



AUSTRALIA-HONG KONG

FREE TRADE AGREEMENT

OUTCOMES: INVESTMENT

Investment flows between Australia and Hong Kong are substantial, and investors from both sides are keen to take advantage of opportunities in each other's economies. Hong Kong was Australia's fifth largest source of foreign investment at the end of 2018 (\$118.8 billion - covering direct, portfolio and other investment). In the same year, Hong Kong was the 11th largest destination for Australian foreign investment abroad (\$52.2 billion).

Provisions on investment are split across the Establishment Chapter of A-HKFTA and a separate Investment Agreement.


The Establishment Chapter offers investment market access that will promote foreign investment in Australia. Increased investment can help to boost Australian living standards by providing capital to finance new industries and enhance existing industries, which can in turn improve productivity and employment opportunities in Australia.

The threshold at which private Hong Kong investments in non-sensitive sectors are reviewed by the Foreign Investment Review Board has been increased from \$266 million to \$1,154 million. Lower screening thresholds of \$15 million and \$58 million will continue to apply to investments in agricultural land and agribusiness respectively. Australia will continue to have the ability to screen for investments in residential land.

Linked to the A-HKFTA, **the Investment Agreement** updates the investment rules in force between Australia and Hong Kong, currently contained in the *1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments* (the 1993 Agreement). The 1993 Agreement will be terminated, and replaced by the new Investment Agreement.

The Investment Agreement contains protections for the substantial investments in each other's economies. Reflecting contemporary developments in investment policy, the Investment Agreement will protect investors on both sides, including providing for a minimum standard of treatment, a requirement to pay compensation in certain circumstances where an investment is expropriated, and protection against discrimination.

The Investment Agreement contains an Investor-State Dispute Settlement (ISDS) mechanism. This provides investors from Australia and Hong Kong with access to an independent arbitral tribunal to resolve disputes for breaches of the investment rules. The ISDS mechanism includes safeguards to protect the government's ability to regulate in the public interest, and pursue national security and legitimate public policy objectives, including on privacy, public health and the environment.



Australia has specifically reserved the right to maintain existing measures, and introduce new measures in key policy areas, including:

- ✓ social services established or maintained for a public purpose, such as social welfare, public education, health and public utilities; and
- ✓ creative arts, Indigenous traditional cultural expressions and other cultural heritage.

The ISDS mechanism cannot be used to challenge:

- ✓ tobacco control measures (including for e-cigarettes);
- ✓ public health measures relating to the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and Office of the Gene Technology Regulator; and
- ✓ decisions by the Foreign Investment Review Board on whether or not to approve a foreign investment proposal.

The ISDS mechanism also includes modern procedural safeguards to better balance the right of an investor to bring a claim with the right of Governments to regulate in the public interest, including:

- ✓ a requirement that hearings will be open to the public, and that documents filed in the arbitration, as well as the tribunal's decision, will be made public;
- ✓ expedited review of claims that are frivolous or manifestly without legal merit;
- ✓ the Parties may issue joint interpretations of the Agreement, which must be followed by ISDS tribunals;
- ✓ time limits on bringing a claim;
- ✓ the ability to permit submissions from interested individuals, including from civil society and non-governmental organisations; and
- ✓ a requirement for arbitrators to comply with rules on independence and impartiality, including on conflicts of interests.