



On 29 March 2020, the Treasurer announced that due to the impacts of the coronavirus outbreak, all monetary thresholds will be temporarily reduced to \$0, and that the FIRB will work with applicants to extend the timeframes for decision making to up to six months. Further information on these temporary changes can be found in 'Guidance Note 53: Temporary measures in response to the coronavirus', available on the FIRB website at www.firb.gov.au.

All other guidance material, including this note on agribusiness, should be read in light of those temporary changes. Within this note, the temporary changes may have particular impact on matters related to, but not exclusively including:

- the monetary thresholds for determining if the threshold test is met.

Where there is any inconsistency between this note and Guidance Note 53, the information in Guidance Note 53 takes precedence.

AGRIBUSINESS INVESTMENT

Last update: 6 February 2020

Proposed direct interests in agribusiness generally require approval where the value of the investment is more than \$60 million, with an exemption applying to investors from Australia's trade agreement partners (as specified below).

This Guidance Note provides information for foreign investors proposing to invest in Australian agribusinesses. It includes information on:

- When an agribusiness investment requires prior approval, which is where the investment is a 'notifiable action' under the *Foreign Acquisitions and Takeovers Act 1975* (Act) and associated instruments. To be a notifiable action:
 - the investment meets the threshold test; and
 - the investment is the acquisition of a *direct interest* in an Australian entity or Australian business that is an agribusiness.
- Other relevant information pertaining to approvals, such as the fees payable for agribusiness investments and links to further information.

SIGNIFICANT AND NOTIFIABLE ACTIONS

The acquisition of a direct interest in an Australian entity or Australian business that is an Australian agribusiness by a foreign person is a significant and notifiable action if the threshold test is met in relation to agribusiness. A foreign person who proposes to enter an agreement to take a notifiable action must notify the Treasurer before entering the agreement.

If the investment is a significant action, the Treasurer may:

- decide not to object to the action and give the person a no objection notification not imposing conditions;
- decide not to object to the action provided that one or more conditions are complied with that ensure the action would not be contrary to the national interest and give the person a no objection notification imposing conditions; or

- decide that the action would be contrary to the national interest and make an order prohibiting the proposed significant action.

If a significant action has already been taken which is contrary to the national interest, the Treasurer may make an order, known as a disposal order, which is directed at unwinding the action. Alternatively, the Treasurer may impose conditions.

THRESHOLDS FOR AGRIBUSINESS INVESTMENTS

The applicable threshold value depends on the nationality and residency of the foreign person and whether or not the foreign person is a foreign government investor as follows:

- For *foreign government investors*, a \$0 (nil) threshold applies.
- For *non-foreign government investors (except those from Chile, New Zealand and the United States of America)*, a \$60 million threshold based on the value of the investment applies.
 - To meet the threshold test, the total of the consideration for the acquisition and the total value of the other interests held by the person (and their associates) in the entity or business or previously acquired from the entity or business are more than \$60 million.

Exemption for certain investors

Significant and notifiable actions in Australia's foreign investment review framework that are specific to agribusinesses do not apply to non-foreign government investors from Chile, New Zealand and the United States of America (see section 40 of the Foreign Acquisitions and Takeovers Regulation 2015 (Regulation)). Investors from these countries are subject to the requirements for significant and notifiable actions for general business acquisitions (for which the threshold for these countries is \$1,192 million).

WHAT IS A DIRECT INTEREST?

A direct interest in an entity or business is defined in section 16 of the Regulation to mean:

- an interest of at least 10 per cent in the entity or business;
- an interest of at least 5 per cent in the entity or business if the person who acquires the interest has entered a legal arrangement relating to the businesses of the person and the entity or business; or
- an interest of any percentage in the entity or business if the person who has acquired the interest is in a position to: (a) participate or influence the central management and control of the entity or business; or (b) influence, participate or determine the policy of the entity or business.

DEFINITION OF AGRIBUSINESS

Section 12 of the Regulation defines an Australian entity or Australian business to be an agribusiness when the following two circumstances are met.

1. The Australian entity or Australian business uses assets in carrying on a business wholly or partly, in any of the following classes of the Australian and New Zealand Standard Industrial Classification Codes (ANZSIC)¹:
 - Any class of Division A;
 - 1111 Meat processing;
 - 1112 Poultry Processing;
 - 1120 Seafood Processing;
 - 1131 Milk and Cream processing;
 - 1133 Cheese and Other Dairy Product Manufacturing;
 - 1140 Fruit and Vegetable Processing;
 - 1150 Oil and Fat Manufacturing;
 - 1161 Grain Mill Product Manufacturing; and
 - 1181 Sugar Manufacturing.

2. Either:
 - for an Australian entity:
 - the value of the assets of the entity and subsidiaries of the entity, used in carrying on an agribusiness exceeds 25 per cent of the total asset value of the entity; or
 - the earnings before interest and tax derived by the entity and its subsidiaries in the above classes in the most recent financial year for which there are audited accounts, exceeds 25 per cent of the total earnings for the entity.
 - for an Australian business, the value of the assets of the business used in carrying on an agribusiness exceeds 25 per cent of the value of the total assets of the business.

Where there are mixed earnings or mixed-use assets that are used partly in an above class, these may be apportioned on the basis of information available to a foreign person taking an action in relation to the business or entity (including information that they may have access to on a confidential basis).

Example 1

A German corporation is proposing to acquire 15 per cent of the securities of Agversity (which is an Australian entity) for \$70 million. Agversity's most recent audited financial statements show that in the last financial year:

- 10 per cent of the value of its total assets were used in its dairy manufacturing operations; and
- its dairy manufacturing operations accounted for more than 40 per cent of its total earnings before interest and tax.

As the proportion of Agversity's total earnings before interest and tax derived from its dairy manufacturing business exceeds 25 per cent and the German corporation is proposing to

¹ A list and [searchable index of the ANZSIC codes](#) is available on the Australian Bureau of Statistics (ABS) website.

acquire a direct interest (more than 10 per cent), the proposal is both a notifiable and significant action.

FEES

The fee is payable at the time of application. Processing commences when the correct fee is paid.

For more information on the fees applying to foreign investment applications, see [Guidance Note 30](#).

PENALTIES

Strict penalties (including civil and criminal penalties) may apply for breaches of Australia's foreign investment rules.

FURTHER INFORMATION

Further information is available on the [FIRB website](#) or by contacting +61 2 6263 3795.

Important notice: This Guidance Note provides a summary of the relevant law. As this Note 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 Guidance Note is therefore not a substitute for obtaining your own legal advice.