



Updated Australian Foreign Investment Policy

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On 30 June 2010, the Australian Treasurer released Australia's updated Foreign Investment Policy (Policy). The Policy aims to assist foreign investors to understand the Australian Government's approach to foreign investment proposals. However, in addition to the Policy, all foreign investors must continue to consider the requirements of the *Foreign Acquisitions and Takeovers Act 1975* as this provides the legislative framework to the Australian Government's screening regime.

The major changes included in the Policy are summarised below.

Foreign governments and their related entities

The Policy confirms the longstanding position that a 'foreign government or a related entity' must notify the Government and get prior approval before:

- making a 'direct investment' in Australia, regardless of the value of the investment; and
- starting a new business or acquiring an interest in Australian urban land (unless such land will be used for diplomatic or consular requirements).

However, the Policy provides more certainty as to when foreign governments and their related entities must notify the Government of a proposed investment. This is achieved by:

- Defining a 'foreign government or a related entity' to include a body politic of a foreign country, companies or other entities in which foreign governments, their agencies or related entities have more than a 15 per cent interest or companies or entities that are otherwise controlled by foreign governments, their agencies or related entities.

- Defining a 'direct investment' to be an investment with the objective of establishing a lasting interest in, and a strategic long term relationship with, the target enterprise. The Policy states that, in line with international practice, any interest of ten per cent or more will constitute a direct investment. However, interests below ten per cent will also constitute direct investments if the foreign government or related entity can use that interest to influence or control the enterprise or if they are preparatory to a takeover bid.
- Clarifying that there is no statutory form and that the timeframes for considering applications do not apply for applications made under the Policy. However, the Policy says that the Government aims to consider these proposals within 30 days, where possible.

The Policy also replaces the six 'guidelines for foreign government investment proposals' with the 'New National Interest Considerations' which apply to all foreign investments and not just investments by foreign governments. Essentially, these considerations re-frame the six 'guidelines for foreign government investment proposals' and include:

- national security
- competition
- Australian Government policies (including tax)
- impact on the economy and community, and
- character of the investor.

In addition, where a proposal involves a foreign government or related entity, the Government will also consider if the investment is commercial in nature of if the foreign government investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest. The Government has also indicated that it will carefully

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consider proposals from foreign government entities that are not operating on a fully arms length basis.

Real estate

The Policy now reflects the changes which were announced by the Government in May this year which apply to temporary residents. In summary, temporary residents must notify the Government if they wish to buy a new dwelling, vacant land for residential development or an established dwelling. In relation to:

- new dwellings, such proposals are usually approved without conditions
- vacant land, such proposals are usually approved subject to conditions (e.g. that construction begins within a certain timeframe), and
- established dwellings, such proposals are usually approved subject to conditions (e.g. that the temporary resident sells the property when it ceases to be their residence) to ensure that temporary residents cannot buy established dwellings as investment properties.

Investments in the media sector

The Policy has also relaxed the rules which apply to investments in the media sector. This has been done by narrowing the definition of the 'media sector' to include daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media).

Also, under the previous foreign investment policy, all non-portfolio investments by foreign persons in the media sector were required to be notified to the Government for approval, irrespective of the investment's size in addition to shareholdings of five per cent or more. However, under the Policy, only investments that involve more than a five per cent interest in the 'media sector' must be notified to the Government for approval such that non-portfolio investments no longer need to be notified.

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