

AUSTRALIAN FOREIGN INVESTMENT FEES DOUBLED

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Legal Briefings - By **Andrew Rich, Malika Chandrasegaran, Joshua Santilli and Danielle Farrell**

The Australian Government has doubled filing fees for foreign investment approval applications with effect from 29 July 2022. It has also indicated possible increases to penalties for breaches of Australia's foreign investment laws

IN BRIEF

- The fee increases raise the lowest applicable fee from \$2,000 to \$4,000, and the highest applicable fee from \$522,500 to \$1.045 million.
- The increases apply in relation to fees that become payable on or after 29 July 2022.
- Penalties for non-compliance with Australia's foreign investment legislation will also likely be increased.
- The increases make FIRB filing fees some of the highest fees for foreign investment applications in the world.

FEES DOUBLED

In line with its May 2022 election commitments, the Australian Government has doubled filing fees for foreign investment approval applications with effect from 29 July 2022.

Examples of the significant impact of these increases are highlighted in the below table. The maximum fee - which would for example apply to acquisitions over \$2 billion - is now set at \$1,045,000.

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CONSIDERATION FOR THE ACTION			APPLICABLE FEE before 29 July 2022	APPLICABLE FEE on and after 29 July 2022
BUSINESSES AND ENTITIES, COMMERCIAL LAND, TENEMENTS	AGRICULTURAL LAND	RESIDENTIAL LAND	FEE FOR SINGLE ACTION	
Less than \$75,000	Less than \$75,000	Less than \$75,000	\$ 2,000	\$ 4,000
\$250 million or less	\$10 million or less	\$5 million or less	\$ 52,800	\$ 105,600
\$500 million or less	\$20 million or less	\$10 million or less	\$ 118,800	\$ 237,600
\$750 million or less	\$30 million or less	\$15 million or less	\$ 184,800	\$ 369,600
\$1 billion or less	\$40 million or less	\$20 million or less	\$ 250,800	\$ 501,600
Over \$2 billion	Over \$80 million	Over \$40 million	\$ 522,500	\$ 1,045,000

EXAMPLES OF SPECIFIC FLAT FEES		
Variation of approval or exemption certificate (<i>immaterial or minor variations only</i>)	\$ 2,000	\$ 4,000
Variation of approval or exemption certificate (<i>non-minor variations</i>)	\$ 13,200	\$ 26,400
Internal reorganisations	\$ 13,200	\$ 26,400
Passive foreign government investor exemption certificate	\$ 52,200	\$ 104,400

These increases make FIRB filing fees some of the highest fees for foreign investment applications in the world. For example

- in the United States, the highest filing fee payable in connection with an application to the Committee on Foreign Investment (“CFIUS”) is US\$300,000 for transactions with a value of more than [US\\$750 million](#); and
- in the United Kingdom, no fee is payable for applications for clearance of notifiable acquisitions under the UK’s National Security and Investment Act.

These increases are significant, particularly in the context of applications for ultimately unsuccessful transactions such as in a competitive bid situation. While these investors may seek to have a FIRB filing fee paid for an unsuccessful bid ‘credited’ to a future FIRB application, FIRB’s current policy is not to refund any filing fees merely because a foreign investor’s bid was not successful. FIRB does provide fee waivers and remissions in other limited circumstances – please do contact us if it is helpful to discuss these.

DOUBLING OF PENALTIES ALSO LIKELY

The Government has also [indicated](#) it will increase the penalties for non-compliance with Australia's foreign investment laws. In line with the fee increases and election policy commitments, we expect those increases will double the current maximum penalties for a number of breaches of Australian foreign investment laws.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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