

# Further Restrictions on Foreign Investment in Australia

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## Further restrictions on foreign investment in Australian mining and resources

The Australian Foreign Investment Review Board (FIRB) has provided a rare public insight into its decision-making process regarding investment into Australian mining and resources assets.

The following comments were reported to have been made by Patrick Colmer, the Executive Member of FIRB, at the Australia China Business Council's China-Australia Investment Forum in Sydney on 24 September 2009:

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- while flexible, FIRB retains a preference for foreign investment proposals that:
  - joint venture projects in various forms, rather than takeovers;
  - constitute below 50% ownership for Greenfield or start-up projects; and
  - constitute below 15% ownership for peak mining assets or major producers;
- as a policy consideration, FIRB prefers that:
  - Australian companies undertaking major projects remain listed on an Australian stock market to maintain sound corporate governance; and
  - investors do not attempt to 'side-step' FIRB policy by using complex legal arguments.

Mr Colmer also reiterated the importance FIRB places on early consultation on an 'in confidence' basis by anyone proposing to make an investment that may raise FIRB concerns.

## How could it affect you?

The key question is whether Mr Colmer's comments were directed only at "foreign government investors" (as defined in s 17F of the Foreign Acquisitions and Takeovers Act 1975, also known as State Owned Enterprises or SOEs). Some commentators take the view that the comments are limited to such investors, given that the speech was made at a China-Australia investment forum. Other commentators take the view that the comments are not so limited, in which case they would amount to a change in FIRB's current practice. FIRB is saying, rather ambiguously, that there is no change in policy. It is expected that FIRB will clarify the position soon.

We will keep you posted.

*\*Note: Mr Colmer's comments were reported by various news agencies that attended the investment forum. At the time of publication of this legal alert a transcript of Mr Colmer's speech has not been made publically available. As a result this alert is based on comments made as reported by those news agencies which were at the investment forum.*

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