



# Foreign Investments in Australia

by **MHL Legal & Notary**

Updated 8 April 2025

# Common Issues with Chinese Investors

- ❖ Due diligence on the investment project & business partner/s
- ❖ Understanding of Australian business culture, legal & compliance issues
- ❖ Communication with professional advisory team/s
- ❖ Set-up of investment vehicle/s & management of staff
- ❖ Control of legal liabilities & taxation risks



# Examples of Investment Vehicles

- ❖ Australian proprietary company limited by liability with ACN
- ❖ Foreign company registered with ASIC with ARBN
- ❖ Trusts (i.e. Unit Trust, Discretionary Trust, Hybrid Trust)
- ❖ Partnership, Joint Venture etc



# Foreign Investment Review



- ❖ The screening process is undertaken by the Foreign Investment Review Board (**FIRB**).
- ❖ According to FIRB Quarterly Report issued on 8 February 2024, \$179.4 billion worth of foreign investments were approved in 2022-23. China continues to grow as a key source of investment with \$12.9 billion worth of approvals.
- ❖ In the majority of industry sectors, smaller proposals are exempt from notification and larger proposals are approved unless assessed as being inconsistent with Australia's national interest or security interest.

# “Foreign Persons”

“Foreign Person” under the *Foreign Acquisitions and Takeovers Act 1975* includes:

- ❖ an individual not ordinarily resident in Australia;
- ❖ a corporation in which an individual not ordinarily resident in Australia or a foreign corporation holds an interest of **20%** or more;
- ❖ a corporation in which 2 or more foreign persons hold an aggregate interest totaling **40%** or more;
- ❖ the trustee of a unit trust in which a foreign person holds **20%** or more of interest, or 2 or more foreign persons hold **40%** or more interest in aggregate.

# Mandatory Notifications to FIRB

- ❖ all vacant non-residential land
- ❖ all residential real estate (exemptions excepted)
- ❖ all direct investments by foreign governments & their related entities
- ❖ all other acquisitions (incl. shares or assets of an Australian business) if target value is **\$339 million** or more (**\*\$1,464 million** for agreement country investors)



# Vacant Commercial Land

- ❖ no substantive permanent building on the land that can be lawfully occupied by persons, goods or livestock
- ❖ notification to FIRB required regardless of value of the proposed acquisition
- ❖ FIRB approval will normally be subject to conditions that the foreign buyer commences continuous construction of the proposed development within 5 years of the date of approval



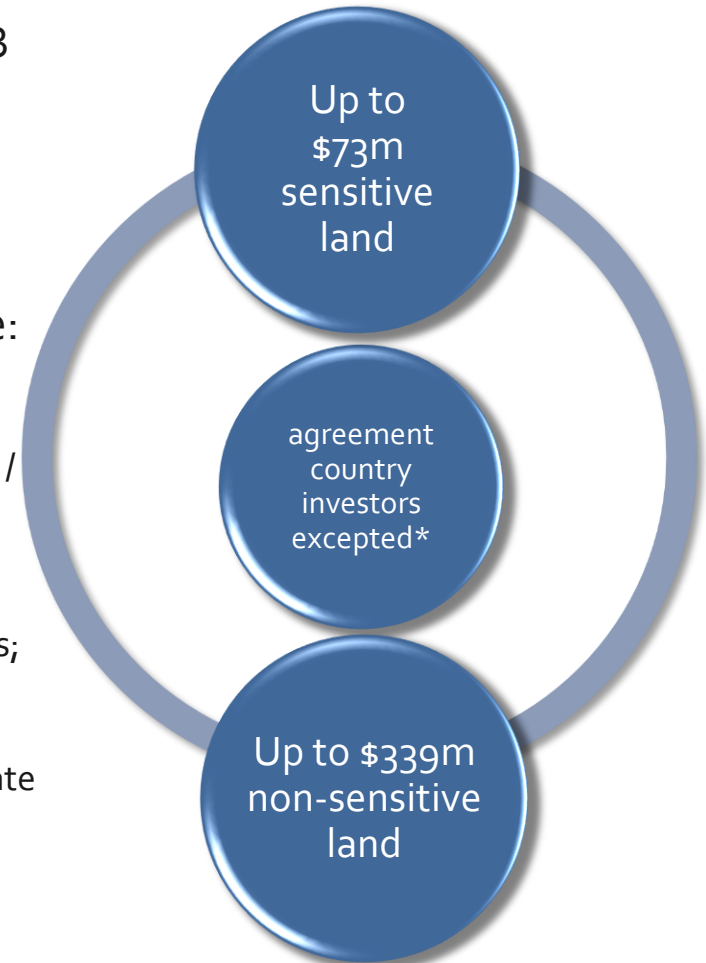
# Developed Commercial Land

Foreign persons must apply for FIRB approval, or FIRB exemption certificate if the acquisition is above the thresholds indicated on the right (fees \$4,300 - \$1,171,600 maximum).

**Sensitive developed commercial land** includes those:

- ❖ leased to the Commonwealth / State / Territory body
- ❖ fitted out specifically for the storage of bulk data; supply of training or HR to defence forces; manufacture of military goods / equipment; development of security technologies & communication systems; extraction of uranium or plutonium or operation of nuclear facilities
- ❖ used for the handling of biological agents; or regulated materials; or prescribed airspace; or operation of mine or telecom network or defined public infrastructure
- ❖ where a mine, oil, gas well, quarry or similar operation will operate on the land or public infrastructure

Agreement country investors (the threshold being **\$1.464 million**) which includes China.





# Exemptions - Residential Real Estate

- ❖ Buyer is an Australian citizen or a New Zealand citizen or holds a current Australian permanent resident visa
- ❖ Foreign person acquires residential property as joint tenants with spouse who is an Australian citizen (*NOT if purchasing as tenants in common*)
- ❖ Acquisition of new dwelling(s) from the developer that holds a New Dwelling Exemption Certificate for sales to foreigners
- ❖ Acquisition of residential property in an Integrated Tourism Resort (ITR) designated before Sept 1999
- ❖ Acquisition of property from the Australian Government (Commonwealth, State or Territory, or local)
- ❖ Acquisition by operation of law, such as matrimonial property settlement



# FIRB Update – Effective 1 April 2025

- From 1 April 2025, foreign residents (including temporary residents and foreign-owned companies) will be banned from purchasing established dwellings in Australia until 31 March 2027 unless an exception applies.
- Exceptions include investments that significantly increase housing supply or support housing availability.
- A review will be undertaken to assess if the ban should be extended beyond 31 March 2027.
- Foreign investment in new properties or land for development will not be impacted by the ban.

# Exemptions - Business Investments

- ❖ Subject to the exceptions below, proposed acquisition of an existing business, or establishment of new business valued below **\$339 million** is exempted from notifying FIRB (the threshold is **\$1.464 million** for non-sensitive businesses for agreement country investors). Different thresholds apply for Agribusinesses.
- ❖ A requirement to notify FIRB may still exist, e.g. investments by foreign government agencies; acquisition of an interest in “sensitive businesses” including media, telecommunications, transport, defence and military related industries, the extraction of uranium or plutonium or the operation of nuclear facilities

# FIRB Fees - Residential (Established Dwellings)

Price of Residential Property	Fees Payable
\$75,000 - \$1,000,000	\$44,100
\$1,000,0001 - \$2,000,000	\$88,500
\$2,000,001 - \$3,000,000	\$177,000
\$3,000,001 - \$4,000,000	\$265,500

- ❖ These fees are applicable for acquisitions of residential land that have an established dwellings. Higher fees are applicable if there is more than one established dwelling on the land.
- ❖ For a FIRB approval for a residential property valued between \$75,000 and \$1,000,000, the fee of \$44,100 is applicable. For residential property of higher values, higher fees apply as shown above.

# FIRB Fees - Residential (Other than Established Dwellings)

Price of Residential Property	Fees Payable
\$75,000 - \$1,000,000	\$14,700
\$1,000,0001 - \$2,000,000	\$29,500
\$2,000,001 - \$3,000,000	\$59,000
\$3,000,001 - \$4,000,000	\$88,500

- ❖ These fees are applicable to acquisitions of new or near new residential dwellings or vacant residential land from 1 July 2024 to 30 June 2025
- ❖ For a FIRB approval for a residential property valued between \$75,000 and \$1,000,000, the fee of \$14,700 is applicable. For residential property of higher values, higher fees apply as shown above.

# FIRB Fees – Commercial / Business

Type of Interest	Fees Payable
Commercial land which consideration for the acquisition is \$50 million or less	\$14,700
Commercial land which consideration for the acquisition is above \$50 million and not more than \$100 million	\$29,500
Interests in assets of an Australian business or direct interest in an Australian agribusiness (\$2 million or less )	\$14,700
Approval for developer to sell new residential dwellings to foreign buyers	\$60,600 application fee (for 1 July 2024 to 30 June 2025) plus 6 monthly reconciliation based on the number of and consideration payable for dwellings acquired by foreign persons

# FIRB Fee – Waiver/Refund

- ❖ Fees will generally not be waived or refunded if:
  - ❖ Your application is not approved;
  - ❖ You change your mind about purchasing the property;
  - ❖ You were unsuccessful in purchasing the property;
  - ❖ You withdraw your application; or
  - ❖ You obtain approval to purchase a property of a particular value, but you obtain the property at a lower price (difference in application fees will not be refunded).
- ❖ It is vital to make your purchase contract subject to FIRB approval as fees will generally not be refunded.



# Annual Vacancy Fee

From 9 May 2017, foreign persons who purchase residential dwellings in Australia will be subject to payment of annual vacancy fee where the property is not rented out or occupied for over 6 months (183 days) a year. Annual vacancy fee may be payable if you fail to lodge your annual vacancy fee return on time.

Annual Vacancy Fee Returns must be lodged by foreign owners of residential dwellings who:

- ❖ made FIRB application for the purchase of residential property after 7:30pm (AEST) on 9 May 2017; or
- ❖ purchased a residential property under a New Dwelling Exemption Certificate that a developer applied for after 7:30pm (AEST) on 9 May 2017

A Vacancy Fee Return must be lodged with ATO within 30 days of the end of each vacancy year (each successive period of 12 months since occupation).

# When is vacancy fee payable?

The vacancy fee is payable annually and will apply where a foreign owned residential property is not:

1. genuinely occupied by the foreign owner or a relative of the owner for at least 6 months (183 days) in a 12-month period;
2. subject to leases or licences (with a minimum duration of 30 days each) which total at least 183 days in a 12 months period; or
3. genuinely made available on the rental market (with a minimum duration of 30 days each) for at least 183 days in a 12-month period.

# How much is the vacancy fee?

- ❖ The vacancy fee payable will be equivalent to the FIRB application fee paid for purchasing the property.
- ❖ For vacancy years starting 9 April 2024, the fee will be double your foreign investment application fee.

For more information, please see the following link:

- ❖ <https://www.ato.gov.au/individuals-and-families/investments-and-assets/foreign-investment-in-australia/vacancy-fee-return-for-foreign-owners>

# Additional Foreign Acquirer Duty

- ❖ Additional Foreign Acquirer Duty (AFAD) is a state-based duty.
- ❖ AFAD is an extra 8% of duty on the purchase price in addition to stamp duty that applies to direct or indirect acquisitions of any residential property in Queensland by any foreign person.
- ❖ AFAD applies regardless of whether the residential property is for investment or non-investment purposes.
- ❖ If there are multiple purchasers, AFAD applies only to the foreign purchasers and is calculated on their portion of interest acquired.

# Foreign Ownership Register

- From 1 January 2021, foreign person owners must notify the 'Register of Foreign Ownership of Australian Assets' within 30 days if the owner
  - ❖ acquires or ceases to hold an interest in Australian land, exploration tenement or Australian water entitlement
  - ❖ takes a notifiable action, notifiable security action or a significant action
  - ❖ ceases to be a foreign person
  - ❖ has an interest which has changed 5 percentage points or more than previously disclosed

# Contact Us

- The purpose of this presentation is solely to provide you with general information on FIRB requirements and is not legal advice. Please do not rely on this information without seeking legal advice.
- If you have further questions relating to FIRB requirements, please do not hesitate to contact us by phone +61 07 3211 4988 or by email to [admin@mhllegal.com.au](mailto:admin@mhllegal.com.au).