

Coronavirus Alert: Changes to the Foreign Investment Rules

1 April 2020

The Australian government has introduced a suite of new legislative reforms to help mitigate the social and economic impact of COVID-19 on Australian society. One of the most notable legislative changes implemented by the Federal government, announced on 29 March 2020, has been the temporary changes to the foreign investment review framework.

Although the extent of these changes has not yet been detailed by the Treasurer, it is understood that these changes will, effective immediately, **mean that any foreign person, corporation, entity or government who seeks to acquire an interest in Australian land or an Australian entity will be subject to Foreign Investment Review Board (FIRB) approval before proceeding to acquire that interest, irrespective of the value of the proposed interest.**

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We will continue to provide updates as the government provides further guidance on these changes but in the meantime, we are available to help you navigate the FIRB approval process and assist you with any domestic investment projects you have, or may be considering.

新型冠状病毒预警: 外国投资规则的变化

2020年4月1日

澳大利亚政府推出了一系列新的立法措施以帮助减轻冠状病毒对澳大利亚社会和经济的影響。其中一项最重要的变化即联邦政府于2020年3月29日宣布的对外国投资审查框架的暂时改变。

尽管财长并未详细说明改变的具体程度，但是可以确定这些改变即刻生效，即**任何想要在澳大利亚土地或澳大利亚实体中获取权益的外国人，无论权益价值多少都必须获得外国投资审查委员会（以下简称FIRB）的批准才可以获取权益。**

如果您想要得到更多的更新，请您在[此处](#)注册或访问我们的[网站](#)。

我们将为您持续更新政府对这些改变出台的指导性文件。与此同时，我们也可以帮您办理FIRB申请并协助您办理正在进行或考虑进行的本地投资项目。

Changes to the assessment threshold

The changes to the foreign investment framework are effective as at 10:30pm (AEDT) 29 March 2020, meaning that until further notice, the threshold amount for FIRB approval is now \$0. At the time of writing, there has been no indication by the Treasurer as to how long these changes will be in place.

FIRB has published brief guidance on the changes, stating that the government will prioritise urgent applications for investment that directly protects and supports Australian businesses and Australian jobs, taking into account any commercial deadlines that relate to the proposed investments. FIRB has also stated that the review period for applications could now take up to six months.

The decision to change the threshold review amount was made by the Federal government as a means of protecting Australian interests amidst the financial and economic uncertainty created by the COVID-19 pandemic.

The assessment threshold previously

The *Foreign Acquisitions and Takeovers Act 1975* (**FATA**) grants the Australian Treasurer very broad, discretionary powers with respect to foreign acquisitions of Australian land and business interests. The Treasurer has the power to review foreign investment proposals and block or apply conditions to proposals that are contrary to national interests. The Treasurer is assisted and advised by FIRB when determining applications.

The *FATA* and *Foreign Acquisitions and Takeovers Regulations* (**FATR**) regulate 'significant actions' by foreign persons. Broadly speaking, 'significant actions' include actions to acquire interests in securities, assets or Australian land, as well as actions in relation to corporations, unit trusts and businesses that have a connection to Australia.

An action must be a 'notifiable action' to trigger the notice requirement to the Treasurer. 'Notifiable actions' are a subset of 'significant actions' under the *FATA*. For an action to be deemed a 'notifiable action', it must satisfy three conditions:

1. the action must be of a kind prescribed under the *FATA*;
2. the threshold test must be met; and
3. the action must be taken by a foreign person.

改变评估门槛

外国投资框架的改变于2020年3月29日晚上10点30分（澳大利亚东部夏令时）生效。这也就意味着直到另行通知，需要FIRB批准的投资项目起始金额为0澳币。在撰写本文时，财长还未告知该改变会持续多久。

FIRB发布了对这些改变的简要指导性文件，文件指出政府将优先考虑那些支持澳大利亚企业和保护澳大利亚就业率的紧急投资申请，同时会考虑与拟议投资相关的商业截止日期。FIRB也指出审理的期限暂定为6个月。

在冠状病毒大流行造成的金融和经济不确定性的情况下，联邦政府决定改变最低门槛审查额度，以保护澳大利亚利益。

之前的评估门槛

1975年《外国收购与接管法》（以下简称**FATA**）授予澳大利亚财长关于外国收购澳大利亚土地和商业权益非常宽泛的自由裁量权。财长有权审查外国人投资提案，并对违反国家利益的提案有禁止或施加条件的权力。在财长审理申请时，FIRB会向财长提供协助和建议。

FATA 和《外国收购与接管法规》（以下简称**FATR**）规范了何为外国人的“重大举动”。概括来说，“重大举动”包括获取证券、资产或澳大利亚土地的行为，以及任何和澳大利亚企业，单位信托和公司有关的举动。

“须申报行为”是指在采取行动前须向财务部长通报拟采取行动的外籍人士的投资。满足以下几个条件可以视为“须申报行为”：

1. *FATA*所规定的行为；
2. 满足投资门槛；并
3. 举动为外国人所为。

Actions prescribed under FATA

An action is a 'notifiable action' if it relates to the acquisition of:

- a direct interest in an Australian entity or Australian business that is an agribusiness;
- a substantial interest in an Australian entity;
- an interest in Australian land (including a leasehold interest);
- an interest of at least 5% in an Australian media business; and
- a legal or equitable interest in a tenement or an interest of at least 10% in securities in a mining, production or exploration entity by a foreign government investor.

Threshold test

The applicable threshold varies depending upon the type of asset or interest that is sought to be acquired. Threshold calculations are complex and the threshold changes on a yearly basis, however, some examples include:

- agricultural land being acquired by a foreign person – \$15,000,000.00;
- 20% or more of shares or units in an Australian company or unit trust valued above the applicable monetary thresholds (the monetary thresholds are indexed yearly but are generally \$266,000,000.00); and
- developed commercial land – \$55,000,000.00.

With the recent changes to the foreign investment framework, the above threshold test will no longer be applicable.

Who is a foreign person?

A foreign person includes:

- an individual not ordinarily resident in Australia;
- a corporation in which an individual (who is not ordinarily resident in Australia), a foreign corporation or a foreign government holds a substantial interest;
- a corporation in which 2 or more persons, each of whom are individuals not ordinarily resident in Australia, a foreign corporation or a foreign government, hold an aggregate substantial interest;
- 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;
- a foreign government; and
- in some circumstances, an associate of a foreign person.

FATA所规定的行为

获取以下权益的行为即可被称为“须申报行为”：

- 从事农业的澳大利亚实体或公司的直接权益；
- 澳大利亚实体中的重大权益；
- 澳大利亚土地权益（包括租赁权益）；
- 澳大利亚传媒板块中5%或以上的权益；及
- 外国政府投资者在矿权中的法定权益，或在采矿、生产或勘探产业中获取10%或以上的权益。

投资门槛

投资门槛取决于资产或权益的类型。投资门槛每年会有变动，但是举例说明：

- 外国人购买农业用地 – \$15,000,000.00;
- 购买价值超过一定数额（该数额每年不同，但一般为\$266,000,000.00）澳大利亚公司或单位信托中20%或更多的股权；及
- 商业用地 – \$55,000,000.00.

由于最近外国投资框架的改变，以上投资门槛不再适用。

谁是外国人？

外国人包括：

- 不长期在澳洲居住的个人；
- 个人公司（个人不是澳大利亚常住居民）、外国公司或外国政府拥有重大权益的公司；
- 由两个或两个以上个人组成的公司，每人都不是澳大利亚常住居民；外国企业或外国政府拥有重大权益的公司；
- 不是澳大利亚常住居民的个人信托受托人，外国公司或外国政府拥有重大权益的信托受托；
- 外国政府；和
- 在一些情况下，和外国人相关的人士。



Thynne + Macartney's team will be producing further updates for our clients as the situation evolves.

随着形势的发展，Thynne + Macartney 团队会为我们的客户提供更多的信息。

To receive copies of our further updates, sign up [here](#) or visit our [website](#).

如果您需要更多信息，请您在[此处](#)注册或访问我们的[网站](#)。

Thynne + Macartney

We're with you.

我们与您同行。

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About Thynne + Macartney

For 127 years Thynne + Macartney has been helping people and businesses in Queensland to build and grow, as well as navigate the challenges and issues that sometimes come up.

We are a proud Queensland focused law firm with offices in Brisbane and Cairns.

Our commitment to regional Queensland is a substantial contribution to our firm's success.

Thynne + Macartney has survived World Wars, Great Depressions, Spanish and other flus, recessions and financial crises.

This too will pass and we will thrive as we always have – by prioritising our clients, offering support through the challenges ahead and working together to find the best possible outcomes and solutions.

Proud of our past, excited by our future,

Thynne + Macartney – we're with you.