

## Foreign Investment in Australia Local Government Exemptions

Since 3 March 2015 when the Federal Treasurer, the Hon. Joe Hockey MP, issued a divestment order on Mr Hui Ka Yan, reported as being China's 15th richest person, to force the sale of a multi-million dollar Point Piper mansion, the Foreign Investment Review Board (**FIRB**) and *Foreign Acquisitions and Takeover Act 1975* (Cth) (**FATA**) have become very topical.

The key underlining objective of Australia's policy on foreign investment and the **FATA** is to provide the Australian Government with the power to accept or reject proposed purchases of Australian businesses and properties by foreign persons if it considers that the proposed purchase is contrary to the national interest.

FIRB approval is not required for all transactions, there are some exemptions. **FATA** and the *Foreign Acquisitions and Takeovers Regulations 1989* (Cth) set out the terms and conditions that the FIRB will consider and are bound by when making decisions as to foreign acquisition of real estate and businesses in Australia.

As a firm with a strong general real estate practice and a large local government practice we have observed three things:

- Firstly, there continues to be an ever increasing foreign appetite for Australian real estate;
- Secondly, there is a growing number of local governments looking to deal with the land assets in a way that:
  - achieves increased economic activity;
  - produces income sources other than rates;
  - takes advantage of Government policy;
  - delivers a strategic redevelopment / urban renew outcome; and
- Thirdly, foreign entities are clearly interested in partnering with local governments undertaking major real estate projects.



**Jackson McDonald is a full service law firm with demonstrated experience acting for local governments, specifically in relation to major real estate projects.**

What is not known by most of our clients in the local government space is the benefit that local governments enjoy when it comes to real estate transactions with foreign persons.

The FIRB requirements that would otherwise apply to a foreign person purchasing real estate in Australia do not apply if the seller of the real estate is a local government.

Despite there being a multitude of provisions which restrict "foreign persons" from purchasing Australian properties, "assets" owned by a "local governing body" are exempt.

We are not aware of any plans to change this exemption.

In our view:

- a "local government" is a "local governing body" - being the expression used in the FATA; and
- the "assets" of a "local governing body" include real estate.

Put another way real estate sold to a foreign person by a local government does not require FIRB approval, regardless of its value.

Interestingly, the local governing body does not need to be the sole owner of the real estate, it can own the real estate with other persons and the exemption will still apply.

Jackson McDonald is a full service law firm with demonstrated experience acting for local governments, specifically in relation to major real estate projects. We can assist with advice as to different structuring alternatives, legal due diligence of the private sector proponent, land valuation issues, analysis of project risks and preparation of the necessary documentation.



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