



## Treasurer

[www.treasurer.gov.au](http://www.treasurer.gov.au)

Last Updated: 1 January 2019

# AUSTRALIA'S FOREIGN INVESTMENT POLICY

## OUR APPROACH

The Australian Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and innovation into the future. Without foreign investment, production, employment and income would all be lower.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, encourages innovation and the induction of new technologies and skills, provides access to markets and promotes competition amongst our industries.

The Government reviews foreign investment proposals against the national interest on a case-by-case basis. This flexible approach is preferred to hard and fast rules. Rigid laws that prohibit a class of investments too often also stop valuable investments. The case-by-case approach maximises investment flows, while protecting Australia's interests.

The Government works with applicants to ensure the national interest is protected. However, if it is ultimately determined that a proposal is contrary to the national interest, it will not be approved, or conditions will be applied to safeguard the national interest.

The Government expects all investors (both foreign and domestically-owned) to comply with Australia's laws and maintain high standards of conduct at all times. This includes following both the spirit and the letter of Australian law, and acting in good faith in complying with any conditions imposed by the Government.

Foreign investors should familiarise themselves with Australia's foreign investment framework and ensure they comply with the law. Failure to do so may result in the imposition of penalties.

# THE FOREIGN INVESTMENT REVIEW FRAMEWORK

The foreign investment review framework is set by the legislative framework and supported by Australia's Foreign Investment Policy (the Policy) and Guidance Notes on the specific application of the law.

- The legislative framework includes the [Foreign Acquisitions and Takeovers Act 1975](#) (Act) and the [Foreign Acquisitions and Takeovers Fees Impositions Act 2015](#) (Fees Imposition Act) and their associated regulations.
  - The Act allows the Treasurer to review foreign investment proposals that meet certain criteria. The Treasurer has the power to block foreign investment proposals or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest.
  - The Fees Imposition Act and its Regulation set the fees<sup>1</sup> for foreign investment applications and notices.
- The Policy outlines the Government's approach to administering the foreign investment framework, including national interest considerations. The Policy provides an overview of the framework, and should be read in conjunction with the legislation.
- Guidance Notes provide more specific information on how the foreign investment framework applies for different acquisitions and investors. They are provided for guidance only and should be read in conjunction with the legislation. Guidance Notes are available at [www.firb.gov.au](http://www.firb.gov.au)

When making foreign investment decisions, the Treasurer is advised by the Foreign Investment Review Board (FIRB), which examines foreign investment proposals and advises on the national interest implications. FIRB is a non-statutory advisory body. Responsibility for making decisions rests with the Treasurer.

FIRB is supported by a secretariat located in Treasury and by the Australian Taxation Office (ATO). Treasury is responsible for the day to day administration of the framework in relation to business, agricultural land and commercial land proposals. The ATO administers foreign investment into residential real estate.

Australia has sought to liberalise trade and investment through Free Trade Agreements (FTAs) and will honour its commitments under those agreements. The commitments include negotiated higher foreign investment screening thresholds. The application of the national interest test will continue to apply consistently to all countries.

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<sup>1</sup> Certain fees are indexed annually on 1 July.

# WHO NEEDS FOREIGN INVESTMENT APPROVAL?

A foreign person is generally:

- an individual that is not ordinarily resident in Australia; or
- a foreign government or foreign government investor; or
- a corporation, trustee of a trust or general partner of a limited partnership where an individual not ordinarily resident in Australia, foreign corporation or foreign government holds a substantial interest of at least 20 per cent; or
- a corporation, trustee of a trust or general partner of a limited partnership in which two or more foreign persons hold an aggregate substantial interest of at least 40 per cent.

A 'foreign government investor' is:

- a foreign government or separate government entity, a corporation or trustee of a trust, or a general partner of a limited partnership in which:
  - a foreign government or separate government entity holds a substantial interest of at least 20 per cent; or
  - foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country) hold an aggregate substantial interest of at least 40 per cent.

Notification requirements vary and are based on a number of factors including: whether the investor is a foreign government or non-government investor, the type of acquisition, whether the acquisition is subject to monetary thresholds and FTA commitments.

Monetary thresholds are outlined in Annex 1.

Foreign investors should contact FIRB or seek independent legal advice if they have any doubt as to whether an investment is notifiable.

## Non-government foreign investors

### Business Acquisitions

Foreign persons must get approval before acquiring a substantial interest (at least 20 per cent) in an Australian entity that is valued above \$266 million.<sup>2</sup>

Consistent with Australia's FTA commitments, a \$1,154 million threshold applies to agreement country investors from Canada, Chile, China, Japan, Korea, Mexico, New Zealand, Singapore and the United States (agreement country investors). This threshold will apply to investors from Vietnam when the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) comes into force for Vietnam on 14 January 2019, and for any country for which the TPP-11

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<sup>2</sup> Monetary thresholds are indexed annually on 1 January, except for the more than \$15 million (cumulative) threshold for agricultural land and the more than \$50 million threshold for agricultural land for Singapore and Thailand investors, which are not indexed.

subsequently comes into force. However, the \$266 million threshold applies to these investors if investing in sensitive businesses.

- Sensitive businesses include media; telecommunications; transport; defence and military related industries; and the extraction of uranium or plutonium or the operation of nuclear facilities.

Foreign persons must also get approval before acquiring certain real estate interests including securities in land corporations and trusts that have a majority of their assets in land.

### **Agribusinesses**

Foreign persons must get approval before acquiring a direct interest (generally at least 10 per cent, or the ability to influence, participate in or control) in an agribusiness where the value of the investment is more than \$58 million (regardless of the value of the agribusiness).

Consistent with Australia's FTA commitments, a \$1,154 million threshold applies to Chilean, New Zealand and United States investors if acquiring a substantial interest in an agribusiness.

### **Media businesses**

All foreign persons, including agreement country investors, must get approval to make investments of at least 5 per cent in an Australian media business, regardless of the value of the investment.

### **Acquisitions of Australian Land**

Australian land includes agricultural and commercial land, mining and production tenements, and residential land.

#### Agricultural Land

Agricultural land means land in Australia that is used, or could reasonably be used, for a primary production business.

Foreign persons must get approval for a proposed acquisition of an interest in agricultural land where the cumulative value of agricultural land owned by the foreign person (and any associates), including the proposed purchase, is more than \$15 million.

Consistent with FTA commitments, a \$1,154 million threshold applies to Chilean, New Zealand and United States investors, and a \$50 million threshold applies to Thai investors. These thresholds are not cumulative.

#### Commercial Land

Commercial land includes vacant land and developed land such as offices, factories, warehouses and shops. Commercial residential premises (such as hotels, motels and caravan parks) are also considered to be commercial land.

All foreign persons must get approval for a proposed acquisition of vacant commercial land, regardless of the value of the land. Such acquisitions are normally approved subject to development conditions.

Agreement country investors only need to apply for developed commercial land where the value of the interest is more than \$1,154 million.

Other foreign persons must get approval for a proposed acquisition of an interest in developed commercial land if the value of the interest is likely to exceed \$266 million, unless the land meets the conditions for the lower threshold of \$58 million. Low threshold commercial land includes mines and critical infrastructure (for example, an airport or a port).

### Tenements

Foreign persons must get approval to acquire an interest in a mining or production tenement, regardless of value.

Relevant agreement country investors (Chile, New Zealand and United States investors) only need to apply for mining or production tenements where the value of the interest is more than \$1,154 million.

## **Foreign government investors**

In addition to the requirements for non-government investors, all foreign government investors must get approval before acquiring a direct interest in Australia (generally at least 10 per cent, or the ability to influence, participate in or control), starting a new business or acquiring an interest in Australian land regardless of the value of the investment.

Foreign government investors also require approval to acquire a legal or equitable interest in a tenement or an interest of at least 10 per cent in securities in a mining, production or exploration entity.

## **Residential real estate**

Foreign persons must get approval to acquire an interest in residential real estate regardless of value. The rules around who is allowed to acquire residential real estate differ depending on whether the foreign person is a temporary resident in Australia or is non-resident.

- A temporary resident is an individual who holds a temporary visa that permits them to remain in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa) or is residing in Australia, has submitted an application for a permanent visa and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

Foreign persons (temporary resident or non-resident) can apply to purchase vacant land for residential development with few restrictions and purchase newly constructed dwellings, whereas approvals for established dwellings are generally limited to the following and will normally be subject to conditions.

- Temporary residents can apply to purchase one established dwelling for use as their residence in Australia. They must sell this within three months of it ceasing to be their primary residence (for example, when they leave Australia).
- Foreign persons that operate a substantial Australian business can apply to purchase established dwellings to house their Australian based staff.
- Foreign persons can purchase established dwellings for redevelopment, provided the redevelopment increases Australia's housing stock (for example, demolishing one dwelling and building two or more in its place).



## Exemptions

Foreign persons are exempt from the need to seek foreign investment approval in certain circumstances. Some of these include:

- Will or devolution – acquisition of an interest in securities, assets, a trust or Australian land that is acquired by will, or devolution by operation of law.
- Australian business carried on by or land acquired from the Commonwealth, state and territory or local governments (except if a foreign government investor is acquiring the asset).
- Compulsory acquisitions and compulsory buy-outs.
- Certain interests acquired under a rights issue or under a dividend reinvestment plan.
- Acquisitions of Australian land by Australian citizens not ordinarily resident in Australia, New Zealand citizens and permanent residents.
- Foreign nationals purchasing property as joint tenants with their Australian citizen, New Zealand citizen, or permanent resident spouse (does not include purchasing property as tenants in common).
- Investors ordinarily in the business of moneylending (specific rules apply for interests in residential land and for foreign government investors).

### Foreign government investors

#### Exemptions generally

Some exemptions that apply to non-government foreign investors do not apply to foreign government investors. Specific exemptions for foreign government investors include the acquisition of residential land to be used for diplomatic purposes.

#### Security interests

Foreign government investors ordinarily in the business of lending money do not need approval to take security interests. They also do not need approval to enforce a security interest if:

- the foreign government investor is an authorised deposit taking institution (ADI) and the asset is sold within 12 months, or, if 12 months have passed since enforcement of the security, the investor is making a genuine attempt to dispose of the interest;
- the foreign government investor is not an ADI and the asset is sold within 6 months, or, if 6 months have passed since enforcement of the security, the investor is making a genuine attempt to dispose of the interest.

These exemptions do not apply to foreign government investors who are not carrying on a moneylending business. If not a genuine moneylending business, taking a security interest will be an acquisition and may require foreign investment approval.

## Other legislation

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- foreign ownership in the banking sector must be consistent with the [Banking Act 1959](#), the [Financial Sector \(Shareholdings\) Act 1998](#) and banking policy;
- aggregate foreign ownership in an Australian international airline (including Qantas) is limited to 49 per cent (see [Air Navigation Act 1920](#) and [Qantas Sale Act 1992](#));
- the [Airports Act 1996](#) limits foreign ownership of some airports to 49 per cent, with a 5 per cent airline ownership limit and cross-ownership limits between Sydney airport (together with Sydney West) and either Melbourne, Brisbane, or Perth airports;
- the [Shipping Registration Act 1981](#) requires a ship to be majority Australian-owned if it is to be registered in Australia, unless it is designated as chartered by an Australian operator; and
- aggregate foreign ownership of Telstra is limited to 35 per cent and individual foreign investors are only allowed to own up to 5 per cent.

### Register of foreign ownership of agricultural land

Under the [Register of Foreign Ownership of Agricultural Land Act 2015](#), foreign persons (including foreign government investors) holding interests in agricultural land must also register those interests with the Australian Taxation Office (regardless of value of that land). New interests need to be registered within 30 days. Further information is available at: [www.ato.gov.au/aglandregister](http://www.ato.gov.au/aglandregister).



# THE NATIONAL INTEREST TEST

Australia's foreign investment review framework balances the need to welcome foreign investment against the need to reassure the community that the national interest is being protected.

The Act empowers the Treasurer to prohibit an investment if satisfied it would be contrary to the national interest. However, the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy.

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Act confers upon the Treasurer the power to decide in each case whether a particular investment would be contrary to the national interest.

The Government recognises community concerns about foreign ownership of certain Australian assets. The framework allows the Government to consider these concerns when assessing Australia's national interest.

The Government considers a range of factors and the relative importance of these can vary depending upon the nature of the target enterprise. Investments in enterprises that are large employers or that have significant market share may raise more sensitivities than investments in smaller enterprises. However, investments in small enterprises with unique assets or in sensitive businesses may also raise concerns.

Sensitive businesses can include business such as: media, telecommunications, and transport, defence related industries and activities and the extraction of uranium or plutonium or the operation of nuclear facilities as well as other critical infrastructure.

The impact of the investment is also a consideration. An investment that enhances economic activity such as by developing additional productive capacity or new technology is less likely to be contrary to the national interest.

The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces.

The Government typically considers the following factors when assessing foreign investment proposals.

## National interest factors in all sectors

### National security

The Government considers the extent to which investments affect Australia's ability to protect its strategic and security interests. The Government relies on advice from the relevant national security agencies for assessments as to whether an investment raises national security issues.

### Competition

The Government favours diversity of ownership within Australian industries and sectors to promote healthy competition. The Government considers whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia.

For example, the Government will consider a proposal that involves a customer of a product gaining control over an existing Australian producer of the product, particularly if it involves a significant producer.

The Government may also consider the impact that a proposed investment has on the make-up of the relevant global industry, particularly where concentration could lead to distortions to competitive market outcomes. A particular concern is the extent to which an investment may allow an investor to control the global supply of a product or service.

The Australian Competition and Consumer Commission also examines competition issues in accordance with Australia's competition policy regime. Any such examination is independent of Australia's foreign investment framework.

#### **Other Australian Government policies (including tax)**

The Government considers the impact of a foreign investment proposal on Australian tax revenues. Investments must also be consistent with the Government's objectives in relation to matters such as environmental impact.

#### **Impact on the economy and the community**

The Government considers the impact of the investment on the general economy. The Government will consider the impact of any plans to restructure an Australian enterprise following an acquisition. It also considers the nature of the funding of the acquisition and the level of Australian participation in the enterprise after the foreign investment occurs, as well as the interests of employees, creditors and other stakeholders.

The Government considers the extent to which the investor will develop the project and ensure a fair return for the Australian people. The investment should also be consistent with the Government's aim of ensuring that Australia remains a reliable supplier to all customers in the future.

#### **Character of the investor**

The Government considers the extent to which the investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision. The Government also considers the corporate governance practices of foreign investors. In the case of investors who are fund managers, including sovereign wealth funds, the Government considers the fund's investment policy and how it proposes to exercise voting power in relation to Australian enterprises in which the fund proposes to take an interest.

Proposals by foreign owned or controlled investors that operate on a transparent and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

The Government considers whether the investor complies with Australia's laws, including following both the spirit and the letter of Australian law, and acting in good faith in complying with any conditions imposed by the Government.

#### **Investments in the agricultural sector**

In addition to the factors above, when examining foreign investment proposals in the agricultural sector, the Government typically considers the effect of the proposal on:

- the quality and availability of Australia’s agricultural resources, including water;
- land access and use;
- agricultural production and productivity;
- Australia’s capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
- biodiversity; and
- employment and prosperity in Australia’s local and regional communities.

## **Investments in residential land**

The Government’s policy is to channel foreign investment into new dwellings as this creates additional jobs in the construction industry and helps support economic growth. It can also increase government revenues, in the form of stamp duties and other taxes, and from the overall higher economic growth that flows from the additional investment.

Foreign investment applications are therefore considered in light of the overarching principle that the proposed investment should increase Australia’s housing stock (by creating at least one new additional dwelling).

Consistent with this aim, different rules apply depending on whether the property being acquired will increase the housing stock or whether it is an established dwelling.

## **Foreign government investors**

Where a proposal involves a foreign government investor, the Australian Government also considers if the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia’s national interest. This includes assessing whether the prospective investor’s governance arrangements could facilitate actual or potential control by a foreign government including through the investor’s funding arrangements.

Proposals from foreign government investors operating on a fully arm’s length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Where the potential investor is not wholly foreign government owned, the Government considers the size, nature and composition of any non-government interests, including any restrictions on the exercise of their rights as interest holders.

The Government looks at proposals from foreign government investors that are not operating on a fully arm’s length and commercial basis. The Government does not have a policy of prohibiting such investments but it looks at the overall proposal carefully to determine whether such investments may be contrary to the national interest.

Mitigating factors that assist in determining that such proposals are not contrary to the national interest may include:

- the existence of external partners or shareholders in the investment;
- the level of non-associated ownership interests;

- the governance arrangements for the investment;
- ongoing arrangements to protect Australian interests from non-commercial dealings;
- whether the target will be, or remain, listed on the Australian Securities Exchange or another recognised exchange.

The Government will also consider the size, importance and potential impact of such investments in considering whether or not the proposal is contrary to the national interest.

## APPLICATIONS

Foreign persons should lodge an application in advance of any transaction, or make the purchase contract conditional on foreign investment approval. A transaction should not proceed until the Government advises of the outcome of its review.

The Government encourages potential investors to engage with FIRB prior to lodging applications on significant proposals to allow timely consideration of the proposal. The Government will treat proposals in-confidence.

Applications should be lodged electronically on the FIRB website [www.firb.gov.au](http://www.firb.gov.au).

### Fees

A fee is payable for all foreign investment applications. Fees are payable at the time of application. The timeframe for making a decision will not start until the correct fee has been paid. See Guidance Notes 29 (residential land) and 30 (business) for full details of the fees payable for foreign investment applications.

### HOW LONG BEFORE A DECISION IS MADE?

Under the Act, the Treasurer has 30 days to consider an application and make a decision. The timeframe for making a decision will not start until the correct fee has been paid in full.

The Treasurer may also extend this period by up to a further 90 days by publishing an interim order. An interim order may be made to allow further time to consider the exercise of the Treasurer's powers. Interim orders appear in the Gazette. Investors can voluntarily extend the period by providing written consent.

Applicants will be informed of the Treasurer's decision within 10 days of it being made. That decision will either raise no objections, allowing the proposal to go ahead; impose conditions, which will need to be met; or block the proposal.

### Exemption Certificates

If a person applies for an exemption certificate, the Treasurer must make a decision whether to grant the certificate before the end of 30 days. A person can voluntarily extend the period by providing written consent.

## CONFIDENTIALITY AND PRIVACY

The Government may share your application with Commonwealth, state and territory government departments and agencies for consultation purposes. The Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government will not provide applications to third parties outside of the Government unless it has permission or it is ordered to do so by a court of competent jurisdiction. The Government will defend this policy through the judicial system if needed.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the [Privacy Act 1988](#) and the [Freedom of Information Act 1982](#).

## PENALTIES

Foreign persons that do not comply with the framework may be subject to civil and criminal penalties. Penalties are outlined in Annex 2.

Foreign persons that do not comply with the framework in relation to residential real estate may also be issued with infringement notices by the ATO.

## ENQUIRIES

Further information may be found the FIRB website at [www.firb.gov.au](http://www.firb.gov.au) or by contacting the FIRB or the ATO.

### General enquiries – Residential

Phone: 1800 050 377

From overseas: +61 2 6216 1111

Email: [firbresidential@ato.gov.au](mailto:firbresidential@ato.gov.au)

Website [www.firb.gov.au](http://www.firb.gov.au)

### General enquiries – Non- Residential

Phone: 02 6263 3795

From overseas: +61 2 6263 3795

Email: [firbenquiries@treasury.gov.au](mailto:firbenquiries@treasury.gov.au)

Website [www.firb.gov.au](http://www.firb.gov.au)

### Compliance

To report a suspected breach of Australia's foreign investment framework, please complete the foreign investment breach reporting form at [www.firb.gov.au](http://www.firb.gov.au)

Phone: 1800 050 377

From overseas: +61 2 6216 1111

Email: [FIRBCompliance@ato.gov.au](mailto:FIRBCompliance@ato.gov.au)

**Important notice:** This policy document provides a summary of the relevant law. As this policy document tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This policy document is therefore not a substitute for obtaining your own legal advice.

## ANNEX 1 MONETARY THRESHOLDS

Monetary thresholds are indexed annually on 1 January, except for the more than \$15 million (cumulative) threshold for agricultural land and the more than \$50 million threshold for agricultural land for Singapore and Thailand investors, which are not indexed.

### NON-LAND PROPOSALS

Investor	Action	Threshold – more than:
<b>From FTA partner countries that have the higher threshold<sup>3</sup></b>	Acquisitions in non-sensitive businesses	\$1,154 million
	Acquisitions in sensitive businesses <sup>4</sup>	\$266 million
	Media sector <sup>5</sup>	\$0
	Agribusinesses	For Chile, New Zealand and United States, \$1,154 million.  For Canada, China, Japan, Korea, Mexico and Singapore \$58 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity)
<b>Other investors</b>	Business acquisitions (all sectors)	\$266 million
	Media sector <sup>5</sup>	\$0
	Agribusinesses	\$58 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity)
<b>Foreign government investors</b>	All direct interests in an Australian entity or Australian business	\$0
	Starting a new Australian business	\$0

<sup>3</sup> Agreement country investors are Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, South Korean, Singaporean and United States investors, except foreign government investors, and any country for which TPP-11 subsequently comes into force. TPP-11 will come into force Vietnam on 14 January.

<sup>4</sup> Sensitive businesses include media; telecommunications; transport; defence and military related industries and activities; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium; or the operation of nuclear facilities.

<sup>5</sup> For investments in the media sector, a holding of at least five per cent requires notification and prior approval regardless of the value of investment.

## LAND PROPOSALS

Investor	Action	Threshold - more than:
All investors	Residential land	\$0
Privately owned investors from FTA partner countries that have the higher threshold <sup>6</sup>	Agricultural land	For Chile, New Zealand and United States, \$1,154 million
		For Canada, China, Japan, Korea, Mexico and Singapore \$15 million (cumulative)
	Vacant commercial land	\$0
	Developed commercial land	\$1,154 million
	Mining and production tenements	For Chile, New Zealand and United States, \$1,154 million
		Others, \$0
Privately owned investors from non-FTA countries and FTA countries that do not have the higher threshold	Agricultural land	For Thailand, where land is used wholly and exclusively for a primary production business \$50 million (otherwise the land is not agricultural land)
		Others \$15 million (cumulative)
	Vacant commercial land	\$0
	Developed commercial land	\$266 million
		Low threshold land (sensitive land) <sup>7</sup> , \$58 million
	Mining and production tenements	\$0
Foreign	Any interest in land	\$0

<sup>6</sup> Agreement country investors are Canadian, Chilean, Chinese, Japanese, Mexican, New Zealand, South Korean, Singaporean and United States investors, except foreign government investors. TPP-11 will come into force Vietnam on 14 January.

<sup>7</sup> Low threshold land includes mines and critical infrastructure (for example, an airport or port).



<b>government investors</b>		
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# ANNEX 2 – PENALTIES

## Residential Real Estate Penalties

Breach	Penalties
<p><b>Foreign person acquires new property without approval</b> (failure to notify or purchase before approval granted)</p> <p><b>Temporary resident acquires established property without approval</b> (failure to notify or purchase before approval granted)</p>	<p><b>Criminal Penalty</b> Maximum criminal penalty of</p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul> <p><b>Civil Penalty</b> Maximum civil penalty is the greater of the following:</p> <ul style="list-style-type: none"> <li>▪ 10 per cent of the consideration for the residential land acquisition (an amount equivalent to the relevant application fee may also be payable in relation to the issue of an order or notice by the Treasurer); or</li> <li>▪ 10 per cent of market value of the interest in the property (an amount equivalent to the relevant application fee may also be payable in relation to the issue of an order or notice by the Treasurer).</li> </ul> <p><b>Tier 1 Infringement notice — Person notified the Commonwealth of the alleged contravention before an infringement notice was issued</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 12 penalty units (\$2,520) plus the relevant application fee.</li> <li>▪ Company — 60 penalty units (\$12,600) plus the relevant application fee.</li> </ul> <p><b>Tier 2 Infringement notice — Identified through compliance activities</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 60 penalty units (\$12,600) plus the relevant application fee.</li> <li>▪ Company — 300 penalty units (\$63,000) plus the relevant application fee.</li> </ul> <p>Either an infringement notice or civil penalty would be sought but not both.</p>

<p><b>Non-resident acquires established property or temporary resident acquires more than one established property</b> (failure to notify, purchase before approval granted or breach of conditional approval)</p> <p><b>Temporary resident fails to sell established property when it ceases to be their principal residence</b> (breach of conditional approval)</p> <p><b>Temporary resident rents out an established property</b> (breach of conditional approval)</p> <p><b>Failure to complete construction within four years without seeking extension</b> (breach of conditional approval of vacant land/ redevelopment applications)</p>	<p><b>Maximum criminal penalty of</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul> <p><b>Civil Penalty</b></p> <p><b>Maximum civil penalty is the greater of the following:</b></p> <ul style="list-style-type: none"> <li>▪ the capital gain made on divestment of the interest in the property;</li> <li>▪ 25 per cent of the consideration for the acquisition of the interest; or</li> <li>▪ 25 per cent of market value of the interest.</li> </ul>
<p><b>Property developer fails to market apartments in Australia in accordance with conditions applying to an exemption certificate</b> (breach of new dwelling exemption certificate)</p>	<p><b>Criminal Penalty</b></p> <p>Maximum criminal penalty of:</p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul> <p><b>Civil Penalty</b></p> <p>Maximum civil penalty of:</p> <ul style="list-style-type: none"> <li>▪ Individual - 250 penalty units (\$52,500)</li> <li>▪ Company – 1,250 penalty units (\$262,500)</li> </ul>
<p><b>Property developer fails to comply with reporting conditions associated with approval</b> (breach of new dwelling exemption certificate)</p>	<p><b>Criminal penalty</b></p> <p><b>Maximum criminal penalty of:</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul>

<p><b>Foreign person fails to comply with reporting condition which requires them to notify of actual purchase and sale of established properties</b> (breach of conditional approval or exemption certificate)</p>	<p><b>Civil penalty</b></p> <p><b>Maximum civil penalty of:</b></p> <ul style="list-style-type: none"> <li>▪ Individual - 250 penalty units (\$52,500)</li> <li>▪ Company – 1,250 penalty units (\$262,500)</li> </ul> <p><b>Tier 1 Infringement notice — Person notified the Commonwealth of the alleged contravention before an infringement notice was issued</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 12 penalty units (\$2,520) plus the relevant application fee.</li> <li>▪ Company — 60 penalty units (\$12,600) plus the relevant application fee.</li> </ul> <p><b>Tier 2 Infringement notice — Identified through compliance activities</b></p> <ul style="list-style-type: none"> <li>▪ Individual — 60 penalty units (\$12,600) plus the relevant application fee.</li> <li>▪ Company — 300 penalty units (\$63,000) plus the relevant application fee.</li> </ul> <p>Either an infringement notice or civil penalty would be sought but not both.</p>
<p><b>Third party assists foreign investor to breach rules</b></p>	<p><b>Civil penalty</b></p> <p>Knowingly assisting another person to contravene a civil penalty provision is a breach of the <i>Regulatory Powers (Standard Provisions) Act 2014</i>. Maximum civil penalty the same as the primary breach.</p> <p><b>Criminal Penalty</b></p> <p>Knowingly assisting another person to commit a criminal offence is an offence under section 11.2 of the <i>Criminal Code Act 1995</i> (maximum penalty is the same as the primary offence).</p>

## Business and Non-Residential Real Estate Penalties

Breach	Penalties
<p><b>Foreign person makes an acquisition without approval</b> (failure to notify or purchase before approval granted)</p>	<p><b>Criminal Penalty</b> Maximum criminal penalty of</p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul> <p><b>Civil penalty (not in relation to interests in residential land)</b> Maximum civil penalty of:</p> <ul style="list-style-type: none"> <li>▪ Individual - 250 penalty units (\$52,500)</li> <li>▪ Company – 1,250 penalty units (\$262,500)</li> </ul>
<p><b>Foreign person fails to comply with a condition of approval</b> (breach of conditional approval)</p>	<p><b>Criminal Penalty</b> Maximum criminal penalty of</p> <ul style="list-style-type: none"> <li>▪ Individual — 750 penalty units (\$157,500) or 3 years imprisonment.</li> <li>▪ Company — 3,750 penalty units (\$787,500).</li> </ul> <p><b>Civil penalty (not in relation to interests in residential land)</b> Maximum civil penalty of:</p> <ul style="list-style-type: none"> <li>▪ Individual - 250 penalty units (\$52,500)</li> <li>▪ Company – 1,250 penalty units (\$262,500)</li> </ul>