



Australian Government Further Tightens FIRB Controls, Now Over Critical Electricity Assets

In early 2016, the Australian Government announced the introduction of new standard tax conditions and appeared to indicate that the conditions would be applied universally to all foreign investment approvals. Later that year, the Government released guidance which clarified that the conditions would not be applied in all cases—the Foreign Investment Review Board ("FIRB") would target foreign investors that pose a risk to Australia's revenue.

In January 2017, the Australian Government established the Critical Infrastructure Centre ("Centre") to undertake assessments of critical public and privately owned infrastructure focussing initially on power, ports and water. The Treasurer of Australia has now codified the imposition of further conditions on the electricity sector by announcing that, from 1 February 2018, all future applications for the sale of electricity transmission and distribution assets, and some generation assets, will attract ownership restrictions or conditions for foreign buyers. Previously, ownership restrictions or conditions were applied by FIRB only on a case-by-case basis.

In so doing, the Treasurer declared that "electricity distribution and transmission infrastructure are critical national assets and a key national security safeguard is the diversity of ownership of these assets". FIRB will be assisted by the Centre in assessing and reviewing electricity sector transactions and will consider factors such as the cumulative level of ownership within a sector, the need for diversity of ownership and the asset's critical importance.

The Treasurer has also indicated that ownership restrictions (if required) will be flagged to the market as early as possible in the sale process. In making this statement, the Treasurer seems to be addressing feedback received from industry on recent transactions that FIRB should be quicker and more transparent in identifying problems on large-scale, costly public sale transactions.

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