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**NEWS**

## **Foreign investors in agricultural land face new threshold test**

On 1 February 2018, Treasurer Scott Morrison announced a further tightening of the approval process for foreign investors acquiring interests in agricultural land. The new test means foreign investors who require Foreign Investment Review Board (FIRB) approval for acquisitions of agricultural land must be able to establish the land was acquired through a sales process which was "open and transparent". Here, partner Mark Lyons explains what this means for foreign investors and vendors.

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### **KEY POINTS**

As a general rule, proposed investments in agricultural land require FIRB approval where the cumulative value of a foreign investor's agricultural land holdings exceeds \$15 million. Certain exceptions apply to investors from Australia's trade agreement partners and a zero dollar threshold applies to foreign government investors. The new open and transparent test is now a threshold requirement for FIRB approval.

To meet the test, a FIRB applicant needs to show Australian buyers have been given the opportunity to acquire the relevant land. As a general rule, FIRB will not approve an application unless the land was offered for sale publicly and "marketed widely".

FIRB has issued an amended [Guidance Note](#) in relation to the new test. Based on the amended guidance, the key indicators the open and transparent sale test has been followed are—

- public marketing is undertaken for the sale of the land, using channels Australian bidders could reasonably access (eg advertised on widely used real estate listing sites or large regional or national newspapers)
- the land is marketed for at least 30 days, and
- there was equal opportunity for bids or offers to be made for the land while the land was still available for sale.

The amended guidance also sets out some exemptions from the test, including—

- where the acquisition of the land is via a private sale marketed in an open and transparent sales process in the last six months, but where the land did not sell at that time or the sale fell through, or
- the investor has substantial Australian ownership (50 percent or more).

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### **SUMMARY**

If the sale of agricultural land fits within the category of an acquisition likely to require FIRB approval and there are potential foreign investor buyers, then it is in the interest of both the seller and foreign investor to ensure the open and transparent process is followed.

From a seller perspective, compliance will mean potential foreign investors are not lost from the sales market. For foreign investors, it will avoid the prospect of wasting FIRB application fees and expenses associated with due diligence as a result of failed FIRB applications.

Our **Real Estate lawyers** can explain these changes and answer any queries.

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## Authors



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