Australian Government

Foreign Investment Reforms Factsheet: Business investment

The Government welcomes foreign investment because of the benefits it provides to the economy. The reforms modernise the foreign investment framework, while the introduction of new fees and new penalties ensures the system is fair.

Foreign persons will continue to require prior approval to acquire a substantial interest in an Australian corporation or control of an Australian business that is valued above $252 million[1]. Foreign persons will also continue to require prior approval to acquire certain real estate interests, including securities in land corporations and trusts that have a majority of their assets in land.

The rules applying to investments by foreign government investors have not changed. Foreign government investors will continue to require prior approval to start a new business, acquire an interest in land, or to take a direct interest in an Australian corporation or Australian business. These rules have been incorporated into the legislative framework.

New fees

Applicants will pay a fee before their foreign investment application is processed. The fees apply per application. If an application falls into a number of categories, the highest fee applies.

The introduction of application fees improves service delivery for investors and ensures Australian taxpayers are no longer funding the administration of the system.

Type of investment	Fee
Vacant commercial land	$10,000
Commercial real estate	$25,000
New business proposals and internal reorganisations	$10,000
Business acquisitions where the value of the investment is $1 billion or less	$25,000
Business acquisitions where the value of the investment is greater than $1 billion	$100,000

1. A higher threshold of $1,094 million applies to non-government investors from the United States, New Zealand, Chile, Korea, Japan and soon China in non-sensitive sectors.

New penalties

The Government has introduced mechanisms that provide a strong deterrent to investors who fail to comply with their obligations under the new legislation. In addition to increasing the criminal penalties for existing offences, the courts will be able to make civil penalty orders. These reforms will ensure that effective regulatory action can be taken in response to suspected contraventions of the new legislation.

Breach of rule	New penalty
Foreign person makes an acquisition without approval	**Increased Criminal Penalty** Maximum criminal penalty of: • Individual — 750 penalty units ($135,000) or 3 years imprisonment. • Company — 3,750 penalty units ($675,000). **Civil penalty** Maximum civil penalty of: • Individual – 250 penalty units ($45,000). • Company – 1,250 penalty units ($225,000).
Foreign person fails to comply with a condition of approval	**Increased Criminal Penalty** Maximum criminal penalty of: • Individual — 750 penalty units ($135,000) or 3 years imprisonment. • Company — 3,750 penalty units ($675,000). **Civil penalty** Maximum civil penalty of: • Individual – 250 penalty units ($45,000) • Company – 1,250 penalty units ($225,000)

A modern foreign investment system

The Government has modernised the system, including the legislative framework. This reduces compliance costs for investors and welcomes foreign investment that is not contrary to Australia's national interest.

The new framework:

- promotes legal certainty;
- adapts to modern business practices and structures;
- aligns more closely with other Commonwealth legislation, such as the *Corporations Act 2001*; and
- focusses on investments that may impact Australia's national interest, minimising the regulatory burden on business.

For example, the substantial interest threshold will be raised from 15 per cent to align with the 20 per cent under Australia's takeover rules in the *Corporations Act 2001*.