



Australian Government Tries to "Level the Playing Field" for Purchases of Agricultural Land

On 1 February 2018, the Treasurer of Australia announced that going forward, foreign persons seeking approval for the acquisition of Australian agricultural land will, in the absence of exceptional circumstances, need to demonstrate to the Foreign Investment Review Board ("FIRB") that the land has been part of a public sales process and marketed widely to potential Australian bidders for a minimum of 30 days, and that Australian bidders have had an opportunity to participate in the sales process. The policy underlying this requirement is a desire to ensure that Australians have had sufficient opportunity to bid on proposed sales of agricultural land.

Updated guidance from FIRB provides further detail on the requirements to have an "open and transparent sale process":

- Public marketing or advertising was undertaken for the sale using channels Australian bidders could reasonably access;
- The marketing or advertising was carried out for at least 30 days; and
- Equal opportunity was allowed for bids or offers to be made while the property was for sale.

The applicant (i.e., the foreign person) will be required to demonstrate to FIRB how he or she became aware that the property was being marketed for sale, and whether the acquisition was subject to an open and transparent sale process, and may be requested to provide evidence of this.

Limited exceptions to the requirement for an open and transparent process include where:

- There had previously been an "open and transparent" process in the last six months, as a result of which the property had not sold;
- The applicant to FIRB has Australian ownership of 50 percent or more (although considered a "foreign person" under the foreign acquisition laws); and
- The acquisition is required to be made to comply with Australian law.

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