



Australian Government
The Treasury

TSY/AU

INFORMATION NOTE

Major reforms to the Foreign Investment Review Framework

An Implementation Roadmap

Overview

On 5 June 2020, the Government proposed major reforms to the *Foreign Acquisitions and Takeovers Act 1975*, including measures to address national security risks, strengthen compliance and enforcement powers, and streamline investment in non-sensitive businesses.

Today The Treasurer announced the release for consultation the exposure draft of the *Foreign Investment Reform (Protecting Australia's National Security) Bill 2020* (the Bill), giving effect to the reforms. The draft amendments to the *Foreign Acquisitions and Takeovers Regulation 2015* will be released in two parts – the first, released today, includes the definition of national security business. The second will include the remainder of the regulatory changes, including the time limit for the call in power, streamlining measures (including investor exemption certificates) and other technical amendments, which will be released separately in September.

Following each release, Treasury will undertake a consultation process with key stakeholders. This is in addition to the extensive engagement taken to date since the announcement. Submissions on the Bill and the definition of national security business are welcome prior to 5:00pm on 31 August. Following the public submission process, Treasury will continue to engage with stakeholders on the implementation of the reforms, including the development of additional guidance. This timeline will allow for the subsequent finalisation and introduction of the Bill into parliament in the Spring sitting. The consultation period for the second part of the exposure draft Regulation will commence around September.

Table 1 outlines the consultation timeframes for each reform measure as it corresponds to the Summary Booklet published on 5 June 2020.

Consultation Plan

Consultation is a critical next step in the Government's implementation of the reforms. Consultation ensures the Government's policy intent is appropriately communicated and the impact of the reforms on affected businesses, community organisations and individuals is fully considered. Many stakeholder groups can provide informed feedback which will prove valuable to the design of the legislation. The objectives of the consultation period include:

- Collect stakeholder questions and feedback for key issues and identify areas which require further policy guidance and clarification.
- Seek assurance from diverse stakeholder groups that the regulatory capture of the exposure draft legislation is appropriate for achieving the Government's intent without over-burdening industries and investors.

Table 1 - consultation period for each reform measure

| Reform measures in the Summary Booklet | Release date | Opportunity for feedback |
|---|---|--|
| Protecting Australia's national security | | |
| 1. The Government will introduce a new national security test which will: | | |
| a. enable the Treasurer to impose conditions or block any investment by a foreign person on national security grounds regardless of the value of investment; | July – Tranche 1 Primary law | Until 31 August |
| b. require mandatory notification of any proposed investment by a foreign person in a sensitive national security business; | July – Tranche 1 Primary law and Regulations | Until 31 August |
| c. require mandatory notification where a business or entity owned by a foreign person starts to carry on the activities of a sensitive national security business; | July – Tranche 1 Primary law and Regulations | Until 31 August |
| d. allow any investment that would not ordinarily require notification to be 'called in' for screening on national security grounds; | July – Tranche 1 Primary law September – Tranche 2 Regulations (the time limit of the call in power) | Until 31 August From September for the Regulations |

| Reform measures in the Summary Booklet | Release date | Opportunity for feedback |
|---|---|---|
| e. allow investors to voluntarily notify to receive investor certainty from 'call in' for a particular investment or apply for an investor-specific exemption certificate; | July – Tranche 1 Primary law September – Tranche 2 Regulations (investor-specific exemption certificate) | Until 31 August From September for the Regulations |
| f. allow the Treasurer to impose conditions, vary existing conditions, or, as a last resort, require the divestment of any realised investment which was approved under the FATA where national security risks emerge. | July – Tranche 1 Primary law | Until 31 August |
| Streamline less sensitive investments | | |
| 2. The Government will exempt certain investments made by entities which are currently classified as 'Foreign Government Investors'. This exemption will be non-discriminatory and apply only where no foreign government investor has or could be perceived to have influence or control over the investment or operational decisions of the entity or any of its underlying assets. | September – Tranche 2 Regulations | From September |
| Stronger penalties, compliance and enforcement powers | | |
| 3. The Government will have standard monitoring and investigative powers (in line with those of other business regulators), including access to premises with consent or by warrant to gather information. This measure will improve regulators' capability to monitor investor compliance and/or investigate potential non-compliance. | July – Tranche 1 Primary law | Until 31 August |
| 4. The Government will have powers to give directions to investors in order to prevent or address suspected breaches of conditions or of the foreign investment laws. | July – Tranche 1 Primary law | Until 31 August |
| 5. The Government will increase civil and criminal penalties under the FATA to ensure these penalties act as an effective deterrent. | July – Tranche 1 Primary law | Until 31 August |
| 6. The Government will expand the infringement notices regime to cover all types of foreign investments and introduce a third tier to allow for a more graduated and proportional approach to enforcement. | July – Tranche 1 Primary law | Until 31 August |
| 7. The Government will have powers to remedy situations where foreign persons are given a no objection notification or an exemption certificate based on a foreign investment application that makes an incorrect statement, or omits an important piece of information. | July – Tranche 1 Primary law | Until 31 August |
| 8. The Government will have powers with respect to an investment that was originally made in breach of the FATA where the interest has subsequently been transferred to another foreign person by will or devolution by operation of law. | September – Tranche 2 Regulations | From September |
| 9. The Government will have the power to accept enforceable undertakings from foreign persons to manage non-compliance or to give weight to commitments a foreign person made at the time of applying for a no objection notification or an exemption certificate. | July – Tranche 1 Primary law | Until 31 August |

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| Reform measures in the Summary Booklet | Release date | Opportunity for feedback |
|--|---|---|
| 10. Foreign persons who have been issued a no objection notification for a proposed action or an exemption certificate will be required to notify the Government of certain events, including that the action has occurred or did not occur. | July – Tranche 1 Primary law | Until 31 August |
| Integrity of the foreign investment review framework | | |
| 11. The Government will clarify that foreign persons are required to seek further foreign investment approval for any increase in actual or proportional holdings above what has been previously approved, including as a result of creep acquisitions and proportional increases through share buybacks and selective capital reductions. | July – Tranche 1 Primary law | Until 31 August |
| 12. The Government will narrow the scope of the moneylending exemption so that it does not apply where foreign money lenders are obtaining interests in a sensitive national security business under a moneylending agreement. | September – Tranche 2 Regulations | From September |
| 13. The Government will require foreign persons to seek foreign investment approval for acquisitions of interests from the Commonwealth, state or territory governments or local government bodies to perform Government services or functions associated with privatisation programs that may raise national security risks. | July – Tranche 1 Primary law September – Tranche 2 Regulations | Until 31 August for the primary law From September for the Regulations |
| 14. The FATA will be amended so that the tracing rules can be similarly applied to unincorporated limited partnerships as they are to corporations and trusts, so that beneficial interests can be traced. | July – Tranche 1 Primary law | Until 31 August |
| 15. A foreign person, who is a parent or spouse of an Australian resident, will need to seek foreign investment approval prior to the purchase of Australian land where they provide money to their Australian family member for the purchase, other than by way of a gift. | July – Tranche 1 Primary law | Until 31 August |
| More coordinated information gathering and sharing | | |
| 16. The Government is considering a new Register of Foreign Ownership that will merge and expand the existing agricultural land, water and residential registers, in order to increase the Government’s visibility of foreign investments made in Australia. | July – Tranche 1 Primary law September – Tranche 2 Regulations | Until 31 August From September for the Regulations |
| 17. The Government will increase the scope of the information sharing provisions under the FATA and the <i>Tax Administration Act 1953</i> (the TAA) to allow greater sharing of foreign investment information across government agencies to simplify the administration of the foreign investment framework. | July – Tranche 1 Primary law | Until 31 August |
| 18. The Government will introduce new information sharing provisions to allow sharing of protected information with international counterparts where national security considerations are present. | July – Tranche 1 Primary law | Until 31 August |
| A fairer and simpler framework for foreign investment fees | | |
| 19. The foreign investment fees framework ensures that foreign investors, not Australian taxpayers, bear the costs of administering the foreign investment system. Consistent with this principle, fees will be reviewed to ensure they continue to cover the costs of administering the system. In doing so, the | July – Tranche 1 Primary law (framework) | Until 31 August for the primary law |

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| Government is committed to reforming the fees framework to make it fairer and simpler for investors. | September – Tranche 2 Regulations (Fee Details) | From September for the Regulations |
| A timely, consistent and reliable investor experience | | |
| <p>20. The Government is committed to delivering a timely and efficient foreign investment regime which recognises commercial deadlines and does not unnecessarily impede the operation of foreign investors or markets. The Government will continue to work with stakeholders in identifying ways to streamline and enhance the investor experience.</p> <p><i>[Note: The provision giving effect to this measure in the Primary law is extending the decision period to 90 days.]</i></p> | July – Tranche 1 Primary law | Until 31 August |
| Other amendments | | |
| 21. The Government will introduce amendments to the foreign investment review framework to improve readability of existing provisions, rectify inconsistencies and unintended consequences, and address feedback from investors seeking greater certainty. | | |
| Exempt exploration tenements acquired by private investors, regardless of the right to occupy | September – Tranche 2 Regulations | From September |
| Update the definition of ‘Australian media business’ | September – Tranche 2 Regulations | From September |
| Reinstate monetary thresholds | September – Tranche 2 Regulations | From September |