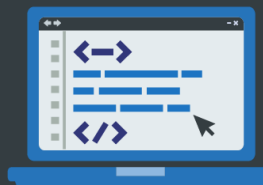


Bird & Bird & Foreign Direct Investments & COVID-19 Pandemic






27 May 2020

South East Asia & Pacific: Foreign Direct Investment Overview

Throughout the world, many countries have taken aggressive steps to respond to the COVID-19 pandemic. Those steps have resulted in high levels of unemployment and many businesses becoming financially distressed. To protect such businesses from being acquired without appropriate oversight, some countries have tightened their foreign investment laws.

This note provides a quick overview of the foreign investment laws in some of the investment destinations in South East Asia and the Pacific region and the changes made to those laws as a result of the COVID-19 pandemic.

 Australia
 Indonesia
 Malaysia
 New Zealand
 Philippines
 Singapore
 Thailand
 Vietnam



**Please click on hyperlink in the above table to access the relevant country section*

Australia



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes, but as a general principle, the Australian government welcomes foreign investment.
If yes, which authority is responsible for the verification of an FDI?	
	The Treasurer of the Commonwealth of Australia reviews investment proposals against the national interest on a case by case basis. The Foreign Investment Review Board (FIRB) is a non-statutory body which advises the Treasurer on Australia's foreign investment regime and is generally responsible for its day-to-day administration. The Australian Taxation Office also plays a role in compliance and enforcement of foreign investment relating to residential real estate, while the Australian Prudential Regulation Authority (APRA) monitors FDI into the banking and financial sectors.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	There are general as well as sector-specific restrictions. Sector-specific restrictions apply to industries that are considered to be sensitive, i.e. media, telecommunications, transport, defence and military, encryption and security technologies and communication systems and the extraction of uranium or plutonium or the operation of nuclear facilities. Additional sector specific laws also regulate FDI in industries including banking and finance, aviation, shipping and insurance.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	The restrictions apply to all "foreign persons". This term includes an individual who is not ordinarily resident in Australia, a foreign government investor or any corporation, trustee of a trust or general partner of a limited partnership in which a foreigner has at least a 20% interest or two or more foreigners have a 40% interest in aggregate; however, in respect of foreign persons from certain "agreement countries or regions", higher monetary thresholds usually apply before disclosure of certain proposed investments is required (but see below).
If yes, are these restrictions dependent on certain control thresholds being reached?	
	The application of restrictions on FDI depends on the type of investor, the type of investment, the industry sector of the investment and value of the proposed investment (but see below). In general, outside of sensitive sectors and land transactions, control thresholds may be reached by foreign persons acquiring a "substantial interest" (20% or more) or by "foreign government investors" acquiring a "direct interest" (10% or more). Sector specific laws also impose various control thresholds, such as the <i>Security of Critical Infrastructure Act 2018</i> (Cth), which requires acquisitions of at least a 10% interest in critical infrastructure (e.g. certain ports, water, gas and electricity assets) to be notified to the Department of Home Affairs for inclusion on a private register.
If yes, what is the administrative procedure?	
	<p>A FDI subject to the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth) (FATA) will only need to be notified to the Treasurer if it is a "notifiable action". Whether an investment is notifiable depends on certain threshold tests. Where prior notification is required, the foreign person is required to lodge an online form containing information prescribed by FIRB. The type of information required to be included in a notice to FIRB includes details of the notifiable action, details of the entity taking the action and reasons why the proposed transaction is not contrary to Australia's national interest. An application for FIRB approval must be lodged in advance of any transaction taking place. Failure to obtain approval, if required, is an offence. It is common for transactions to be conditional on FIRB approval being obtained. Application fees for foreign investment notifications are charged by the Australian government.</p> <p>The Treasurer is required to make a decision within 30 days of receiving notice and notify the applicant of the outcome within a further 10-day period (but see below). It is not unusual for FIRB to invite an applicant to ask for one or more extensions of time to permit FIRB to consider an application. FIRB may also impose conditions on the transaction or business.</p> <p>A different procedure applies to applications made to APRA.</p>
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	The Australian government announced significant changes to the FDI review framework to protect the national interest. Effective from 29 March 2020, all proposed FDI that is subject to the FATA will require approval, regardless of the value of the investment or the nature of the foreign investor. The Treasurer has implemented this policy by temporarily reducing all monetary screening thresholds to nil for all foreign investments. These changes apply to all foreign persons subject to FATA and to all agreements entered into from 10.30pm 29 March 2020. The control thresholds remain unchanged. In addition, the Australian government announced that the timeframe for reviewing applications will be extended from 30 days to up to 6 months and that FIRB will only prioritise urgent applications that protect and support Australian businesses and Australian jobs.

Indonesia



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes, certain FDI restrictions apply. For example, there are restrictions that impose limits on foreign ownership of local entities and on the type of legal entities capable of being operated by foreign investors. In addition, limitations on local procurement and business locations apply to foreign investors. Additional regulations also exist for specific business sectors.
If yes, which authority is responsible for the verification of an FDI?	
	The Indonesian Investment Coordinating Board, or Badan Koordinasi Penanaman Modal (BKPM), is a Non-Ministerial government Agency in charge of implementing policy and coordinating services relating to foreign investment in Indonesia.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	The restrictions are largely sector-specific and are regulated under the Negative Investment List or <i>Daftar Negatif Investasi</i> (DNI) which was enacted under the Presidential Decree No. 44 of 2016. The DNI stipulates the sectors which are closed to FDI and those that are open (with conditions) to FDI. If a business sector is not listed in the DNI, the business will be considered open (without conditions) and 100% foreign ownership is permitted. In addition, certain business sectors considered strategic to the Indonesian government, such as mining, health and pharmaceutical industries, are subject to additional sector-specific restrictions.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No. The restrictions apply to all foreign investors (which includes foreign individuals, foreign corporations, and/or foreign governments) investing in the Indonesia. However, investors from certain countries with a treaty in place with Indonesia have certain privileges, including tax cuts, simplification of export procedures and tariffs, credit access and investment protection. For example, the maximum permitted foreign ownership limit is higher for investors from ASEAN countries.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	Yes, the threshold of foreign ownership depends on the business sector. DNI has divided investment into following sections: <ul style="list-style-type: none"> (i) business sectors which are closed to investment; (ii) business sectors which are reserved for micro, small, medium enterprises, and cooperatives; (iii) business sectors which are open to investment under certain conditions involving investment caps, licenses and locations; and (iv) business sectors which are entirely open to investment. The FDI restrictions may also require foreign investors to have a joint venture or cooperation arrangement with locals, and to use local goods or services in certain government contracts.
If yes, what is the administrative procedure?	
	Where ownership or control is sought in a business sector (other than a strategic business sector), the procedure is a self-assessment. However, where ownership or control is sought in a strategic business sector, approval from an Investment Board must be obtained. In addition, while foreign persons that wish to invest in Indonesia may do so directly through a foreign company, all foreign investors who wish to do business must establish a limited liability company, known as a Perseroan Terbatas (PT). The investors (which must be a minimum of two persons) must execute a Deed of Establishment relating to the company before a public notary. After the PT has been formally established by the issuance of a Decree from the Ministry of Law and Human Rights, the investor must obtain approval from the Investment Board in the form of Business Identification Number, along with a business license relating to the relevant business sector.
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No, FDI restrictions have not been tightened during the COVID-19 pandemic. On the contrary, the Indonesian government has issued packages for investors in the form of tax relief and business licensing facilities. For example, the Indonesian government relaxed tax rules relating to the Income Tax exemption (PPh 21). Under the PPh 21 exemption, employers and employees of affected business sectors (such as hospitality, transportation, construction, mining, and wholesale) are exempt from monthly Income Tax payments. The Indonesian government also applied tax exemptions for Import Income Tax (PPh 22), implemented a 30% reduction of Tax Income instalment (PPh 25), and implemented the Value Added Tax incentive for the affected business sectors. The Indonesian government is also assisting the pharmaceutical and medical devices industry during the COVID-19 pandemic in the form of a reduction/remission of business licensing requirements, acceleration of licensing processes and provision of special assistance services.

Malaysia



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes for certain sectors only. Generally, Malaysia is 100% FDI friendly for manufacturing and most of the service industries.
If yes, which authority is responsible for the verification of an FDI?	
	There is no central authority responsible for regulating and verifying an FDI in Malaysia. Restrictions on foreign investment are implemented by the relevant sectoral regulatory authority.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	General restrictions apply to land related FDI matters, however the implementation and enforcement of such restrictions lies with the relevant state authority. As for foreign investment relating to non-land matters, industry/sector specific restrictions apply in sectors such as finance, energy, telecommunications, broadcasting, medicine, distributive trade, tourism and hospitality.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No, the FDI restrictions apply to all foreign jurisdictions. However, the percentage of foreign equity restrictions may differ based on specific jurisdictions.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	<p>In general, land dealings, which, for example includes acquisition of land by non-citizens and foreign companies, will require prior approval from the relevant state authority.</p> <p>As for foreign investments relating to non-land matters, 100% FDI is welcomed in the manufacturing and most of the service industries, save for certain regulated sectors. For example:</p> <ul style="list-style-type: none"> (i) foreign ownership in the finance sector, which includes investment banks, Islamic banks, insurance companies and Takaful operators, is limited to 70% of its equity; (ii) Petrolim Nasional Berhad (Petronas), a wholly owned Malaysian government entity, is vested with the exclusive rights, powers, liberties and privileges of exploring, exploiting, winning and obtaining petroleum (whether onshore or offshore) in Malaysia. Both local and foreign investments in the petroleum industry are required to adhere to the requirements imposed by Petronas, which includes Bumiputera participation in equity, the board of directors, and/or management of Petronas; (iii) the medical sector allows 100% foreign equity ownership in private hospitals, specialist medical clinics and specialist dental clinics. However, foreign equity restrictions apply to operations of other facilities such as private medical clinics, ambulatory care centres, hospice centres and mental health centres; (iv) in the distributive trade sector and logistic services, the foreign equity restrictions differ depending on the type of trade or operations; and (v) for tour and travel agency business, foreign equity restrictions apply to companies partaking in inbound and ticketing operations, and the threshold varies depending on the jurisdiction of the foreign owner.
If yes, what is the administrative procedure?	
	The procedure varies for each industry/sector (and the type of operations within the industry/sector also affects the procedure). Approval by the relevant sectoral regulatory authority is required and the procedures in relation to the application process for approval are set by sectoral regulatory authorities. Applications are assessed on a case-by-case basis. The Malaysian government is open to foreign investment and relaxation of the thresholds may be granted upon consultation with the relevant sectoral regulatory authority.
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No additional FDI restrictions have been implemented due to the COVID 19 pandemic.

New Zealand



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes, but as a general principle, the New Zealand government welcomes foreign investment.
If yes, which authority is responsible for the verification of an FDI?	
	The Minister of Finance is responsible for New Zealand's foreign investment legislation and has designated the Overseas Investment Office (OIO) as the regulator. The OIO is generally responsible for the day-to-day administration of New Zealand foreign investment laws. The relevant government Ministers generally make consent decisions after considering a recommendation made by the OIO. In some circumstances, the OIO has authority to make consent decisions under delegation from the Ministers, however, Ministers have the discretion to 'call in' a delegated decision and make it themselves.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	These are general restrictions, however there are certain sectors to which a more streamlined process or alternative pathway for satisfying the consent criteria is available to foreign investors, such as in forestry and residential land development. These sector-specific streamlined consent pathways have been adopted to encourage overseas investment in these industries by accommodating some of the unique challenges faced by these sectors.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No, the restrictions apply to all "overseas persons" (this term includes an individual who is not a New Zealand citizen or ordinarily resident in New Zealand, a body corporate that is incorporated outside of or is a 25% subsidiary of a body corporate incorporated outside New Zealand, and a body corporate, a partnership, unincorporated joint venture, a trust or unit trust, where 25% or more of any class of securities or interests are owned or controlled by an overseas person). However, higher monetary thresholds apply to certain investors from Trans-Pacific Partnership member nations, and certain other nations with which New Zealand has "most-favoured nation" obligations under existing trade agreements such as the People's Republic of China and Hong Kong. Investors from these nations have the benefit of an exemption from the restrictions if they are investing in significant business assets in New Zealand and the value of the transaction is below the prescribed monetary thresholds.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	Yes, control thresholds are applicable in determining whether an acquisition by an overseas person constitutes the acquisition of sensitive New Zealand assets (being sensitive land, fishing quota or significant business assets). Consent will be required if an overseas person (either alone or together with its associates) acquires a (direct or indirect) 25% or more ownership or control interest in the sensitive New Zealand assets, where 'control' includes the ability to appoint and remove 25% or more of the governing body.
If yes, what is the administrative procedure?	
	OIO consent must be obtained prior to the overseas investment being given effect to, including the entry into any unconditional agreements to acquire the sensitive New Zealand assets. An application for consent is required to be made to the OIO using the relevant template forms. The OIO will undertake a "quality assurance" review to ensure the application contains sufficient information for the OIO to undertake a full assessment taking into account a range of risk and complexity factors, including the "investor test" and (if applicable) the "benefit to New Zealand test", to decide the application. Finally, depending on the nature of the investment, as mentioned above, either the OIO or the relevant Ministers will decide the application.
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	Yes, the New Zealand government has introduced a temporary notification regime requiring each overseas person making an overseas investment covered by the emergency notification regime to notify the OIO before giving effect to the transaction. An overseas investment will be covered by the regime if it is an acquisition of rights or interests in securities which results in an interest of more than 25%, increases an existing interest to, or beyond, 50%, 75%, or 100% or the acquisition amounts to a change in control of a business. This requirement will apply regardless of the dollar value of the investment. The government has also announced that a new 'national interest' test will be fast tracked into law to ensure that strategically important infrastructure, such as airports, ports, telecommunications infrastructure, electricity and other assets, do not fall into foreign ownership as a result of the economic distress caused by the COVID-19 pandemic. The national interest test will temporarily apply to all foreign investments, regardless of dollar value, that result in more than a 25% ownership interest, or that increase an existing stake in a New Zealand asset to, or beyond, 50%, 75% or 100%. Once the temporary measures end, the minimum threshold for the national interest test will apply to transactions of \$100 million or more (or higher if set by a trade agreement), as well as investments in sensitive land or fishing quota.

Philippines



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes. As a general rule, foreign nationals may obtain up to a 100% interest in both domestic market and export enterprises. However, certain activities are reserved wholly or partially for Philippine nationals.
If yes, which authority is responsible for the verification of an FDI?	
	The Securities and Exchange Commission (SEC) and Department of Trade and Industry (DTI) are the primary agencies responsible for monitoring compliance of foreign investments with nationality restrictions.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	There are general as well as sector-specific restrictions. The Philippine government has released a Foreign Investment Negative List (FINL) which contains details of investment areas that are subject to restrictions. The FINL is updated every few years to reflect updates on regulated activities. Foreign investment is generally restricted in sensitive industries such as mass media. Varying degrees of restriction apply to other specified sectors including advertising, public utilities, mining and exploration, development, and utilisation of natural resources.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No, the FDI restrictions apply to all foreign jurisdictions.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	<p>The thresholds vary based on the sector in question. For example:</p> <ul style="list-style-type: none"> (i) no foreign equity is permitted in mass media and small-scale mining; (ii) up to 30% foreign equity is permitted in advertising; and (iii) up to 40% foreign equity is permitted in the exploration, development, and utilization of natural resources, and ownership of private lands. <p>The election of foreign nationals as members of the board of directors of corporations engaged in partially nationalized activities is allowed in proportion to their allowable participation or share in the capital of such entities.</p>
If yes, what is the administrative procedure?	
	Upon filing an application for incorporation or obtaining a license to do business in the Philippines, the SEC reviews the ownership structure, having regard to the proposed activity of the foreign entity. Assuming the prescribed nationality restrictions are satisfied, the corporation shall submit an Application to Do Business Under the Foreign Investments Act of 1991, which is processed together with the application for incorporation. The Certificate of Registration Under the Foreign Investments Act is usually issued together with the Certificate of Incorporation. Other governmental agencies regulating specific sectors may also monitor compliance with nationality restrictions when issuing government permits.
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No additional FDI restrictions have been implemented.

Singapore



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes. While in general, there is no distinction in treatment of foreign and domestic investment in Singapore, some restrictions on FDI for a limited list of sectors are permitted by relevant sector-specific legislation.
If yes, which authority is responsible for the verification of an FDI?	
	There is no central authority responsible for regulating and verifying an FDI and any restrictions on foreign investment are implemented by the relevant sectoral regulatory authority.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	There are no general restrictions, but industry/sector-specific restrictions apply in areas such as telecommunications, financial services, professional services, media and land ownership.
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	<p>The thresholds vary based on the sector in question. For example:</p> <ul style="list-style-type: none">(i) in the real estate sector, foreign ownership of certain types of residential property (including vacant land, landed residential property, public residential housing units) is restricted in its entirety, whereas private high-rise residential condominium units, housing on Sentosa Island and industrial and commercial real estate are generally not restricted;(ii) domestic newspaper and broadcasting companies require prior approval from the Info-communications Media Development Authority (IMDA) with regards to funds from a foreign source; and(iii) for domestic broadcasting companies whose operations requires a broadcasting licence, the IMDA will not grant such licence if the company is controlled by foreign investors or if foreign investors hold more than 49% of the shares or voting power of the company.
If yes, what is the administrative procedure?	
	<p>As explained above, the procedure varies for each sector and is set forth in the relevant sector-specific legislation.</p> <p>While some transactions (such as restricted foreign land ownership) are not permitted and will be deemed null and void, other decisions are made by the relevant regulatory authority on a case-by-case basis, such as those relating to applications for foreign financing of domestic newspaper and broadcasting companies. Certain industries such as domestic banking and telecommunications have a licensing regime in which the competent regulatory authority applies qualitative and quantitative criteria to determine whether new entrants should be granted a licence to operate in the sector in Singapore.</p> <p>Broadly speaking, the Singapore government remains open to foreign investment and encourages, where possible, consultation with regulatory authorities when applications are made by foreign investors applying for approvals to invest into controlled sectors.</p>
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No additional FDI restrictions have been implemented.

Thailand



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes. The Foreign Business Act B.E. 2542 (1999) (as amended) (FBA) prohibits and restricts foreign ownership in a number of business activities. Non-Thai investors cannot own more than a 49% interest in restricted businesses, except where a foreign business license (FBL) is granted under the FBA. In addition, foreigners are not permitted to own and operate any prohibited businesses (which are contained in List 1 of the FBA and known as 'List 1 Businesses').
If yes, which authority is responsible for the verification of an FDI?	
	The Department of Business Development (DBD) under the Ministry of Commerce (MOC) is responsible for verifying FDI. An FBL application must be filed with and reviewed by the DBD before it is submitted to the Cabinet or Foreign Business Committee (FBC), as the case may be, for approval. An FBL application cannot be filed for List 1 businesses.
If yes, are these general restrictions or industry/sector-specific restrictions?	
	There are 3 groups of prohibited and restricted business activities under the FBA: <ul style="list-style-type: none"> (i) prohibited businesses that cannot be owned at all by a foreigner (List 1 Businesses include: mass media publication; radio broadcasting station or radio and television station business; rice farming, plantation or crop growing; livestock farming; forestry and timber processing from a natural forest; fishery, only in respect of the catchment of aquatic animals in Thai waters and specific economic zones of Thailand; extraction of Thai medicinal herbs; trading and auction sale objects or objects of the historical value of Thailand; making or casting Buddha images and monk alms-bowls; and land trading); (ii) restricted businesses that cannot be owned more than 60% by a foreigner who is granted an FBL (List 2 Businesses include: businesses related to national safety or security or having an impact on arts, culture, traditions, customs and folklore handicrafts or natural resources and the environment); and (iii) restricted businesses that cannot be owned more than 49% by a foreigner unless an FBL is granted (List 3 Businesses include: businesses in which Thai nationals are not yet ready to compete with foreigners).
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No. The prohibition and the restrictions apply to all "foreigners" no matter where they reside or are located. The FBA defines a "foreigner" as: <ul style="list-style-type: none"> (i) a natural person who is not of Thai nationality; (ii) a juristic person not registered in Thailand; (iii) a juristic person registered in Thailand at least one-half of capital shares of which are held by persons under (i) and (ii) or a juristic person in which investment has been placed by the persons under (i) or (ii) in the amount at least equivalent to one half of the total capital thereof; and being a limited partnership or a registered ordinary partnership, the managing partner or the manager, of which is the person under (i); or a juristic person registered in Thailand at least one-half of the capital shares of which are held by persons under (i), (ii) or (iii) or a juristic person in which investment has been placed by the persons under (i), (ii) or (iii) in the amount at least equivalent to one half of the total capital thereof.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	The restrictions are only dependent on the ownership thresholds, which are: not more than 60% for List 2 Businesses and not more than 49% for List 3 Businesses.
If yes, what is the administrative procedure?	
	An FBL application for a foreigner to hold ownership in restricted businesses beyond the maximum ownership thresholds mentioned above must be filed with the DBD at the MOC. The DBD reviews the application and verifies it with the applicant and then submits it to the FBC (List 3 Businesses) or the Cabinet (List 2 Businesses) for approval. The FBC and the Cabinet may approve or reject the application at their sole discretion.
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No, Thailand has not tightened FDI restrictions. On the contrary, the Board of Investment of Thailand (BOI) has issued a number of benefits to encourage FDI in relation to the manufacture of medical equipment, "smart farming" technologies and R&D. FDI businesses granted benefits by the BOI are not subject to the foreign ownership limits under the FBA.

Vietnam



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FDI restrictions prior to the COVID-19 pandemic	
Do FDI restrictions apply?	
	Yes. In general, all foreign investment is encouraged; however certain prohibitions and restrictions apply. Prohibitions and restrictions are contained in international treaties to which Vietnam is a party (for example, the WTO Specific Commitments on Services, ASEAN Framework Agreement on Services and Comprehensive and Progressive Agreement for Trans-Pacific Partnership), as well as in national laws. Restrictions apply to foreign investors from certain territories and the types of restrictions vary based on the type of investment.
If yes, which authority is responsible for the verification of an FDI?	
	<p>Subject to the nature, scale and location of the investment, an investment policy decision may be first required for certain FDI activities in relation to which investment approval will then be granted. Local authorities which have power to make decisions on investment policy include (i) the National Assembly, (ii) the Prime Minister and (iii) provincial-level People's Committees.</p> <p>While authority for making decisions on investment policy is widely distributed, the provincial-level Departments of Planning and Investment (DPIs) consider and grant investment approval via 'Investment Registration Certificates' (IRCs) in case of greenfield projects where project companies are newly set up by foreign investors, and 'M&A approval' in case of acquisitions by foreign investors of shares/ capital in local companies.</p> <p>However in certain sectors (such as, banking, insurance and securities) other ministries and government bodies such as the State Bank of Vietnam and the Ministry of Finance have the authority to consider and make appropriate approvals or grant licenses, not the DPIs.</p>
If yes, are these general restrictions or industry/sector-specific restrictions?	
	General and sector-specific restrictions apply. General prohibitions are applicable to investment by all investors in certain businesses (for example, businesses relating to certain drugs, businesses involved in certain chemicals and businesses involved in the trade of humans and human parts). There is also a list of certain business sectors where investment by foreign investors is restricted (see some examples given below).
If yes, do these restrictions apply to buyers from specific jurisdictions only?	
	No, the restrictions generally apply to investors from all jurisdictions. However, there are also restrictions in certain business sectors (e.g. trading, wholesale/ retail business) which are applicable solely to investors from jurisdictions which are not WTO members.
If yes, are these restrictions dependent on certain control thresholds being reached?	
	<p>Foreign ownership restrictions vary depending on the relevant sector (including banking, telecom, transportation and audio visual). For example, in the telecom sector, for businesses providing basic telecom services, foreign ownership may not exceed 49%, 51% or 65% (depending on whether the services to be provided are facilities-based or non facilities-based services).</p> <p>In the banking sector, while qualified foreign banks are permitted to set up new banks with 100% foreign ownership in Vietnam, the total foreign ownership for a share/ capital acquisition must not collectively exceed 30% of the charter capital of a local bank, of which an individual foreign investor does not individually hold more than 5% and an institutional foreign investor does not individually hold more than 15% (unless the institutional investor is otherwise considered a strategic investor, in which case it may hold up to 20% of the charter capital of a local bank).</p> <p>With respect to public companies (of which shares are listed or registered for trading on local stock markets), foreign ownership cannot exceed a threshold of 49% in all business sectors, unless other specific national laws provide for a higher cap. In such cases, the cap relaxation must be registered with the State Securities Commission.</p>
If yes, what is the administrative procedure?	
	<p>All prohibitions, restrictions and/or conditions applicable to foreign investors will be considered when local authorities consider the application dossiers submitted to them by investors. Investors must demonstrate (with supporting evidence) that they are capable to do the investment, comply with all restrictions and satisfy all conditions provided by law.</p> <p>In general, investment policy decisions, IRCs or M&A approvals will only be granted if investors are capable, all restrictions are complied with and all conditions are satisfied.</p>
Tightening of FDI restrictions during COVID-19 pandemic	
Were FDI restrictions temporarily tightened?	
	No additional FDI restrictions have been implemented.

Background

This note has been prepared by Bird & Bird in Australia and Singapore in conjunction with local legal counsel in New Zealand, Malaysia, Indonesia, Vietnam, the Philippines and Thailand. Bird & Bird works closely with carefully selected local legal counsel in these jurisdictions, to ensure we are able to offer clients sound insights into complex multi-jurisdictional issues.

This note reflects the legal and regulatory framework as of 27 May 2020.



Indonesia



Malaysia



New Zealand



Philippines



Thailand



Vietnam

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If you would like further information in relation to the foreign investment laws of any of the countries listed, please contact the individuals mentioned on each of the country pages, or [Steve Johns](#) (Partner in Sydney) or [Beng Chai Tay](#) (Partner in Singapore).

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