	Previous threshold	New temporary threshold
All investors	Residential land	\$0	Unchanged
Privately-owned investors	Agricultural land	\$15m (\$1,192m for certain FTA country investors)	\$0
	Vacant commercial land	\$0	Unchanged
	Developed commercial land	\$275m (\$60m for low threshold land such as mines and critical infrastructure and \$1,192m for certain FTA country investors)	\$0
	Mining and production tenements	\$0 (\$1,192m for certain FTA country investors)	\$0
Foreign Government investors	Any interest in land	\$0	Unchanged

The changes will apply to any agreement entered into after 10:30pm AEDT on 29 March 2020.





STATUTORY TIMEFRAME EXTENDED FROM 30 DAYS TO SIX MONTHS

The statutory timeframe for reviewing applications has been extended from 30 days to six months. This will apply to all new and existing applications. Foreign investors should now expect material delays in approvals, however, priority will be given to urgent applications for investments that directly protect and support Australian businesses and Australian jobs.

EXEMPTIONS

The changes will not affect transactions by foreign persons that are exempt from requiring FIRB Approval for a reason other than the application of a monetary threshold. For example:

- an acquisition of an interest of less than 20 per cent of an entity which who hold an interest in Australian Land;
- acquiring an interest in Australian land from a will or a devolution of law; or
- where the interest has been acquired as a result of an acquisition from a Commonwealth, State or tertiary or local governing body.

REFUNDS FOR EXISTING APPLICATIONS

The FIRB will consider refunding an applicant's paid fee if the applicant decides to delay or defer its investment (and therefore withdraw its application) in response to the COVID-19 pandemic and associated economic conditions.

Next steps

If you are a business or an individual and consider your business or yourself to be affected by COVID-19 and the legislation changes on a Federal and State level, please do not hesitate to contact us.

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