
Foreign investment law update

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In brief

As the regulation of foreign investment in Australia continues to evolve we provide an update on a number of recent developments:

- signing of China-Australia Free Trade Agreement;
 - announcement of a 3% stamp duty surcharge in Victoria for foreign acquirers of real property;
 - commencement of real estate surveillance and enforcement by the Australian Taxation Office;
 - comments by the Agriculture Minister supporting a ban on foreign government investors acquiring rural land;
 - amendment of complying fund requirements for the Significant Investor Visa program; and
 - establishment of a Premium Investment Visa program.
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In detail

Signing of the ChAFTA

The China Australia Free Trade Agreement (**ChAFTA**) was signed by both countries in a ceremony in Canberra on 17 June 2015. Each country will now undertake their treaty ratification processes ahead of the agreement becoming effective; this is expected by the end of the year.

We discussed the significant benefits of ChAFTA to Chinese investors in Australia in our 3 December 2014 [alert](#); in summary:

- the asset threshold for screening investments made by Chinese private investors in non-sensitive sectors will be raised from its current level of \$252 m to \$1,094m, in line with investors from other major trading partners such as the United States, Japan and New Zealand;
- tariffs on resources, energy and manufactured goods will be eliminated immediately, whilst tariffs in certain sensitive industries such as automotive, steel, aluminium, plastics, canned fruit, carpets, clothing and footwear, will be phased out within 2 to 4 years; and
- a more liberal approach to visa and immigration requirements will apply to Chinese investors.

Surcharges for foreign investors acquiring real estate in Victoria

The Victorian Government has announced in the 2015-16 State Budget that a 3% surcharge will apply to stamp duty payable on the acquisition of residential real estate in Victoria by foreign investors from 1 July 2015. A 0.5% land tax surcharge will also apply to absentee property owners from 2016.

Commencement of surveillance and enforcement by the Australian Taxation Office

The Australian Taxation Office (ATO) has assumed responsibility for the audit, compliance and enforcement of foreign investment laws relating to acquisitions of residential real estate.

The ATO has commenced using its data matching capabilities to review foreign investment applications for the period 1 July 2010 to 30 June 2016 for potential breaches of foreign investment laws. We understand that over 150 cases of potential breaches are currently under investigation by the ATO.

Responsibility for the administration of the foreign investment regulation of residential real estate, including the collection of the application fees, the upfront screening process, compliance activities and enforcement action, will be transferred to ATO from 1 December 2015.

Minister supports ban on acquisition of rural land by foreign governments

In widely reported comments, the Minister for Agriculture, Mr. Barnaby Joyce, has expressed his personal support for a total ban on the acquisition of Australian rural land by foreign government investors. Presently all proposals for the acquisition of rural land by foreign government investors are subject to screening by the Foreign Investment Review Board (FIRB) and may be approved if found not to be contrary to Australia's national interest. It remains to be seen whether these views would be adopted by the Australian Government.

New complying investment framework for Significant Investor Visa program

The Australian Government has announced changes to the complying investment framework for the popular Significant Investor Visa (SIV) program in order to direct investment away from residential real estate and passive investment towards investment in innovation and industrial development.

The changes to the investment framework will commence from 1 July 2015 and will require a visa applicant to invest at least \$5 m over four years in the following investments:

Minimum Investment amount	Type of investment
\$500,000	AusIndustry registered funds (either Early Stage Venture Capital Limited Partnership or Venture Capital Limited Partnership).
\$1,500,000	Funds investing in emerging companies (e.g. a company that have a market capitalisation of less than \$500,000,000 at the time the securities of the company are purchased by the fund).
Balance up to \$3,000,000	Managed funds (open or close-end) or Listed Investment Companies that invest in a combination of eligible assets that include other ASX listed companies, corporate bonds, annuities and real property.

Importantly, investment in residential real estate will only be permitted to comprise 10% of the \$5m minimum investment amount (although investors may invest in excess of this outside of this limit).

New premium investment visa program

A new class of investment visa, the Premium Investment Visa (**PIV**) program will be introduced on 1 July 2015. Unlike SIV which requires investor to invest \$5 m into complying investments for a minimum of 4 years before being eligible to apply for a permanent visa, PIV offers a more expeditious, 12 month pathway to permanent residency. It is established to attract talented entrepreneurs and innovators and access to the program will be by invitation of the Australian Government.

An applicant under the PIV will be required to invest a minimum of \$15,000,000 in managed funds or direct investment in ASX listed assets, government or semi-government bonds or notes, corporate bonds or notes, proprietary limited companies, real property in Australia (excluding residential property), annuities or government approved philanthropic donations.

Let's talk

Our legal experts routinely advise foreign investors on all aspects of their investment in Australia, including:

- foreign investment notification requirements and clearance process;
- corporate structuring and transaction design;
- tax and duty issues in transaction design;
- targeted due diligence in relation to target assets;
- real property conveyance and leasing;
- compliance with requirements in regulated industries; and
- employment, industrial relations and immigration.

We also bring to our clients the breadth of expertise throughout PwC, within Australia and throughout the world, notably including our corporate finance specialists and our real estate advisory team.

To find out more about how these issues might affect you, please contact your usual PwC advisor or:

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