

April 1, 2020

Emergency Changes to Australian Foreign Investment Laws  
Continue Global Trend of Extending Reviews of Transactions

The Australian government has taken swift action to protect its markets during the COVID-19 crisis by temporarily requiring that *any* investment in an Australian business (including a subsidiary) or asset that has more than \$0 in Australian presence obtain approval from the Australian Foreign Investment Review Board (“FIRB”), although the expanded scope is limited by the voting or equity percentage thresholds that remain in effect. The new filing requirement applies to any agreement signed (or open market purchases contemplated) on or after March 29, 2020, that meet or exceed the following thresholds:

- 20% voting or equity interest in any Australian business or asset;
- 10% of voting or equity interest by a foreign government investor of any Australian business or asset;
- 10% voting or equity interest in an Australian agribusiness or land/resource entity; and
- 5% indirect voting or equity interest in an Australian media business (any direct investment is reportable).

The new rule was coupled with an announcement that FIRB will request that petitioning parties voluntarily extend the statutory review period from 30 days to up to six months. FIRB also has the ability to automatically extend the statutory waiting period by an additional 90-days and indicated that it would do so if parties were unwilling to extend the review period voluntarily.

Most countries have formally or informally implemented policies that extend review periods under their competition and foreign investment laws in response to the COVID-19 pandemic. The new FIRB rule is thus unlikely to materially delay global transactions that are subject to other regulatory approvals and clearances. In addition, FIRB has committed to expedite its review where parties work cooperatively with the authority and can demonstrate that the transaction will help protect Australian communities and jobs.

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