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Commercial Law e-alert

Foreign Investment Screening Framework Reform

On 4 August 2009 the Treasurer, Mr Wayne Swan, announced reforms to the Australia's foreign investment screening framework.

Currently the Foreign Acquisitions and Takeovers legislation contains six thresholds which prescribe when an overseas business investing in Australia must be reviewed by the Foreign Investment Review Board ("FIRB") or when it must notify the Federal Government.

The most common threshold is an acquisition of 15 per cent or more in an Australian business valued at \$100 million or more, while offshore takeovers are subject to a threshold of \$200 million.

There are also three investment thresholds for United States investors only. The first threshold is indexed at \$110 million for sensitive sector acquisitions, the second is indexed at \$219 million for offshore takeovers and the third is indexed at \$953 million for investment in non-sensitive sectors.

The Treasurer has proposed to replace the lowest four thresholds with a single threshold of \$219 million. This will ensure that overseas business buying a stake greater than 15 per cent in companies valued below \$219 million will be able to do so without review by the FIRB.

The only other threshold that will remain will be for United States investors only and will be indexed at \$953 million for investment in non-sensitive sectors.

The Treasurer has also proposed that the thresholds will be indexed to inflation on 1 January every year.

The other major proposal announced by the Treasurer is the abolition of the threshold which requires private investors establishing a new business in Australia valued above \$10 million to notify the Federal Government.

According to the Treasurer, based on 2008-09 figures, the proposed reforms will mean that around 20 per cent of all business applications will no longer need to be reviewed by the FIRB.

The Government hopes to introduce the amending regulation by September 2009.

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