



New FIRB Rules for Agricultural Land Acquisitions by Foreign Interests

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THE FEDERAL GOVERNMENT ANNOUNCES NEW FIRB ASSESSMENTS RULES

On 1 February 2018 the Federal Government announced it will be introducing new rules in cases where the Foreign Investment Review Board ("FIRB") assesses applications in relation to Agricultural Land sales of more than \$15 million in Australia. The announcement can be seen at <http://sjm.ministers.treasury.gov.au/media-release/006-2018/>.

The Government has indicated that the rules have been introduced to enable adequate opportunity for Australians to invest in agricultural Land. These rules will apply retrospectively to all current FIRB applications.

In this alert we look at what is now required when seeking FIRB approval in respect of agricultural land in Australia.

AGRICULTURAL LAND FIRB APPROVAL

Agricultural land is land in Australia that is used, or that could reasonably be used, for a primary production business. This includes land which is partially used for a primary production business, or land where only part of the land could reasonably be used for a primary production business.

In cases where there is an acquisition of agricultural land in Australia by a foreign entity, that entity is required to seek FIRB approval prior to entering into an agreement to purchase the Land. This applies where the acquisition value is more than \$15 million and where the proposed acquisition together with existing agricultural holdings of the applicant exceeds \$15 million.

In making an assessment it remains the case that the Federal Treasurer will consider whether the transaction is contrary to the national interest.

NEW RULES

In order to satisfy the national interest test in respect of an acquisition of Australian agricultural land, ("NIT") the transaction has to be open and transparent.

An open and transparent sale process means:

1. Public marketing/advertising was undertaken for the sale of the property, using channels that Australian bidders could reasonably access. This could include widely used real estate listing sites or a large regional/ national newspaper;
2. The property was so marketed/ advertised for at least 30 days; and

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3. There was equal opportunity for Australian bidders or offers to be made for the property while still available for sale.

The responsibility will be on the applicant when making the application to show how they became aware of the property and the measures which were taken to advertise the land. It may be that applicants will be requested to provide evidence of the sale process and how a transparent transaction was obtained.

EXCEPTIONS

There are some exceptions which include acquisitions where the applicant:

1. Is acquiring a property via a private sale that was marketed/ advertised in the above manner in the last six months but did not sell or where the sale fell through; or
2. Has a substantial Australian ownership share (i.e 50 percent or more), despite a foreign ownership share; or
3. Is required to make the acquisition to comply with state or commonwealth law e.g. mining buffer zones.

NEXT STEPS

When looking to sell agricultural property, it is important as a seller that the land is marketed according to the new guidelines. At this stage, it is somewhat unclear what will constitute a transparent transaction as each FIRB application will be assessed individually at FIRB's discretion.

FIRB is also yet to clarify what will constitute adequate marketing of the property for at least 30 days. At the time of publication, the minimum advertising requirements have not yet been determined.

Please feel free to contact either Tim Ferrier or Karissa Andrejic to discuss these changes.

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