

# Appendix A: Australia's Foreign Investment Policy



# Australia's Foreign Investment Policy<sup>#</sup>

## Our approach

The Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and prosperity.

Foreign investment brings many benefits. It supports existing jobs and creates new jobs, it encourages innovation, it introduces new technologies and skills, it brings access to overseas markets and it promotes competition amongst our industries.

The Government reviews foreign investment proposals against the national interest case-by-case. We prefer this flexible approach to hard and fast rules. Rigid laws that prohibit a class of investments too often also stop valuable investments. The case-by-case approach maximises investment flows, while protecting Australia's interests. Our Foreign Investment Review Board (FIRB) will work with an applicant to ensure the national interest is protected. But, if we ultimately determine that a proposal is contrary to the national interest, we will not approve it.

The Government also recognises community concerns about foreign ownership of certain Australian assets. The review system allows the Government to consider these concerns when assessing Australia's national interest.

The national interest test also recognises the importance of Australia's market-based system, where companies are responsive to shareholders and where investment and sales decisions are driven by market forces rather than external strategic or non-commercial considerations.

The Foreign Investment Review Framework provides details on how the Policy is applied to individual cases.

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<sup>^</sup> This version of Australia's Foreign Investment Policy was first released in June 2010.

<sup>#</sup> The Policy is also available in Bahasa, Japanese and Mandarin. In the event of any inconsistency between the English version and a foreign language version, the English version prevails.

# Foreign Investment Review Framework

## The foreign investment policy and the legislation

The *Foreign Acquisitions and Takeovers Act 1975* (FATA) provides the legislative framework for our screening regime. The FATA allows the Treasurer or his delegate – usually the Assistant Treasurer – to review investment proposals to decide if they are contrary to Australia’s national interest.

The Treasurer can block proposals that are contrary to the national interest or apply conditions to the way proposals are implemented to ensure they are not contrary to the national interest. When making such decisions, the Treasurer relies on advice from FIRB.

The Policy provides guidance to foreign investors to assist understanding of the Government’s approach to administering the FATA. The Policy also identifies a number of investment proposals that need to be notified to the Government even if the FATA does not appear to apply.

## Who needs to apply?

### 1. Foreign Governments and their related entities

All foreign governments and their related entities<sup>1</sup> should notify the Government and get prior approval before making a direct investment in Australia, regardless of the value of the investment.

Foreign governments and their related entities also need to notify the Government and get prior approval to start a new business or to acquire an interest in land, including any interest in a prospecting, exploration, mining or production tenement (except when buying land for diplomatic or consular requirements). This is consistent with the Government’s longstanding practice.

Further guidance for foreign government investors is provided under Further Information for Business Acquisitions and, in particular, the section titled Foreign Governments and their Related Entities.

### 2. Privately-owned foreign investors — business acquisitions

Foreign persons should notify the Government before acquiring an interest of 15 per cent or more in an Australian business or corporation that is valued above

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<sup>1</sup> Definitions are provided in Annex 1.

\$244 million.<sup>2</sup> They also need to notify if they wish to acquire an interest in an offshore company whose Australian subsidiaries or gross assets are valued above \$244 million.<sup>3</sup>

The exception is for US investors,<sup>4</sup> where the \$244 million threshold applies only for investments in prescribed sensitive sectors. A \$1062 million<sup>5</sup> threshold applies to US investment in other sectors. To calculate the value of a business or corporation, you need to consider the value of the total issued shares of the corporation or its total gross assets, whichever is higher.

All foreign persons, including US investors, need to notify the Government and get prior approval to make investments of 5 per cent or more in the media sector, regardless of the value of the investment.

Foreign persons should also be aware that separate legislation includes other requirements and/or imposes limits on foreign investment in the following instances:

- foreign investment in the banking sector must be consistent with the *Banking Act 1959*, the *Financial Sector (Shareholdings) Act 1998* and banking policy;
- total foreign investment in Australian international airlines (including Qantas)<sup>6</sup> is limited to 49 per cent;
- the *Airports Act 1996* limits foreign ownership of airports offered for sale by the Commonwealth to 49 per cent, with a 5 per cent airline ownership limit and cross ownership limits between Sydney airport (together with Sydney West) and Melbourne, Brisbane and Perth airports;
- the *Shipping Registration Act 1981* requires a ship to be majority Australian-owned if it is to be registered in Australia; and
- aggregate foreign ownership of Telstra is limited to 35 per cent of the privatised equity and individual foreign investors are only allowed to own up to 5 per cent.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

Further guidance is provided under Further Information for Business Acquisitions.

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2 The threshold is indexed annually on 1 January.

3 The threshold is indexed annually on 1 January.

4 The FATA does not apply to investments by US investors in financial sector companies. Financial sector companies have the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

5 The threshold is indexed annually on 1 January.

6 Individual holdings in Qantas are also limited to 25 per cent and aggregate ownership by foreign airlines is limited to 35 per cent.

### 3. Privately-owned foreign investors — real estate

Foreign persons should notify the Government and get prior approval to acquire an interest in certain types of real estate. An 'interest' includes buying real estate, obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements.

Regardless of value, foreign persons generally need to notify the Government to take an interest in residential real estate, vacant land or to buy shares or units in Australian urban land corporations or trusts.

Foreign persons also need to notify if they want to take an interest in developed commercial real estate that is valued at \$53 million<sup>5</sup> or more – unless the real estate is heritage listed, then a \$5 million threshold applies. An exception for developed commercial real estate applies to US investors, where a \$1062 million<sup>7</sup> threshold applies instead.

Foreign persons should also notify if they have any doubt as to whether an investment is notifiable.

The specific real estate rules are explained in further detail under Further Information About Buying Real Estate.

### When should you apply?

You should lodge an application in advance of any transaction, or you should make your purchase contract conditional on foreign investment approval. A transaction should not proceed until the Government advises you of the outcome of its review.

The Government encourages potential investors to engage with FIRB prior to lodging applications on significant proposals to allow timely consideration of the proposal. The Government will treat proposals in-confidence (as outlined further in the section titled Confidentiality/Privacy).

Applications will be accepted as proposals under the FATA when they contain sufficient detail. This includes information about the parties, the proposed investment (including its nature, methods of acquisition, the value of the investment, timetables and whether the investment is public), a statement of the investor's intentions (immediate and ongoing) and how the proposed investment may impact on the national interest.<sup>8</sup>

Applications should also include applicable statutory notices (although please note that there is no statutory form for applications made under the Policy only).

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<sup>7</sup> The threshold is indexed annually on 1 January.

<sup>8</sup> See National Interest Considerations under Further Information for Business Acquisitions.

Applications to acquire interests that will not be substantially completed within 12 months will generally not be accepted.

Please refer to FIRB's website [www.firb.gov.au](http://www.firb.gov.au) or to the relevant How to Apply guide for further details and links to the forms under the FATA.

No fees or charges apply to applications.

## What is the Government looking for?

The Government is making sure investments are not contrary to the national interest. If an investment is contrary to the national interest, the Government will intervene. This occurs infrequently.

What is contrary to the national interest cannot be answered with hard and fast rules. Attempting to do so can prohibit beneficial investments and that is not the intention of our regime. Australia's case-by-case approach maximises investment flows while protecting Australia's national interest.

To assist applicants, we provide more guidance on what we are looking for under Further Information for Business Acquisitions.

## How long before a decision is made?

Under the FATA, the Treasurer has 30 days to consider your application and make a decision. However, the Treasurer may extend this period by up to a further 90 days by publishing an interim order. An interim order is normally issued if a proposal is very complicated or where you have not provided sufficient information.

You will be informed of the Treasurer's decision within 10 days of it being made. That decision will either raise no objections, allowing the proposal to go ahead; impose conditions, which will need to be met; or prohibit the proposal. If the Treasurer has no objections, you will receive an e-mail or letter to this effect from the FIRB Secretariat on the Treasurer's behalf.

There is no time limit for applications made under the Policy only. However, the Government also aims to consider these proposals within 30 days, where possible.

## Confidentiality/privacy

The Government may share your application with government departments and agencies for consultation purposes, including Australian State and Territories. However, the Government respects any 'commercial-in-confidence' information it receives and ensures that appropriate security is provided.

The Government will not provide your application to third parties outside of the Government unless it has your permission or it is ordered to do so by a court of competent jurisdiction. The Government will defend this policy through the judicial system if needed.

The Government also respects the privacy of personal information provided by applicants, as per the requirements of the *Privacy Act 1988* and the *Freedom of Information Act 1982*.

## Further enquiries

Further information on the Policy may be found at FIRB's website [www.firb.gov.au](http://www.firb.gov.au). Should you have any further enquiries please contact FIRB on:

General enquiries:		From overseas:
Phone:	02 6263 3795	+61 2 6263 3795
Fax:	02 6263 2940	+61 2 6263 2940
Email:	<a href="mailto:firbenquiries@treasury.gov.au">firbenquiries@treasury.gov.au</a>	<a href="mailto:firbenquiries@treasury.gov.au">firbenquiries@treasury.gov.au</a>

Compliance hotline:		From overseas:
Phone:	1800 050 377	+61 2 6263 3795
Email:	<a href="mailto:FIRBCompliance@treasury.gov.au">FIRBCompliance@treasury.gov.au</a>	<a href="mailto:FIRBCompliance@treasury.gov.au">FIRBCompliance@treasury.gov.au</a>



## Further information for business acquisitions

### National interest considerations

Assessing the national interest allows the Government to balance potential sensitivities against the benefits of foreign investment.

The Government determines national interest concerns case-by-case. We look at a range of factors and the relative importance of these can vary depending upon the nature of the target enterprise. Investments in enterprises that are large employers or that have significant market share may raise more sensitivities than investments in smaller enterprises. However, investments in small enterprises with unique assets or in sensitive industries may also raise concerns.

The impact of the investment is also a consideration. An investment that enhances economic activity – such as by developing additional productive capacity or new technology – is less likely to be contrary to the national interest.

The Government typically considers the following factors when assessing foreign investment proposals in any sector. Further guidance on how these apply to agriculture is provided in Annex 2.

### National security

The Government considers the extent to which investments affect Australia's ability to protect its strategic and security interests. The Government relies on advice from the relevant national security agencies for assessments as to whether an investment raises national security issues.

### Competition

The Government favours diversity of ownership within Australian industries and sectors to promote healthy competition. The Government considers whether a proposed investment may result in an investor gaining control over market pricing and production of a good or service in Australia. For example, the Government will carefully consider a proposal that involves a customer of a product gaining control over an existing Australian producer of the product, particularly if it involves a significant producer.

The Government may also consider the impact that a proposed investment has on the make-up of the relevant global industry, particularly where concentration could lead to distortions to competitive market outcomes. A particular concern is the extent to which an investment may allow an investor to control the global supply of a product or service.

The Australian Competition and Consumer Commission (ACCC) also examines competition issues in accordance with Australia's competition policy regime. Any such examination is independent of Australia's foreign investment regime.

### **Other Australian Government policies (including tax)**

The Government considers the impact of a foreign investment proposal on Australian tax revenues. Investments must also be consistent with the Government's objectives in relation to matters such as environmental impact.

### **Impact on the economy and the community**

The Government considers the impact of the investment on the general economy. The Government will consider the impact of any plans to restructure an Australian enterprise following an acquisition. It also considers the nature of the funding of the acquisition and what level of Australian participation in the enterprise will remain after the foreign investment occurs, as well as the interests of employees, creditors and other stakeholders.

The Government considers the extent to which the investor will develop the project and ensure a fair return for the Australian people. The investment should also be consistent with the Government's aim of ensuring that Australia remains a reliable supplier to all customers in the future.

### **Character of the investor**

The Government considers the extent to which the investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision. The Government also considers the corporate governance practices of foreign investors. In the case of investors who are fund managers, including sovereign wealth funds, the Government considers the fund's investment policy and how it proposes to exercise voting power in relation to Australian enterprises in which the fund proposes to take an interest.

Proposals by foreign owned or controlled investors that operate on a transparent and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

### **Foreign Governments and their related entities**

Where a proposal involves a foreign government or a related entity, the Australian Government also considers if the investment is commercial in nature or if the investor may be pursuing broader political or strategic objectives that may be contrary to Australia's national interest. This includes assessing whether the prospective investor's governance arrangements could facilitate actual or potential control by a foreign government (including through the investor's funding arrangements). Proposals from foreign government entities operating on a fully arms length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Where the potential investor has been partly privatised, the Government considers the size, nature and composition of any non-government interests, including any restrictions on the exercise of their rights as interest holders.

The Government looks carefully at proposals from foreign government entities that are not operating on a fully arms length and commercial basis. The Government does not have a policy of prohibiting such investments but it looks at the overall proposal carefully to determine whether such investments may be contrary to the national interest.

Mitigating factors that assist in determining that such proposals are not contrary to the national interest may include: the existence of external partners or shareholders in the investment; the level of non-associated ownership interests; the governance arrangements for the investment; ongoing arrangements to protect Australian interests from non-commercial dealings; and whether the target will be, or remain, listed on the Australian Securities Exchange or another recognised exchange. The Government will also consider the size, importance and potential impact of such investments in considering whether or not the proposal is contrary to the national interest.

## Further information about buying real estate

### General

The Government has decided that some types of investment in real estate are contrary to the national interest. This section outlines these prohibitions as well as the types of real estate that foreign investors may buy and whether they need Government approval to do so.

If you are intending to buy real estate in Australia, you should make your purchase contracts conditional on foreign investment approval, unless you already have approval or you are exempt from the FATA. Significant penalties may apply to ineligible owners of real estate.

### Rules for buying residential real estate

It is the Government's policy that foreign investment in residential real estate should increase Australia's housing stock. All applications are considered in light of this overarching principle.

Residential real estate means all land and housing that is not commercial property or rural land. In that regard, vacant land that can be used for residential purposes, 'hobby farms' and 'rural residential' blocks are residential real estate.

### Temporary residents

#### Established (second-hand) dwellings

Temporary residents need to apply if they wish to buy an established dwelling. Only **one** established dwelling may be purchased by a temporary resident and it must be used as their residence in Australia. Such proposals are normally approved subject to

conditions (such as, that the temporary resident sells the property when it ceases to be their residence).

Temporary residents **cannot** buy established dwellings as investment properties.

### **New dwellings**

Temporary residents need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

### **Vacant land**

Temporary residents need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

## **All other foreign persons**

### **Established (second-hand) dwellings**

Non-resident foreign persons **cannot** buy established dwellings as investment properties or as homes, except as below.

Companies that are foreign persons need to apply to buy established dwellings to house their Australian based staff. Such proposals are normally approved subject to the company undertaking to sell or rent the property if it is expected to remain vacant for six months or more.

Non-resident foreign persons need to apply to buy established dwellings for redevelopment (that is, to demolish the existing dwelling and build new dwellings). Proposals for redevelopment are normally approved as long as the redevelopment increases Australia's housing stock (at least two dwellings built for the one demolished) or where it can be shown that the existing dwelling is derelict or uninhabitable. Approvals are usually subject to conditions.

### **New dwellings**

Non-resident foreign persons need to apply to buy new dwellings in Australia. Such proposals are normally approved without conditions.

### **Vacant land**

Non-resident foreign persons need to apply to buy vacant land for residential development. These are normally approved subject to conditions (such as, that construction begins within 24 months).

## Who is Exempt?

You **do not** need Government approval to buy residential real estate if you are:

- an Australian citizen (living at home or overseas) or you are ordinarily resident in Australia;
- a New Zealand citizen;
- a foreign national who holds a permanent resident visa; or
- a foreign national buying a property as joint tenants with their Australian citizen spouse.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- new dwellings bought from a developer that has pre-approval to sell them to foreign persons;
- an interest in a time share scheme that allows you (and any associates)<sup>9</sup> to use it for up to four weeks per year;
- certain residential real estate in Integrated Tourism Resorts (ITR) – see below;
- an interest acquired by will or devolution by operation of law; or
- an interest acquired from a Government in Australia (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose.

## Residential real estate in ITRs

You **do not** need the Government's approval to buy residential property that is within the bounds of a resort that the then Treasurer designated as an ITR prior to September 1999.

For resorts designated as ITRs from September 1999, the exemption only applies to developed residential property that is subject to a lease of 10 years or more to the resort operator and that is available as tourist accommodation when it is not occupied by the owner. The normal foreign investment rules apply to all other property within the ITR, including vacant land for development. Strict conditions must be met to qualify for ITR status.

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<sup>9</sup> See section 6 of the FATA for the list of 'associates'.

## Rules for buying commercial real estate

Commercial real estate includes vacant and developed property that is not for residential purposes, such as offices, factories, warehouses, hotels and shops. It may also include land that does not meet the definition of rural land, such as mining operations.

### All foreign persons

#### Vacant land

Foreign persons need to apply to buy or take an interest<sup>10</sup> in land for commercial development (including to start a forestry business), regardless of the value of the land. Such proposals are normally approved subject to development conditions.

#### Developed commercial property

Foreign persons need to apply to buy or take an interest in developed commercial real estate valued at \$53 million or more – unless the real estate is heritage listed, then a \$5 million threshold applies. US investors only need to apply for developed commercial real estate valued at \$1062 million or more.

Developed commercial property includes hotels, motels, hostels and guesthouses, as well as individual dwellings that are a part of these properties. Buying a unit in a hotel that is owner-occupied or rented out privately (that is, it is not part of the hotel business) is considered to be residential property.

#### Mining tenements

Foreign persons need to apply to buy prospecting, exploration, mining or production tenements where:

- they provide the right to occupy Australian urban land and the term of the lease or licence (including extensions) is likely to exceed 5 years; or
- they provide an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land.

If the mining tenement applies to land currently being used as rural land, then other rules apply (see Rural Land).

Where a mining tenement is developed to an operational mine, it will then be considered developed commercial property (see above).

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<sup>10</sup> An 'interest' includes obtaining or agreeing to enter into a lease, or financing or profit sharing arrangements.

## Forestry

Established forestry businesses are treated as rural land.

### Who is exempt?

You **do not** need Government approval to buy or take an interest in commercial real estate if you are an Australian citizen (living at home or abroad) or you are ordinarily resident in Australia.

Regardless of your citizenship or residency, you **do not** need Government approval for:

- an interest acquired by will or devolution by operation of law;
- an interest acquired from the Government (Commonwealth, State or Territory, or local) or a statutory corporation formed for a public purpose;
- an interest in developed commercial property (regardless of value) where the property is to be used immediately and in its present state for industrial or non-residential commercial purposes (the acquisition must be wholly incidental to the purchaser's proposed or existing business activities); or
- an interest in developed commercial property valued below \$53 million generally or \$5 million for heritage listed properties (or \$1062 million for US investors).

## Rural land<sup>11</sup>

Rural land is land used wholly and exclusively for carrying on a business of primary production. To be a business of primary production, the business must be substantial and have a commercial purpose or character.<sup>12</sup>

A foreign person needs approval to buy an interest in a primary production business where the total assets of the business exceed \$244 million (or \$1062 million for US investors).

All foreign governments and their related entities should notify the Government and get prior approval before acquiring any interest in rural land.

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11 See also Annex 2.

12 The definition of a primary production business is taken from the *Income Tax Assessment Act 1997*. It refers to production resulting from the cultivation of land; animal husbandry/farming; horticulture; fishing; forestry; viticulture or dairy farming. Primary production for the purpose of the rural land definition does not include vacant land (even if zoned 'rural'), hobby farms, 'rural residential' blocks or land used for stock agistment or mining.

## **Annex 1 — Definitions**

### **Australian urban land**

Australian urban land is any land in Australia that is not rural land. It includes all seabed within Australia's Exclusive Economic Zone (EEZ).

### **Australian urban land corporation or trust**

A corporation or trust that has interests in Australian urban land which makes up more than 50 per cent of the value of its total assets.

### **Direct investment**

A direct investment has the objective of establishing a lasting interest in an asset(s), or a strategic long-term relationship with a target enterprise. It may allow a significant degree of influence by the investor in the management of the target.

It is common international practice to consider any investment of 10 per cent or more as a direct investment. However, Australia's foreign investment regime is concerned with all investments that provide the investor with influence or control over the target, including any indirect acquisition.

Therefore, we consider that interests below 10 per cent may also be direct investments and must also be notified if the acquiring foreign government or related entity can use that investment to influence or control the target. In particular, investments of less than 10 per cent which include any of the following must be notified:

- preferential, special or veto voting rights;
- the ability to appoint directors; and
- contractual agreements including, but not restricted to, for loans, provision of services and off take agreements.

Investments preparatory to a takeover bid will also be considered direct investments and must be notified. Enforcing a security interest over a business' assets or shares is also a direct investment.

### **Foreign governments and their related entities**

Foreign governments and their related entities include:

- a body politic of a foreign country;
- companies or other entities in which foreign governments, their agencies or related entities have more than an aggregate 15 per cent interest; or



- companies or entities that are otherwise controlled by foreign governments, their agencies or related entities.

### Foreign person

A foreign person is:

- a natural person not ordinarily resident in Australia;<sup>13</sup>
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

### Heritage listed

Commercial developed property is heritage listed where the property, or part of the property, is listed for its heritage value by a local, state or territory, or the federal government, or is subject to a heritage overlay or similar designation.

### Joint tenants

Two or more persons that hold property jointly so that each owns an undivided share of the whole. Should one person die, their interest would pass to the surviving co-owner or co-owners.

### Media sector

For screening purposes, the media sector refers to daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media).

### New dwellings

A dwelling that has not been previously sold by the developer and has not been previously occupied (such as, by tenants) for more than 12 months.

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<sup>13</sup> This may include some Australian citizens living abroad, except when they are acquiring Australian urban land.

New dwellings include those that are part of extensively refurbished buildings where the building's use has undergone a change from non-residential (for example, office or warehouse) to residential. It does not include established residential real estate that has been refurbished or renovated.

### Ordinarily resident

A person is ordinarily resident if:

- their continued presence in Australia is not subject to any limitation as to time imposed by law (that is, they are permitted to stay in Australia indefinitely, such as Australian permanent residents and New Zealand citizens); and
- the person has actually been in Australia for 200 or more days in the previous 12 months.

### Prescribed sensitive sectors

The prescribed sensitive sectors are:

- media;
- telecommunications;
- transport (including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided within, or to and from, Australia);
- the supply of training or human resources, or the manufacture or supply of military goods or equipment or technology, to the Australian Defence Force or other defence forces;
- the manufacture or supply of goods, equipment or technology able to be used for a military purpose;
- the development, manufacture or supply of, or the provision of services relating to, encryption and security technologies and communications systems; and
- the extraction of (or the holding of rights to extract) uranium or plutonium or the operation of nuclear facilities.

### Spouse

Spouse includes a de facto partner (whether of the same sex or a different sex) – that is, although they may not be legally married, they have a relationship as a couple and live together on a genuine domestic basis (sections 22A and 22B of the *Acts Interpretation Act 1901*).

### **Substantial interest**

A substantial interest occurs when a single foreign person (and any associates)<sup>14</sup> has 15 per cent or more of the ownership or several foreign persons (and any associates) have 40 per cent or more in aggregate of the ownership of a corporation, business or trust.

### **Temporary resident**

A person that is residing in Australia and:

- holds a temporary visa which permits them to stay in Australia for a continuous period of more than 12 months (regardless of how long remains on the visa); or
- has submitted an application for permanent residency and holds a bridging visa which permits them to stay in Australia until that application has been finalised.

### **United States (US) investor**

A national or permanent resident of the United States of America; a US enterprise; or a branch of an entity located in the US and carrying on business activities there.

### **Branch of an entity located in the US**

A branch may be 'carrying on business activities in the US' where it is doing so in a way other than being solely a representative office; and in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the US and by having its administration in the US.

### **US enterprise**

A US enterprise is an entity constituted or organised under a law of the United States of America. The form in which the entity may be constituted or organised may be, but is not limited to, a corporation, a trust, a partnership, a sole proprietorship or a joint venture.

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<sup>14</sup> See section 6 of the FATA for the list of 'associates'.

## Annex 2

### Policy statement: foreign investment in agriculture

Australia is a capital hungry country that has always relied on foreign investment as a driver of employment and prosperity, including in our agricultural sector. Foreign investment plays an important role in maximising food production and supporting Australia's position as a major net exporter of agricultural produce, by financing investment, and delivering productivity gains and technological innovations.

Without foreign capital inflows, investment in Australia would be limited, resulting in lower food production with potentially higher food prices, as well as lower employment, lower incomes in the sector and lower government revenue. Foreign investment in agriculture supports agricultural production, job creation and contributes to the prosperity of rural communities and the broader Australian economy.

Australia's foreign investment policy strikes the right balance between attracting foreign investment into Australia to support our economy, and ensuring that investments are not contrary to the national interest. This applies to investments in all sectors of the economy, including agriculture.

Under the Government's foreign investment screening arrangements, all proposed investments by foreign government related entities, including in agriculture, must be examined.

Proposed investments by private investors in agribusinesses (including those involving agricultural land) are subject to the same thresholds that apply to other foreign acquisitions of Australian companies or business assets.

In assessing any application under the Government's foreign investment screening arrangements, the Government applies a rigorous national interest test. National interest considerations include the affect of investments on national security, competition, the economy, the community and other government policies. The Government also considers the type of investor and the extent to which an investor operates independently of foreign governments.

Consistent with these principles, the Government is committed to ensuring on a case-by-case basis that investments do not adversely affect the sustainability of Australia's national agricultural resources, including their economic, social and environmental contribution to Australia.

In assessing foreign investment applications in agriculture, the Government typically considers the affect of the proposal on:

- the quality and availability of Australia's agricultural resources, including water;
- land access and use;
- agricultural production and productivity;
- Australia's capacity to remain a reliable supplier of agricultural production, both to the Australian community and our trading partners;
- biodiversity; and
- employment and prosperity in Australia's local and regional communities.

In addition, all investors – both foreign and domestic – must comply with Australian law, irrespective of the value of the investment. An important example of this is the requirement for all investments to be consistent with Australia's national competition policy. The Australian Competition and Consumer Commission rigorously assesses all proposals that have the potential to raise competition concerns, including any potential competitive affects of agribusiness supply chain acquisitions by foreign investors. All potential investors must also obtain any other approvals, such as environmental approvals, that are required under Australian laws.