



Australian Government

The Treasury

TSY/AU

Major reforms to Australia's foreign investment framework

August 2020

The Australian Government welcomes foreign investment

- Foreign investment has helped build Australia's economy, and will continue to enhance our wellbeing by supporting economic growth and innovation into the future.
 - Australian firms with foreign direct investment support 1 in 10 jobs in Australia. They also make a significant contribution to the one in five jobs that are trade-related.
- It creates partnerships, builds trust and understanding between Australia and our international partners.
- It is in line with our values – openness, pluralism, and multiculturalism.

Elements of the reform package

New national security powers

New national security powers will ensure foreign investment is not contrary to Australia's national security, particularly in Australia's most sensitive businesses

Strengthened compliance

Stronger compliance and enforcement powers, including the expansion of infringement notices and higher civil and criminal penalties

Streamlining investment in non-sensitive businesses

Measures to streamline approval for passive investors and investments into non-sensitive businesses

Investments will be considered under the national interest *or* national security test

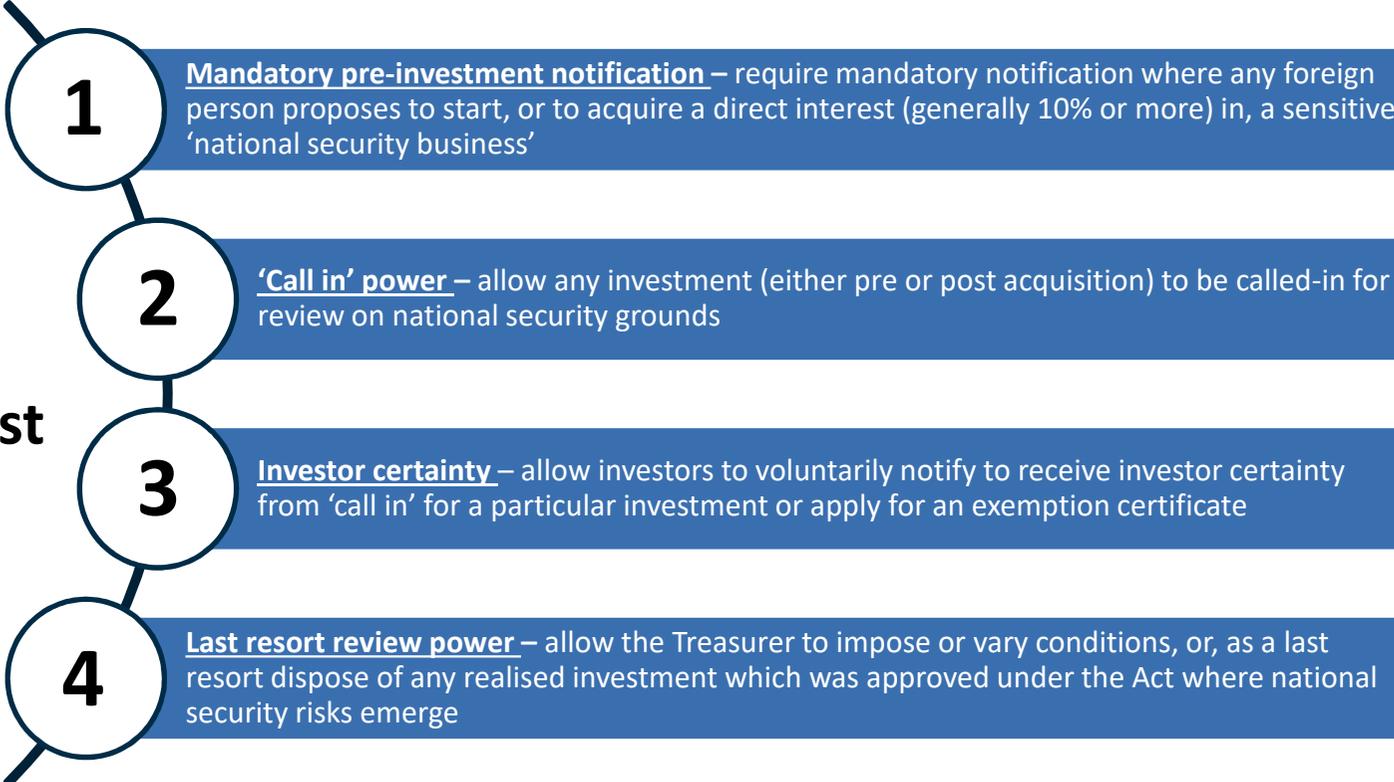


To avoid overlap, wherever the broader national interest test would apply to a particular action, only that test will be used in an assessment

New national security powers

The Treasurer will be able to impose conditions or block any investment by a foreign person on national security grounds, regardless of the value of investment under the national security test

National security test



1 Mandatory pre-investment notification: 'national security business'

As proposed in the exposure draft regulation, currently under consultation, a **'national security business'** will include:

- 'Responsible entities' and 'direct interest holders' of critical infrastructure assets regulated under *Security of Critical Infrastructure Act 2018*, and 'carriers' and 'carriage service providers' regulated under *Telecommunications Act 1997*;
- Businesses that develop, manufacture or supply critical goods, technologies or services that will be used (or are intended for use) by defence and intelligence personnel, or the defence force of another country, in activities that may affect Australia's national security;
- Businesses that own, store, collect or maintain classified data, or personal data relating to Australia's defence and intelligence personnel that, if disclosed or accessed, could compromise Australia's national security; and
- Land that is 'defence premises' land that is or will be occupied by an agency in the national intelligence community, and land that is in proximity to highly sensitive defence and national security bases and installations.

2 'Call in' power

- Any investment will be able to be called in before, during or after the investment, on a case-by-case basis if the Treasurer considers the investment raises national security concerns.
- Once called in, an investment will be reviewed under the national security test to determine if it raises national security concerns.
- The Treasurer's powers will apply to any investment which is called in (approve, approve with conditions, or reject).
- This power will be time-limited.
 - The time period will be specified in the second part of the exposure draft regulation release in September.

3 Investor certainty

Voluntary notification

- For greater regulatory certainty, investors will have the opportunity to **voluntarily notify** (on a per-investment basis), including before acquisition, to avoid the possibility of being called in for review on national security grounds.

Exemption certificates

- Investors will be able to apply for an **investor-specific exemption certificate** which enables them to make eligible acquisitions without case-by-case screening. Exemption certificates may range in length and value, and will be subject to conditions, including reporting conditions where necessary.

4 National security last resort review power

- The last resort review power will allow the Treasurer to impose conditions, vary existing conditions, or, as a last resort, dispose of an investment where national security risks emerge post-approval.
- Two-stage process to exercise the power:
 1. The Treasurer must first undertake a national security review (NSR), once a number of conditions are satisfied.
 2. The Treasurer must then notify the applicant of the outcome of the review. The applicant can seek merits review of the NSR.
- The last resort power would only be used where no other regulatory mechanism was available to mitigate an identified national security risk.
- It will be subject to multiple safeguards: security agency advice, other regulatory mechanisms, good-faith negotiations.

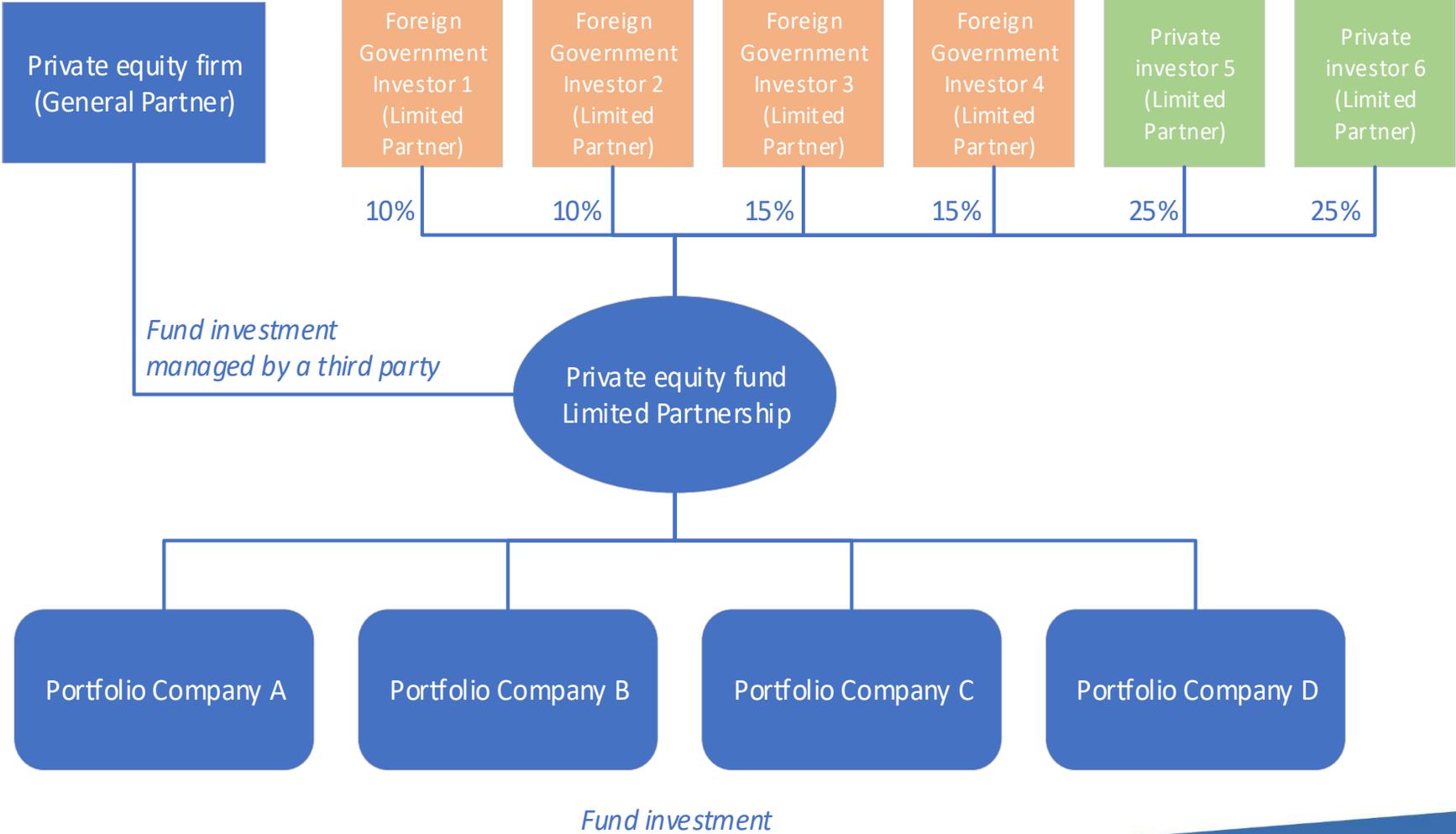
New compliance and enforcement powers

- Ensuring foreign investors comply with Australia's rules is a priority for the Government.
- The Treasury and ATO's **compliance monitoring and enforcement** capacity will be strengthened to better ensure foreign investment rules are enforced.
 - This will include expanded infringement notices, higher penalties and a broader range of powers to bring foreign investment regulation in line with comparable regulators.

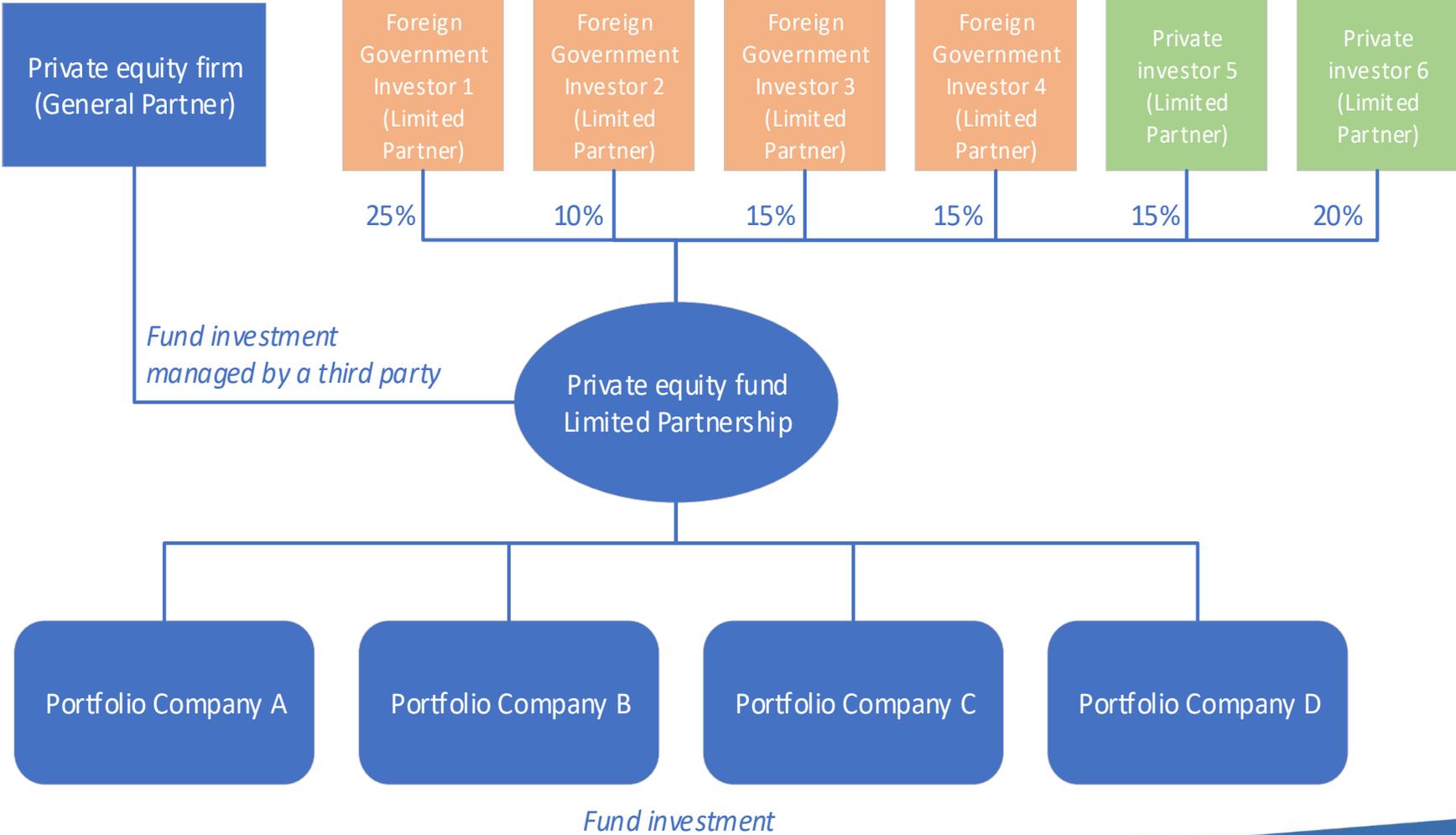
Streamlined approval for passive investors

- Certain privately-controlled investment funds will no longer be treated as 'Foreign Government Investors' (FGIs). Instead, they will be treated as private investors and be able to access the higher monetary thresholds.
 - This exemption will be non-discriminatory and apply only where no foreign government has or could be perceived to have influence or control over the investment or operational decisions of the entity or any of its underlying investments
- Some passive investors will no longer be deemed a FGI (example 1), while others will still be deemed FGIs but will be able to apply for a broad exemption certificate on a case by case basis. Example 2 is an indicative example and other structures may also be eligible.

Passive investors – example one



Passive investors – example two



Increased resources and updated fees

- The government will provide resources across Government to fully implement and give effect to the reform package
 - The fee schedule will be updated to reflect the enlarged roles and growing complexity of foreign investment activities across Government, including aspects related to national security.
 - The updated fee schedule will also focus on delivering a structure that is fairer and simpler

Interaction with temporary changes

- On 29 March 2020, the Government temporarily reduced the monetary screening threshold for all investment to \$0.
 - This temporary measure was introduced to safeguard the national interest for the duration of the coronavirus crisis.
- The announcement of these reforms does not immediately affect the temporary measures.
 - The coronavirus still presents risks to the Australian economy and businesses.

Timeline and opportunity for feedback





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Further information, including detail on individual reform measures, is available on the Foreign Investment Review Board website, firb.gov.au

Treasury welcomes your feedback on the reform measures and the exposure draft legislation. You can contact Treasury on +61 2 6263 3795, or by email: FIRBEnquiries@treasury.gov.au.