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REFORMS TO AUSTRALIA'S FOREIGN INVESTMENT FRAMEWORK – WHAT YOU NEED TO KNOW

On 1 May 2024, the Treasurer announced reforms to streamline and strengthen Australia's foreign investment framework to deliver "a stronger, faster and more transparent approach to foreign investment".

Treasury will be adopting a stronger risk-based approach to its screening and assessment of foreign investment applications. While on the one hand, Treasury will be bolstering its protection of Australia's national interest and increasing its scrutiny of investments giving rise to national interest or security concerns, on the other hand, it will be seeking to streamline and fast-track its assessment of lower risk investments.

At this stage, the reforms have been released in an updated version of Australia's Foreign Investment Policy, which is available here: Australia's foreign investment framework | Foreign investment in Australia. FIRB has advised that updates to the FIRB Guidance Notes reflecting these changes are in development.

What do you need to know?

1. **FIRB approval requirements remain the same:** The reforms have not created any 'new actions' which require mandatory FIRB approval, nor have any changes been made to the monetary thresholds. In particular, foreign government investors and investments in national security land and national security businesses continue to be subject to a $0 threshold. Accordingly, based on the 1 May announcement, the assessment of whether an investment is 'caught' and requires a mandatory FIRB approval remains the same.
2. **Certain critical and sensitive investments will face more scrutiny**: FIRB has advised that investments in **critical infrastructure**, **critical minerals**, **critical technology**, and those in **proximity to sensitive Australian Government facilities** or involving **sensitive data** will face greater scrutiny to protect Australia's national interest and national security. Sectors where there are supply chain resilience concerns, a need to protect sensitive data, technology, or capabilities, or where the concentration of ownership is a factor, as well as investment proposals involving high tax risks, have also been specifically identified as areas where additional scrutiny will be applied. We expect that this will mean that FIRB's assessment of these types of investments will take longer, with greater prospects of FIRB requesting further information from applicants and proposing more onerous conditions which it considers necessary to protect Australia's national interest and national security. To assist applicants with being on the front-foot about potential national interest or security concerns, we consider that upfront due diligence on target assets or businesses, the development of a FIRB strategy as to the types of submissions to be made and early engagement with external government relations advisors prior to submitting an application will become more paramount.
3. **Streamlined process and faster turn-around times expected for non-sensitive investments**: Examples provided by FIRB of investments that it expects will receive faster decisions include investments by passive institutional investors, investors with a strong track record of compliance, repeat investors who are well-known to FIRB, and investments in non-sensitive sectors (such as manufacturing, professional services, commercial real estate, new housing, mining of non-critical minerals and investments not near sensitive

Australian Government facilities). Of particular note is that investments relating to gold, coal and iron ore (which are not on Australia's critical minerals list, available here: [Australia’s Critical Minerals List and Strategic Materials List | Department of Industry Science and Resources]) are expected to have quicker turn-around times, provided that they are not near sensitive Australian Government facilities. Of course, investments will continue to be considered on a case-by-case basis, and while there are no guarantees on timeframes for assessment, we anticipate this to be a positive development for non-sensitive investments.

4. **Improved transparency and adoption of timing performance targets:** Treasury has stated that it will improve transparency in communicating to investors when they can expect longer timeframes in the assessment of investment proposals. This is a welcome development, particularly for material transactions which may be subject to hard commercial headlines and where timing expectations with counterparties and other interested parties need to be managed. Treasury will also be adopting a new performance target of processing 50 per cent of investment proposals within the 30-day statutory decision period from 1 January 2025, and has stated that most foreign investors will see an improvement in the speed of processing from as early as 1 July 2024.

Further information about the changes is expected to be provided in the updates to FIRB's Guidance Notes which are still in development. Please feel free to contact us to discuss any aspect of the reforms or how they may relate to any of your upcoming investments.

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