



ARTICLE

Briefing Note

Foreign Investment Review Board

Statutory body: Foreign Investment Review Board

Website: www.firb.gov.au

Changes to Australia's foreign investment regulation effective immediately

- Temporary changes to the Foreign investment review framework designed to protect Australian business interests weakened by Covid-19.
- From 29 March 2020 all proposed foreign investments into Australia, subject to the Act, will require approval, regardless of value or the nature of the foreign investor.
- FIRB will extend timeframes for reviewing applications from 30 days to up to six months.
- The measures are temporary and will remain in place for the duration of the current crisis.

Context

Australia's Foreign Investment Review Board (FIRB) is the Commonwealth government body charged with advising the Treasurer, the Treasury Department and the Government about inbound foreign investment under the Foreign Acquisitions and Takeovers Act 1975.¹

Specifically, the FIRB examines proposed investments from foreign investors into Australian assets and advises the Treasurer about whether or not those investments are in Australia's economic and security interests. It also provides guidance to foreign investors and monitors the behaviour of investors to ensure compliance with the Act.

The FIRB does not make decisions about whether or not

a foreign investor can invest in Australia. The FIRB advises the Treasurer, who has the authority to make the final decision. It is uncommon, but not unheard of, for the Treasurer to act against the advice of the FIRB.

FIRB has not traditionally looked at every potential foreign investment. To attract the attention of FIRB any transaction had to meet certain criteria, as set out in the Act. The most obvious is the monetary threshold – where a transaction is above a certain amount (depending on the industry or the country of origin), FIRB gets involved. The other main criteria is security. If it impacts on Australia's economic or physical security, the transaction will attract FIRB attention, no matter the dollar amount.

Covid-19 Changes

The Australian government has recognised that the economic impacts of Covid-19 have left a number of otherwise healthy Australian businesses potentially vulnerable to foreign takeover, which may not be in the best interests of those businesses, the local supply chain, the owners (private or public), or the Australian economy.

To that end, while stressing that Australia remains open and welcomes foreign investment, a number of changes have been made to how the foreign investment policy is applied by FIRB post Covid-19

As noted in his media release of 29 March 2020, Treasurer of Australia, Josh Frydenberg, said “The Morrison Government is today announcing temporary changes to the foreign investment review framework that are designed to protect Australia’s national interest as we deal with the economic implications arising from the spread of the coronavirus.”²

From 29 March 2020 all proposed foreign investments into Australia, subject to the Act, will require approval, regardless of value or the nature of the foreign investor. Essentially, the Treasurer has temporarily reduced to \$0 the monetary threshold for all foreign investments.

As noted on their website, this will increase the wait times for FIRB to consider all foreign investments. FIRB will

extend timeframes for reviewing applications from 30 days to up to six months.

The technical changes above give FIRB and the Australian Government more time to consider foreign investment applications.

The purpose of the changes is to protect Australian businesses that have been affected by the economic impacts of Covid-19, leaving them vulnerable to foreign raiders. As noted in the Treasurer’s media release “These measures are necessary to safeguard the national interest as the coronavirus outbreak puts intense pressure on the Australian economy and Australian businesses. These are temporary measures that will remain in place for the duration of the current crisis.”³

Conclusion

The changes to Australia’s foreign investment policy could make investing in Australia more difficult. All foreign investment will come under more scrutiny and the process will take longer than it has previously.

While the government has been sincere in its assurances that Australia is still ‘open for business’, foreign investors should nevertheless plan for potential delays in having deals approved, and there is a greater chance that investments could be rejected on economic and security grounds.

1. <https://www.legislation.gov.au/Details/C2020C00023>

2. <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/media-releases/changes-foreign-investment-framework>

3. Ibid.

SHANNON WALKER

Senior Director

+61 3 9448 2812

shannon.walker@fticonsulting.com

BEN HAMILTON

Managing Director

+61 2 8298 6119

ben.hamilton@fticonsulting.com



The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals. FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. FTI Consulting, Inc., including its subsidiaries and affiliates, is a consulting firm and is not a certified public accounting firm or a law firm.

©2020 FTI Consulting, Inc. All rights reserved. www.fticonsulting.com