



## COVID-19 | Foreign Investment Changes in Australia

Effective immediately, the foreign investment approval process in Australia has been materially changed. This affects the monetary thresholds for transactions which require review and the timeframe for the review process.

The following seeks to provide you with a high level summary of this temporary measure, based on available information today as well as our preliminary thoughts.

This information is relevant should you be embarking upon or in the midst of any transaction involving a foreign person.

### What has changed?

The Federal Treasurer has announced that as a temporary measure, the threshold amounts which apply in determining whether particular foreign investments made on or after 10:30 pm (AEST) Sunday, 29 March 2020 **are subject to Australia's foreign investment framework are now \$0.**

### Who is affected?

All foreign investors from all countries are affected by this decision irrespective of existing trade treaties or whether sovereign owned, listed on a stock exchange or privately held.

### What transactions does this change affect?

All proposed acquisitions of, or substantive investments in, Australian businesses, Australian companies and land in Australia, are impacted as are reconstructions of existing businesses which are already foreign owned. Some secured debt investments will also be affected.

Importantly, this can and will also include indirect acquisitions where, for example, a foreign company owns 20% or more of the acquiring vehicle (or foreign interests hold 40% or more in aggregate) making the acquirer a 'foreign person'.

### What do I have to do?

All potential purchasers involved in foreign investments must make an application via the Foreign Investment Review Board (**FIRB**) process for approval or a letter of non-objection (**FIRB Approval**). Material application fees must be paid and these fees are refundable only on a discretionary basis where an application which has yet to be determined is withdrawn.

**We solve complex business problems**

+61 2 8651 8700

Level 1 • 25 King Street • Sydney NSW 2000 Australia

[ashstreet.com.au](http://ashstreet.com.au)



### How long might the approval process take?

The statutory **timeframe has been extended from 30 days to 6 months**. Given FIRB must liaise with relevant government departments on each application, including the ATO, Treasury, the relevant State Departments etc., before a recommendation is made by FIRB to the Treasurer or minister assisting the Treasurer, and given the current COVID-19 pandemic crisis, potential investors should assume this process will not be quick.

### Our thoughts

Whilst the change to the FIRB thresholds is stated to be a temporary change, it will for the foreseeable future have a significant impact on new acquisitions and investments as well as further financing or refinancing of companies and businesses, including restructures and bail outs, where foreign investors are involved. Not every situation will be caught by the new thresholds and there may well be ways of ensuring the entity in need of a cash injection can still receive investment without requiring FIRB approval, or of structuring a transaction to factor in the likely timeframe now required to obtain FIRB Approval.

---

### Important to Note

The information set out above is general guidance only and is not intended to be relied on as a substitute for legal advice. Liability limited by a scheme approved under Professional Standards Legislation.

The information in this note is valid as at 3pm on 30 March 2020. FIRB has not yet updated the policy documents and guidance notes available on its website to reflect these changes. We will update this note once these are published.

### Ash St. Can Help You

The Ash St. Corporate and M&A team are highly experienced professionals who pride themselves on providing clients with practical business solutions.

If you are about to embark or are in the midst of a transaction and you think this Government announcement applies to you, please contact us as soon as possible so that we can give early attention to identifying the path to be followed +61 2 8651 8700 or email [info@ashstreet.com.au](mailto:info@ashstreet.com.au)

106276

**We solve complex business problems**

+61 2 8651 8700  
Level 1 ▪ 25 King Street ▪ Sydney NSW 2000 Australia  
[ashstreet.com.au](http://ashstreet.com.au)