

# Australian Foreign Investment Approval Updates

## Client Alert

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### Australian Foreign Investment Approval Withheld on National Security Grounds

The Australian Foreign Investment Review Board (“**FIRB**”) has rejected an application by China Minmetals Non Ferrous Metals Co Ltd (“**Minmetals**”) to acquire control of the Prominent Hill copper-gold mine in South Australia on national security grounds.

The Australian Treasurer announced on 27 March 2009 that Minmetals’ proposed 100% takeover of Oz Minerals Ltd, the owner of the Prominent Hill mine, will not be approved under the *Foreign Acquisitions and Takeovers Act (1975)* if it includes the acquisition of the Prominent Hill mine.

Approval has been withheld due to the Prominent Hill mine being located within the Woomera Prohibited Area (“**WPA**”) in South Australia.

### Woomera Prohibited Area

The WPA is a 127,000 square kilometer area in central South Australia that has been set aside as a weapons testing range. Access to the WPA is restricted under the *Defence Act (1903)* and the *Defence Force Regulations (1952)* for both safety and national security reasons.

Companies that wish to conduct exploration or mining activities within the WPA must obtain special approval from the Commonwealth government. This includes entering into a deed of access setting out terms and conditions for entry into the WPA.

Oz Minerals Ltd received Commonwealth approval in 2006 to construct and operate the Prominent Hill mine within the WPA.

### Australian Foreign Investment Approval

The Australian Foreign Acquisitions and Takeovers Act 1975 requires foreign investors to obtain FIRB approval for various categories of investment into Australia. These include the acquisition of Australian urban land and acquisitions of controlling interests in Australian companies whose assets exceed certain thresholds.

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Australia's foreign investment policy also requires foreign government controlled companies to seek approval for any level of investment in Australian companies or assets.

## The Decision

The Australian Treasurer's announcement states that Prominent Hill is located in the WPA weapons testing range which is an area that makes a unique and sensitive contribution to Australia's national defence.

The Treasurer further states that governments commonly restrict access to sensitive areas on national security grounds. The FIRB has therefore determined that Minmetals may not acquire Oz Minerals Ltd if such acquisition includes the Prominent Hill mine. This is because such acquisition would give Minmetals, a Chinese government controlled company, access to the WPA.

## Implications for foreign investors

The Treasurer's decision is the first time foreign investment approval has been withheld in Australia on national security grounds.

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