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## Property Law Ealert

### Foreign Investment Review Board (FIRB) changes for residential property

The Australian Government has announced changes to the law applicable for acquisitions of residential real estate by foreign persons. Those changes which are changes to policy are now in place whereas those that require an amendment to the *Foreign Acquisitions and Takeovers Regulations 1989* will come into effect shortly when amended Regulations are promulgated.

#### Off-the-plan sales to foreigners

The previous arrangement which enabled developers to obtain approval to sell up to one half of apartments in a new residential development has been changed. From now up to 100% of such apartments may be sold to foreign persons. The previous restriction that the apartment must be brand new when sold has been varied to permit a developer to rent the apartment for no more than 12 months before it is sold by the developer to a foreign person.

Up till now developers made an application to FIRB for a consent applicable to a particular development for sales to foreign purchasers. Foreign purchasers in those circumstances did not make a separate application. The developer was required to submit an annual report giving details of all sales in the development including details of foreign purchasers. That process has now been discontinued. Purchasers will be required to make their own application. The form to be used has yet to be released.

These arrangements will be reviewed after 2 years. They are obviously intended to assist residential developers offload stock in the current financial climate.

#### Vacant residential land

The previous restriction which required a foreign purchaser to build a dwelling within 12 months of the acquisition of a vacant residential lot has now been extended to 24 months.

#### Foreign companies purchasing second hand dwellings

There is to be no limit to the number of established dwellings which can be purchased for employee accommodation by foreign owned companies. Where it is expected that the dwelling will remain vacant for more than 6 months the foreign owned company will be required to sell or rent the dwelling.

#### Redevelopment of second hand dwellings

Any development must increase the number of dwellings. The requirement that no rental income can be received prior to demolition has not been changed. A foreign purchaser will now have 24 months to commence construction of new dwellings where dwellings have been purchased prior to demolition for a particular residential project. Development expenditure must be at least 50% of the purchase price of the property.

#### Temporary residents purchasing second hand dwellings

A "temporary resident" now includes all foreign persons living in Australia on a valid visa but does not include short term visitors such as tourists. Individual situations would need to be checked but there is greater scope for a temporary resident to purchase second hand real estate.

Foreign students who are resident in Australia are no longer subject to a \$300,000.00 limit on the value of an established dwelling purchased as their principal place of residence.

#### Resorts and hotels – accommodation facilities

Where resorts and/or hotels are to be purchased they will be treated as commercial real estate rather than residential real estate. This includes individual units within any such development. Of consequence, provided the purchase price is less than the exempt developed commercial property price fixed from time to time, a purchaser will not be required to notify and therefore obtain approval for that purchase.

For developed commercial property the current price limit under which no approval is required (as distinct from notification) is \$5 million for a heritage listed property, \$50 million for a non-heritage listed property or (subject to some exceptions) \$953 million for investors from the United States of America. The need to notify needs to be checked with each transaction.

#### Development of vacant commercial land (non residential development)

In this category the policy has been changed to permit a foreign purchaser 60 months from the date of acquisition rather than 12 months to commence continuous substantial construction on the land. The restriction that the development cost must be not less than 50% of the acquisition cost or value of the land purchased has been maintained.

The above is a summary of the recent announcements by the Australian Government. For any detailed advice in relation to the application of foreign investment guidelines in real estate in Australia, please contact us.

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