

Commercial Insights

Reinstatement of thresholds and other FIRB changes

Major changes to Australia's foreign investment regime came into effect on 1 January 2021, through two pieces of legislation:

1. the *Foreign Investment Reform (Protecting Australia's National Security) Act 2020* (Cth) which amends the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**the Act**); and
2. the *Foreign Investment Reform (Protecting Australia's National Security) Regulations 2020* (Cth) which amends the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

In response to changing economic conditions due to COVID-19, a \$0 threshold for Foreign Investment Review Board (**FIRB**) approval was introduced on 29 March 2020, which meant that all foreign investments subject to the Act required FIRB approval, regardless of the value or the nature of the foreign investor.

This has now been reversed and monetary thresholds have been reintroduced to determine whether foreign investments require FIRB approval. Some monetary thresholds have returned to their previous amount while others have changed, so potential foreign investors will need to ensure they have reviewed the new amounts applicable to different categories of investment.

Other changes introduced by this legislation include:

- the introduction of a new category of foreign investments which require FIRB approval, being a notifiable national security action;
- amended definitions of 'Australian media business' and 'foreign government investors';
- the Treasurer being granted additional review and enforcement powers and reasons to extend its decision making period; and
- increased penalties for non-compliance, including the introduction of a new penalty for giving false or misleading information relating to a FIRB application.

Updated guidance incorporating these changes is available on the FIRB website at <https://firb.gov.au/guidance-notes>.

This article was written by Principal [Mark Fitzgerald](#) and Solicitor, Molly Cooke. If you have any questions about how the recent FIRB changes will impact your business and transactions, please contact Mark Fitzgerald.



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