

FDI Guide
Australia

[Contact](#)

Nicola Charlston

King & Wood Mallesons, Melbourne

nicola.charlston@au.kwm.com

Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Australia
1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>National interest and national security test</p> <ul style="list-style-type: none"> • Australia’s foreign investment regime aims to balance the economic benefits of foreign investment against the need to protect Australia’s national interest. • The Foreign Acquisitions and Takeovers Act 1975 (Cth) (the ‘Act’) empowers the Australian Federal Treasurer (the ‘Treasurer’) to prohibit an investment if satisfied it would be contrary to the national interest (or national security, for national security actions, as described below). However, the general presumption under the Act and Australia’s Foreign Investment Policy (the ‘Policy’) is that foreign investment is beneficial due to its key role in the Australian economy. • Where risks to the national interest or national security are identified, the investment is typically approved subject to conditions designed to mitigate these risks. An investment is only prohibited if the Treasurer is satisfied that conditions cannot reduce the identified risks to an acceptable level. • Proposed acquisitions that are subject to foreign investment review may be screened under a ‘national interest test’ or a narrower ‘national security test’. Most investments are assessed under the national interest test where they meet the thresholds to mandate foreign investment screening or are voluntarily submitted for review under the Act.
2.	Legal regime Authority(ies) in charge	Describe source(s).	Australia’s foreign investment regime is principally regulated under Federal legislation. The primary legislation is the Act, which is chiefly supported by the:

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			<ul style="list-style-type: none"> • Foreign Acquisitions and Takeovers Regulation 2015 (Cth) (the ‘Regulations’); • Foreign Acquisitions and Takeovers Fees Imposition Act 2015 (Cth) (the ‘Fees Act’); • Foreign Acquisitions and Takeovers Fees Imposition Regulation 2015 (Cth) (the ‘Fees Regulation’); and • Policy.
		Name of authority in charge of applying the FDI rules (Minister/Agency/...).	<p>The Treasurer is ultimately responsible for all decisions relating to foreign investment and for the administration of the Policy. The Treasurer is advised and assisted by the Foreign Investment Review Board (FIRB), which is an administrative body with no statutory existence. The Act does not reference the FIRB; however, the Policy confirms its role.</p> <p>Applications to the Treasurer under the Act are made through the FIRB and processed by the Federal Department of Treasury (the ‘Treasury’) or, for most applications regarding residential land, the Australian Taxation Officer (ATO). All decisions by the Treasurer relating to foreign investment proposals are underpinned by analysis and recommendation by the FIRB.</p> <p>The Act provides the Treasurer with powers to make decisions, make orders and take compliance action. The Treasurer has delegated some of these powers to the junior minister in the Treasury portfolio (usually, the Assistant Treasurer) and certain Treasury and ATO officials.</p>
3.	Transactions that may be subject to FDI <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p>In general, a foreign person needs to apply under the Act and obtain a no objection notification from the Treasurer prior to an agreement to undertake a proposed acquisition becoming binding on the parties. The no objection notification is commonly referred to as ‘FIRB approval’. A proposed acquisition is not regarded as binding if the proposal is conditional on the issue of FIRB approval.</p> <p>FIRB approval is generally required for the following types of investments, which are notifiable or notifiable national security actions:</p> <ol style="list-style-type: none"> 1. substantial interest (20 per cent or more) in an Australian entity where the total security value, or total asset value or consideration values the target at AUD 289m or more; substantial interest includes actual voting power, number of shares held and ‘potential voting power’ or ‘right to issued shares’ amounting to a substantial interest (20 per cent) being acquired (eg, through a convertible note); 2. direct interest (ten per cent or more) in an Australian agribusiness where the cumulative interest held in the Australian agribusinesses by the foreign person is valued at AUD 63m or more; direct interest can be zero per cent where there is a control interest element acquired, such as the right to appoint a director;

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			<ol style="list-style-type: none"> 3. direct interest (ten per cent or more) in an Australian media business: AUD 0 threshold; 4. direct interest (ten per cent or more) in an Australian land entity, being an entity where over 50 per cent of assets are interests in Australian land, over the applicable monetary threshold, based on its land holdings (see the thresholds at part (i) below); 5. direct interest (ten per cent or more) in a national security business, detailed below: AUD 0 threshold; 6. any interest in national security land, being land which is owned or occupied by the Department of Defence or a national intelligence community agency has an interest: AUD 0 threshold; 7. starting a national security business: AUD 0 threshold; 8. any interest in Australian land, in the absence of an exemption, over the following threshold values: <ol style="list-style-type: none"> (i) vacant commercial land, national security land or residential land: AUD 0 threshold; (ii) sensitive commercial land (including land used for public infrastructure, storage of biological agents, telecommunications, financial institutions or to be leased to a government body): AUD 63m; (iii) non-sensitive commercial land: AUD 289m; (iv) agricultural land (being land used or could reasonably be used for the purpose of primary production): cumulative interest held by the foreign person and associates' threshold of AUD 15m; and (v) mining or production tenement: AUD 0. <p>An interest in Australian land includes a freehold interest, leases and licences that are reasonably likely to exceed five years in duration (including any options to renew), an option to acquire an interest in land, an agreement (exceeding five years) to share in the profits from the use of Australian land and a royalty agreement.</p> <p>When considering whether FIRB approval is required, an entity should take into account:</p> <ol style="list-style-type: none"> 1. whether the investor is privately owned, a foreign government entity, or from a country with whom Australia has a free trade agreement (an 'agreement country investor'); 2. the type of acquisition; 3. whether the acquisition meets the relevant monetary or ownership interest thresholds; and

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			<p>4. whether an exemption is available.</p> <p>If the investor is a foreign government investor, FIRB approval is generally required for:</p> <ol style="list-style-type: none"> 1. a direct interest (ten per cent or more) in an Australian entity or business; 2. an interest in land, regardless of the type of land; and 3. starting an Australian business. <p>A threshold of AUD 0 applies to foreign government investor acquisitions.</p> <p>(See 4 for the definition of a foreign government investor.)</p> <p>National security businesses</p> <p>Under the national security regime introduced in January 2021, FIRB approval is required for any foreign person acquiring a direct interest (ten per cent or more) in a national security business. FIRB approval is also required for interests of less than ten per cent where there is an ability to influence or control (eg, acquiring a board seat).</p> <p>A ‘national security business’ is a business carried on wholly or partly in Australia and is defined to include businesses for which foreign acquisition may pose the greatest national security concern to Australia, such as critical infrastructure or businesses that provide critical services to the Australian Defence Force or National Intelligence Community.</p> <p>Importantly, the definition of national security business includes a direct interest holder in, or the responsible entity for, a ‘critical infrastructure asset’ as defined in the Security of Critical Infrastructure Act 2018. This includes businesses in a wide range of sectors, including telecommunications, data storage and processing, financial services, superannuation, energy, water and sewerage, hospitals, public transportation, universities, food supply chains and aviation businesses.</p>
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>Offshore acquisitions</p> <p>Offshore transactions, where the investor is acquiring an interest in a foreign entity with Australian subsidiaries, are not notifiable actions that require mandatory FIRB approval, unless:</p> <ul style="list-style-type: none"> • the investor is a foreign government investor; • the foreign entity is, itself, an Australian land entity; • the acquisition in the foreign entity is 20 per cent or more and the foreign entity holds a direct interest (ten per cent or more) in a national security business, or is a national security business itself; or

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			<ul style="list-style-type: none"> the acquisition in the foreign entity is 20 per cent or more and the foreign entity holds 20 per cent or more of an entity that holds a direct interest (ten per cent or more) in a national security business. <p>Offshore acquisitions may still be considered significant actions or reviewable national security actions and, as such, may ultimately be subject to the Treasurer’s powers to review or ‘call in’ the acquisition.</p> <p>(See 4 for the definition of a foreign government investor.)</p> <p>(See 7 (section 6.2) for further information on reviewable national security actions and significant actions.)</p> <p>Internal reorganisations</p> <p>Internal reorganisations may require FIRB approval if they meet the thresholds outlined above. However, in most circumstances, simply removing an entity from the corporate structure does not require FIRB approval. The interposing of an entity in the structure is subject to the thresholds for the operation of the Act.</p> <p>Greenfield investments</p> <p>For private investors (foreign persons who are not foreign government investors), establishing a new subsidiary would be below the AUD 289m monetary threshold for the acquisition of substantial interest in an entity and, therefore, would not require FIRB approval. Private investors also do not need FIRB approval to start an Australian business unless it is a national security business.</p> <p>The establishment by a foreign government investor of a new wholly owned subsidiary does not require FIRB approval. A foreign government investor may also establish a new entity as part of a consortium without FIRB approval if the new consortium entity later applies for FIRB approval in relation to a proposed acquisition. The Regulations provide an exemption from the Act for such establishments by foreign government investors.</p> <p>Foreign government investors require FIRB approval to start a new Australian business.</p>
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	<p>The Treasurer has the ability to ‘call in’ investments that meet the criteria for a reviewable national security action for review. Additionally, the Treasurer may make orders in respect of significant actions that do not require mandatory notification to FIRB.</p> <p>(See 7 (section 6.2) for further information on reviewable national security actions and significant actions.)</p>

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4.	<p>Sectors falling under the FDI scope</p>	<p>Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<p>As set out at 3, there are a range of investments that require FIRB approval, including acquisitions relating to entities, land, mining and agriculture.</p> <p>Acquisitions that require FIRB approval and relate to sensitive sectors are subject to greater scrutiny by FIRB. As set out at 3, lower thresholds apply for interests in sensitive land, media businesses, national security businesses and national security land.</p> <p>FIRB's public guidance also lists a range of sectors where foreign investment may raise national security risks, meaning investments in these sectors face greater scrutiny and may constitute reviewable national security actions. These sectors include:</p> <ul style="list-style-type: none"> • access to sensitive personal information, sensitive network or operational information; • communications, telecommunications and broadcasting; • commercial construction contractors and commercial real estate; • critical minerals and critical technologies; • critical services providers and suppliers; • data centres and cloud providers; • defence industry and Department of Defence suppliers; • domain names systems; • energy, electricity, gas and liquid fuels; • energy market operators; • food and grocery supply chains; • financial services and superannuation; • freight services and freight infrastructure • health, medicines and medical devices; • health sector facilities and services; • higher education facilities; • information technology, data and the cloud; • nuclear and space industry; • transport, public transport, aviation and ports; and • water and sewage.

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5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Australia's foreign investment regime applies to foreign persons, with stricter rules applying to foreign persons who are foreign government investors.</p> <p>A 'foreign person' is defined under the Act as:</p> <ol style="list-style-type: none"> 1. an individual not ordinarily resident in Australia; or 2. a corporation in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; 3. a corporation in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; 4. the trustee of a trust in which an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds a substantial interest; 5. the trustee of a trust in which two or more persons, each of whom is an individual not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest; 6. a foreign government; or 7. any other person, or any other person that meets the conditions, prescribed by the regulations. <p>A 'foreign government investor' is defined as:</p> <ol style="list-style-type: none"> 1. a foreign government or separate government entity; or 2. a corporation, trustee of a trust or general partner of a limited partnership in which: <ol style="list-style-type: none"> (i) a foreign government or separate government entity, alone or together with one or more associates, holds an interest of at least 20 per cent; or (ii) foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an interest of at least 40 per cent. <p>Due to changes introduced in January 2021, funds with passive investors are no longer considered foreign government investors if foreign government entities from multiple countries collectively hold an interest of 40 per cent or more (part (ii) above), as long as government entities from one country do not hold an interest of 20 per cent or more (part (i) above).</p> <p>A 'foreign government' means an entity that is:</p>

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			<ol style="list-style-type: none"> 1. a body politic of a foreign country; or 2. a part of a body politic of a foreign country or a part of a body politic of part of a foreign country. <p>A ‘separate government entity’ means an individual, corporation or corporation sole that is an agency or instrumentality of a foreign country, but not part of the body politic of a foreign country or of a part of a foreign country.</p> <p>The legislation deems foreign government-related entities from the same country to be associated. The effect is that an entity is a foreign government investor where one or more foreign government-related entities from the same country have in aggregate a 20 per cent or more interest in the subject entity.</p> <p>The definition of a foreign government investor is very broad and extends to cover federal, state or even municipal governments and includes government-associated entities, such as public sector pension funds or university endowment funds.</p>
6.	Procedure 6.1 Before or post-closing filing		<p>In general, a foreign person needs to apply for and obtain FIRB approval <i>prior</i> to an agreement to undertake a proposed acquisition becoming binding on the parties. A proposed acquisition is not regarded as binding if the proposal is conditional on the issue of FIRB approval.</p> <p>A foreign person may enter into a conditional agreement prior to applying for FIRB approval, but the conditions must not become binding until FIRB approval has been received.</p> <p>Further, if a foreign person acquires shares by a passive increase, such as via a rights issue, and this meets the criteria to be a notifiable action or notifiable national security action and exceeds a threshold, the investor is required to lodge a notification with FIRB within 30 days of the acquisition occurring and seek FIRB approval.</p> <p>Reviewable national security actions and significant actions</p> <p>For investments that meet the criteria under the Act for a ‘reviewable national security action’ or a ‘significant action’, the foreign person does not need to apply for FIRB approval, provided the investment is not also a notifiable action or a notifiable national security action. Notwithstanding, the foreign person may voluntarily submit an application to FIRB either before or after undertaking the acquisition.</p> <p>(See 7 (section 6.2) for further information on reviewable national security actions and significant actions.)</p> <p>(See 3 for further information on notifiable actions and notifiable national security actions.)</p>

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			<p>Exemption certificates</p> <p>A foreign person may apply for an Exemption Certificate for notifiable actions and/or notifiable national security actions, which allows the investor to undertake acquisitions over a specified period (typically, between one and three years) without obtaining FIRB approval for each acquisition (in effect, pre-approval).</p> <p>The scope of an Exemption Certificate is limited to a specified permitted purpose and, for land acquisitions, particular local government areas. Exemption Certificates also contain a total expenditure limit, individual transaction limits, and are subject to a range of conditions. Foreign persons who obtain an Exemption Certificate are required to report to FIRB on the acquisitions undertaken under the Exemption Certificate within 30 days of entering into a binding agreement.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p>Mandatory filings</p> <p>It is mandatory to submit an application for, and receive, FIRB approval prior to entering into a binding agreement for an acquisition that meets the criteria for a:</p> <ul style="list-style-type: none"> • notifiable action; or • notifiable national security action. <p>FIRB approval should therefore be a condition precedent to the transfer of the interest being acquired becoming binding.</p> <p>See 3 for further information on notifiable actions and notifiable national security actions.</p> <p>Voluntary filings</p> <p>It is voluntary to submit an application for FIRB approval in respect of a:</p> <ul style="list-style-type: none"> • significant action (if it is not also a notifiable action); or • reviewable national security action. <p>Most significant actions also meet the criteria to be a notifiable action. The common significant actions that are not also a notifiable action are:</p> <ul style="list-style-type: none"> • a private investor acquiring an interest in a foreign entity that has Australian subsidiaries; and • the acquisition of an Australian business (asset acquisition). <p>An acquisition is a ‘reviewable national security action’ where:</p>

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			<ul style="list-style-type: none"> • a foreign person acquires an interest in land or a direct interest (generally, an interest of ten per cent or more) in an Australian entity or business; • the acquisition is not a notifiable action, notifiable national security action or significant action; and • the acquisition gives rise to national security concerns. <p>There is no definition of national security concern in this context, and it is assessed on a case-by-case basis. Notwithstanding, FIRB has issued public guidance outlining the types of acquisitions that would raise national security concerns.</p>
8.	6.3 In the case of post-closing, what are the powers of the authority?		<p>Significant actions</p> <p>For acquisitions that are significant actions, the Treasurer has the ability to:</p> <ul style="list-style-type: none"> • impose conditions on the investor to mitigate identified risks to the national interest; and • prohibit an acquisition if it has not occurred or order the disposal of interests if the acquisition has completed, if the Treasurer is satisfied that the acquisition is, or was, contrary to the national interest and these risks cannot be appropriately mitigated through conditions. <p>Reviewable national security actions</p> <p>Acquisitions that meet the criteria for a reviewable national security action are subject to the Treasurer’s ‘call-in power’. This is a power that gives the Treasurer the ability, for a ten-year period, to call in proposals that raise a national security concern for review.</p> <p>The voluntary notification of a reviewable national security action extinguishes the call-in power.</p> <p>If an acquisition is called in for review, the Treasurer has the same powers available for significant actions.</p> <p>Last resort power</p> <p>The last resort power allows the Treasurer to impose conditions, vary existing conditions or require the divestment of any acquisition that previously received FIRB approval, or was reviewed under the call-in power, if exceptional circumstances apply.</p> <p>Broadly, the last resort power can only be used if a national security risk arises in connection with the acquisition, and:</p>

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			<ul style="list-style-type: none"> the Treasurer becomes aware of a materially false or misleading statement or omission by the foreign person when notifying the acquisition, which directly relates to the national security risk; or the national security risk arose because, since FIRB approval was granted, the business or activities of the foreign person have materially changed, or the circumstances of the market have materially changed. <p>The exercise of the last resort power is subject to a number of safeguards, including exhausting all other avenues before use.</p>
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>In general, FIRB does not provide advice or a ruling on whether a transaction requires FIRB approval in the absence of receiving an application.</p> <p>If an application is submitted and FIRB determines that the transaction is not a notifiable action or notifiable national security action, FIRB will refund the filing fee paid for the application.</p>
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	<p>The foreign person is required to submit an application prior to an agreement to undertake an acquisition that is a notifiable action or a notifiable national security action becoming binding on the parties.</p> <p>An application may be submitted at any stage before the agreement becomes binding. An agreement does not have to have been drafted, or even negotiated, for an application to be submitted, as long as the foreign person can provide sufficient details regarding the proposal.</p> <p>An application can be prepared in a week to two weeks depending on the type of application and availability of material required to commence the application.</p>
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist <i>de facto</i> or <i>de jure</i> .	<p>The statutory decision period for an application expires 30 business days after the full filing fee for an application has been paid. If a decision has not been made on the proposal within the statutory decision period, the acquisition described in the application is deemed to have received FIRB approval without conditions.</p> <p>The statutory decision period may be extended any number of times. If additional time is required for the foreign investment screening process to complete, and for the Treasurer – or the relevant delegate – to make a decision on the proposal, the decision period may be extended one of the following ways:</p> <ul style="list-style-type: none"> a Treasury or ATO official asks the investor to voluntarily request an extension to the statutory decision period to a particular date, which is the primary means by which the

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			<p>decision period is extended; the investor may request an extension to the date sought by Treasury or the ATO, or to an alternate date;</p> <ul style="list-style-type: none"> the Treasurer extends the decision period without the investor's agreement, as permitted under the Act; this power has been delegated to Treasury and ATO officials; and the Treasurer issues an interim order that is public and formally extends the statutory decision period by up to 90 days. Once an interim order has been issued, the decision period cannot be extended again. As such, interim orders are rarely used. <p>With the exception of applications regarding residential land, the decision period for most applications is extended beyond the initial 30-day decision period. A three-month period can be expected for straightforward matters and six months or more for sensitive applications that require deeper scrutiny.</p> <p>There is no statutory decision period for applications for retrospective FIRB approval, or for applications to vary a no objection notification or Exemption Certificate.</p>
12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>The FIRB review process is interactive and typically involves numerous questions being asked by Treasury or ATO officials. The investor may also provide additional information, or update the details provided in the application, during the review process.</p> <p>Prior to a decision being made on the proposal, the investor is provided with an opportunity to review and provide comments on the:</p> <ul style="list-style-type: none"> proposal description, being the description of the acquisition that will be set out in the FIRB approval, if the decision-maker decides to approve the proposal; and any draft conditions proposed to be imposed on the acquisition. <p>If the application is for an Exemption Certificate, the investor has the opportunity to review and comment on the draft Exemption Certificate before the decision-maker decides whether or not to issue the certificate.</p> <p>The investor may propose amendments to the proposal description, conditions or draft Exemption Certificate. FIRB typically aims to accommodate an investor's amendments where possible, although the amendments may be refused if FIRB believes the amendments could pose risks to the national interest.</p>
		Are there any guidelines issued by the authority?	<p>FIRB publishes a series of guidance notes that are available on its website, www.firb.gov.au. These guidance notes provide information on:</p> <ul style="list-style-type: none"> the acquisitions requiring FIRB approval;

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			<ul style="list-style-type: none"> • FIRB’s interpretation of the legislation; • the types of acquisitions that may raise national security concerns, which FIRB recommends are voluntarily notified as reviewable national security actions, if a mandatory filing is not required; • the Policy; • details that need to be included in an application; • tax conditions that may be imposed on acquisitions; • development conditions that may be imposed on acquisitions of vacant land; and • FIRB’s approach to compliance.
13.	(iv) Filing fees	Is there a filing fee?	<p>A filing fee is applicable to all FIRB applications. While certain applications attract a flat fee, for most applications, the fee payable is based on the consideration for the acquisition.</p> <p>The standard filing fees are applied at a rate of:</p> <ul style="list-style-type: none"> • AUD 12,700 per AUD 50m consideration for acquisitions of commercial land, businesses and entities (note that the first AUD 50m attracts a discounted fee of AUD 6,350); • AUD 12,700 per AUD 2m consideration for acquisitions of agricultural land (note that the first AUD 2m attracts a discounted fee of AUD 6,350); and • AUD 12,700 per AUD 1m consideration for acquisitions of residential land (note that the first AUD 1m attracts a discounted fee of AUD 6,350). <p>Applications for Exemption Certificates attract a 25 per cent discount on the standard filing fees, and applications for reviewable national security actions attract a 75 per cent discount.</p> <p>The total fee is capped at AUD 503,000 – or AUD 377,250 for an Exemption Certificate and AUD 125,750 for an exemption certificate.</p> <p>The Treasurer has the discretion under the Act to waive or reduce the filing fee. In addition, a lower fee of AUD 2,000 is applicable in specific circumstances, such as where the consideration is less than AUD 75,000.</p> <p>Note that fees are indexed on 1 July of each year and the new Australian Government has foreshadowed that the fees will be doubled.</p>

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14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>FIRB publishes an Application Checklist on its website, which details the information required in applications.</p> <p>In summary, an investor needs to provide the following details regarding its business and ownership:</p> <ul style="list-style-type: none"> • the direct acquirer, including incorporation details (if the entity has been established), its business or purpose, and any Australian subsidiaries; • the business of the ultimate parent entity (or ultimate parent entities); • the ownership of the ultimate parent entity (or entities), including the names and country of ownership of all investors that hold a five per cent or greater interest in the entity (or entities); <p>Note: FIRB traces through chains of ownership of 20 per cent or more. Therefore, if multiple entities indirectly hold an interest of 20 per cent or more in the direct acquirer, the five per cent interest holders in all these ultimate parent entities should be provided.</p> <ul style="list-style-type: none"> • all existing investments or assets of the direct acquirer, the parent entity and associated entities; • total global assets or assets under management for the direct acquirer and the ultimate parent entity; • any existing relationship of economic interests between the direct acquirer or ultimate parent entity and the target; and • aggregate percentage of any beneficial ownership by foreign government investors (by country). <p>An investor does not need to provide details of FDI approvals of other authorities outside Australia. However, an investor should detail its engagement with other Australian regulatory agencies, such as the ATO and the Australian Competition and Consumer Commission.</p>
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>As set out at 11 above, the statutory decision period for an application expires 30 business days after the full filing fee for an application has been paid. The statutory decision period may be extended multiple times and by any number of days.</p> <p>If a decision has not been made on the proposal within the statutory decision period and the decision period has not been extended, the acquisition described in the application is deemed to have received FIRB approval without conditions.</p>

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			Applications for retrospective FIRB approval or to vary a FIRB approval or Exemption Certificate do not have a statutory decision period.
16.	<p>Conditionality of approval</p> <p>(i) Type of conditions or commitments</p>	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>Conditions may be imposed to address identified risks to the national interest or national security. In general, conditions apply until the investor disposes of the asset that is the subject of the FIRB approval. However, some conditions may specify particular timeframes or apply for a limited period of time.</p> <p>The more commonly imposed conditions include:</p> <ul style="list-style-type: none"> • ‘standard tax conditions’, which are outlined in FIRB’s guidance notes, and require the investor to provide an annual report stating they have complied with Australia’s taxation laws; the investor is not required to provide evidence of compliance as part of the report; • additional tax conditions, requiring the investor to provide further details to the ATO regarding the structure, funding and tax guidance compliance of the acquisition. This is typically a one-off report due within 90 days of closing; • development conditions, if vacant land is acquired, requiring the investor to ensure continuous construction commences on the property within five years of receiving FIRB approval, and preventing the investor from selling the property until the development is complete; • cybersecurity conditions for renewable energy projects, requiring the investor to achieve the lowest-level security profile of the Australian Energy Sector Cybersecurity Framework; • governance conditions, requiring the investor to ensure the target’s board of directors is comprised of a certain percentage of Australian citizens, independent directors or persons with a security clearance; • data storage and access conditions, requiring personal information held by the target to be stored in Australia, and only accessible from within Australia, except in specific circumstances; and • access restrictions to areas of a property that are tenanted by government bodies contain sensitive infrastructure.

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17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	<p>As the legislation does not include a definition of ‘national interest’ or ‘national security’, this is ultimately a matter of judgement for the Treasurer (or its delegate), based on the advice of the FIRB. Applications are assessed on a case-by-case basis.</p> <p>As set out at 8 (section 6.3), the Treasurer also has the discretion to use the call-in power to review acquisitions that meet the criteria of a reviewable national security action or use the last resort power if satisfied it is necessary to protect the national interest, and if all other avenues have been exhausted.</p>
18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>The vast majority of applications receive FIRB approval, noting conditions may be imposed.</p> <p>If the Treasurer is inclined to prohibit the acquisition, the investor first receives a letter outlining that the Treasurer has formed a preliminary view that the acquisition is contrary to the national interest, or national security. The investor is typically given seven days to make submissions regarding why the proposal should receive FIRB approval. The investor may also suggest mitigations to reduce any potential risks to the national interest.</p> <p>The investor also has the ability to withdraw its application at this stage to prevent a prohibition order being made and published on the Federal Register of Legislation, which is publicly available.</p> <p>FIRB does not provide any information to the public regarding the number of investors that have received preliminary views that their proposal is contrary to the national interest or national security.</p> <p>In 2020, one prohibition order was made under the Act, which was related to an investment in an Australian mining corporation that supplies critical minerals.</p> <p>There is a higher risk of the Treasurer being inclined to prohibit an acquisition if the target is in a highly sensitive sector. The sectors that face higher levels of scrutiny are set out at 4, with the sectors facing the greatest scrutiny by FIRB generally being:</p> <ul style="list-style-type: none"> • the defence industry; • data storage and processing, in particular large data centres; • energy production, including renewable and non-renewable resources, as well as nuclear power; • critical mineral extraction and process (eg, lithium and cobalt); and • healthcare, particularly large hospitals and entities with access to bulk medical data.

	Topic	Explanation/Description of what is expected	Australia
19.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	<p>The Treasury and ATO officials responsible for processing FIRB approval applications as part of the usual assessment consult with a wide range of federal and state government bodies, including the:</p> <ul style="list-style-type: none"> • ATO; • Australian Competition and Consumer Commission; • Department of Defence, Department of Home Affairs and intelligence agencies; • Department of Agriculture, Water and the Environment; • Department of Foreign Affairs and Trade; • Department of Science, Infrastructure, Energy and Resources; • Department of Prime Minister and Cabinet; and • state government Departments of Premier and Cabinet or Treasury. <p>The particular bodies consulted on an application depend on the nature of the proposed acquisition.</p> <p>These other government bodies exert a significant amount of influence on whether the Treasurer is inclined to prohibit an acquisition, or if conditions are imposed. As the expertise of the Treasury and ATO officials processing an application is typically limited to economic issues, significant weight is placed on the national security assessments provided by other bodies, in particular the security agencies.</p>
20.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	<p>The Treasurer and FIRB have a wide range of powers to respond to non-compliance with the Act; however, the largest penalties must be imposed by a court.</p> <p>To monitor compliance, authorised Treasury officers may:</p> <ul style="list-style-type: none"> • determine, using monitoring powers, whether the provisions of the Act are being complied with and information provided is correct; • gather material, using investigation powers, relating to the offence and civil penalty provisions of the Act; • compel investors to provide information and documents; and <p>conduct compliance audits of approved investments, to assess an investor's compliance with the scope and conditions of a no objection notification or Exemption Certificate.</p>

	Topic	Explanation/Description of what is expected	Australia
		breach of conditions and/or commitments attached to the approval; and	<p>FIRB may issue an investor with an infringement notice for contraventions of conditions. The maximum values of the infringement notices are 300 penalty units for individuals and 1,500 penalty units for corporations.</p> <p>The Treasurer may require the defaulting investor to enter into an enforceable undertaking, or give the investor a direction, to prevent non-compliance or rectify non-compliance, including where there is a reasonable belief that non-compliance has occurred or will occur.</p> <p>Penalties imposed by a court</p> <p>A court may impose the following maximum penalties on an investor for breaching conditions:</p> <ul style="list-style-type: none"> • civil penalties: up to 2,500,000 penalty units; and • criminal penalties: ten years' imprisonment, 15,000 penalty units for individuals or 150,000 penalty units for corporations, or both. <p>Contraventions relating to residential land attract higher financial penalties. A court may impose the greatest of the following penalties:</p> <ul style="list-style-type: none"> • the capital gain that would be made if the investor disposed of the property; • 25 per cent of the consideration for the acquisition; and • 25 per cent of the market value of the property. <p>The current value of a penalty unit is AUD 222.</p>
		investment carried out without prior approval.	<p>FIRB may issue an investor with an infringement notice for undertaking an acquisition without FIRB approval. The maximum values of the infringement notices are 300 penalty units for individuals and 1,500 penalty units for corporations.</p> <p>The Treasurer may require the defaulting investor to enter into an enforceable undertaking, or give the investor a direction, to prevent non-compliance or rectify non-compliance, including where there is a reasonable belief that non-compliance has occurred or will occur.</p> <p>Penalties imposed by a court</p> <p>A court may impose the following maximum penalties on an investor for undertaking an acquisition without FIRB approval:</p> <ul style="list-style-type: none"> • civil penalties: up to 2,500,000 penalty units; and • criminal penalties: ten years' imprisonment, 15,000 penalty units for individuals and 150,000 penalty units for corporations, or both.

	Topic	Explanation/Description of what is expected	Australia
			<p>Contraventions relating to residential land attract higher financial penalties. A court may impose the greatest of the following penalties:</p> <ul style="list-style-type: none"> • the capital gain that would be made if the investor disposed of the property; • 25 per cent of the consideration for the acquisition; and • 25 per cent of the market value of the property. <p>In addition, a court may make a variety of orders that it deems appropriate, which include:</p> <ul style="list-style-type: none"> • prohibiting the payment of sums; • directing the disposal of securities or assets; and • prohibiting a person from being involved in the central management and control of an entity or business. <p>The current value of a penalty unit is AUD 222.</p>
19.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	<p>There are no current Covid-19 specific rules.</p> <p>In response to the Covid-19 pandemic, all monetary thresholds for all acquisitions were reduced to AUD 0. This required all foreign persons to apply for FIRB approval for interests in land and interests in businesses or entities if the percentage or control thresholds were met.</p> <p>In its public guidance, FIRB also noted that it would consider applications for filing fee waivers if the acquisition was necessary to prevent significant economic consequences (eg, the failure of a business or the loss of jobs), or if the investor or target was facing economic distress as a result of the pandemic.</p> <p>The monetary thresholds were restored to their pre-pandemic levels on 1 January 2021.</p>