

## Australia - horizontal limitations

- 3) Notification and examination under Australia's foreign investment policy guidelines and the Foreign Acquisitions and Takeovers Act 1975. In addition to the specific foreign investment policy requirement set out in those parts of this Schedule concerning financial services and international shipping, proposals for foreign interests to invest in the services identified in the Schedule are examined under the Government's policy guidelines without the need to demonstrate economic benefits or to provide for Australian equity participation and are approved unless judged contrary to the national interest. The onus for establishing that proposals are so contrary rests with the Australian authorities. Investors can expect that approval will not be withheld from proposals on national interest grounds other than in unusual circumstances affecting Australia's vital interests and development.
- 3) Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia
- At least two of the directors of a public company must be ordinarily resident in Australia
- Unbound for current and future measures at the federal, state or local government levels according rights or preferences to any indigenous person or organisation providing for the favourable treatment of any indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector. For the purposes of this Schedule, an indigenous person means a person of the Aboriginal race of Australia or a descendant of an indigenous inhabitant of the Torres Strait Islands.
- Unbound for subsidies for research and development
- 4) Unbound except for measures concerning the entry and temporary stay of natural persons in the following categories:
- 4) Unbound except for measures concerning the categories of natural persons referred to in the market access column.
- (a) Executives and senior managers, as intra-corporate transferees, for periods of initial stay up to four years. Executives and senior managers being natural persons who are employees of a company operating in Australia, and who will be responsible for the entire or a substantial part of that company's operations in Australia, receiving general supervision or direction principally from higher level executives, the board of directors or stockholders of the business, including directing the company or a department or subdivision of it; supervising and controlling the work of other supervisory, professional or managerial employees; and having the authority to establish goals and policies of the department or subdivision of the company.

(b) Independent executives, without requiring compliance with labour market tests, for periods of initial stay up to a maximum of two years. Independent executives being natural persons who meet the criteria of executives and senior managers who intend, or are responsible for the establishment in Australia, of a new business of a service supplier with its head of operations in the territory of another Member and which has no other representative, branch or subsidiary in Australia.

(c) Service sellers, as business visitors, without requiring compliance with labour market tests, for periods of initial stay of up to six months.

Service sellers being natural persons not based in Australia who are (sales) representatives of a service supplier and are seeking temporary entry for the purpose of negotiating for the sale of services or entering into agreements to sell services for that service supplier, where those representatives will not be engaged in making direct sales to the general public or in supplying services themselves. Applicants for business visitor visas are natural persons seeking to travel to Australia for business purposes and not intending to engage in work that might otherwise be carried out by an Australian citizen or permanent resident. This requirement will be satisfied where the service seller's remuneration and financial support for the duration of the visit are derived entirely from sources outside Australia.

This requirement would also normally be regarded as being satisfied in cases where the person seeking a business visit visa had won a contract to provide a service in Australia.

(d) Specialists, subject to individual compliance to labour market testing, for periods of initial stay up to a maximum of two years with provision of extension provided the total stay does not exceed

four years. Specialists, being natural persons with trade, technical or professional skills who are responsible for or employed in a particular aspect of a company's operations in Australia. Skills are assessed in terms of the applicant's employment experience, qualifications and suitability for the position. Labour market testing is not required for (i) natural persons who have specialised knowledge at an advanced level of a proprietary nature of the company's operations and have been employed by the company for a period of not less than two years and (ii) if the position in question is within a labour agreement in force at the time of application. A labour agreement is an agreement between the Australian Government, employers or industry organizations and unions for the entry of specialists from overseas.

The above commitments do not apply in cases of labour/management dispute.

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3) Australia's foreign investment policy guidelines apply to foreign-owned or controlled enterprises after establishment in Australia

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