

# Investing in Real Estate in Australia for Foreign Investors

Direct Investment in Residential  
Real Estate

## Good Reasons to invest in Australia now



- Barriers for foreign investment have been lowered
- Slower local market activity from domestic investors in market
- Increased number of acquisition opportunities
- Economic and Real Estate fundamentals in Australia remain strong
- Stable government, good banking and land title system
- Low Aussie dollar
- Low domestic and international interest rates

# FIRB & Policy



- Foreign Investment Review Board is a government advisory body that examines proposals to undertake direct investment in Australia
- The government policy is to channel foreign investment into activity that directly increases the supply of **new** housing (new developments - house and land packages, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers

# Who is Exempt?



- **Australian citizens resident abroad**, unless they are purchasing through a foreign registered company or foreign trust and provided property is zoned residential
- **Foreign persons buying as joint tenants** with Australian citizen spouse;
- **Foreign persons who hold permanent resident visas**, unless they are purchasing through a foreign registered company or foreign trust
- **New Zealand citizens**, but not New Zealand permanent residents
- **Since 31 March 2009**, temporary resident visa holders meeting the exemption requirements buying certain residential property such as a single block(s) of vacant land; a new dwelling(s); and/or a second hand dwelling to be used as your principal place of residence (including if it is going to be demolished first then redeveloped)

# Residential Real Estate



- All Australian urban land other than commercial properties (that is offices, factories, warehouses, restaurants, shops), including acquisitions of 'hobby farms\*' and 'rural residential' blocks
- \*Hobby farms - not a substantial primary production business of a commercial nature

# Definition Foreign Person



## A **foreign person** is:

- A natural person not ordinarily resident in Australia
- A corporation or trust in which a foreign person holds a substantial or controlling interest - (where 15 % or more of the shares or units are beneficially held by a foreign person or 40% if 2 or more foreign persons hold an aggregate interest)
- Artificial circumvention of the policy guidelines by nominee directors or blind trusts will breach guidelines

# Foreign Investment Review Board –Changes



Policy for acquisition of residential real estate changed on 21 December 2008 with full implementation of regulation changes occurring on 31 March 2009

# Changes – Summary



- Temporary residents can purchase second hand dwellings as principal residences
- Temporary residents are now exempt from making application to FIRB
- Foreigners with student visas purchasing second hand properties as principal residences can buy more expensive properties
- New and Off the Plan Developments:
  - 100% of development can now be sold to foreign persons
  - Developer now has flexibility to rent out units
  - No advance pre-approval to developer

# Changes – Summary



- Stand alone new dwellings can be sold to foreigners without need for developer/builder to concurrently build a similar dwelling
- Single blocks of vacant residential land – longer time to commence construction, no minimum construction cost and no post construction obligations
- Now simpler for foreign owned companies with businesses in Australia to buy second hand dwellings for use of Australian based staff
- Redevelopment of second hand dwellings - more time to demolish and commence building
- Some hotels and resorts will be treated as commercial and not residential which may simplify approval process

# Changes - Temporary Residents



- **Change** – Temporary residents are able without prior approval to buy a second hand dwelling as a principal residence
- **Change** - Acquisition is exempt – no notification to FIRB is required
- Temporary resident may buy through wholly owned trust or Australian company
- New guidelines still limit temporary resident to buy only one second hand dwelling
- Considerably larger target market for sellers of second hand real estate and more choice of real estate product for temporary residents

## Definition - Temporary Residents



The definition of 'temporary resident' now includes all foreign persons living in Australia who:

- Hold a valid temporary visa which permits them to stay in Australia for a continuous period of more than 12 months (irrespective of how much time is remaining until that visa expires);

or

- Have submitted an application for permanent residency (PR), and hold a bridging visa which permits them to stay in Australia until their PR application has been finalized

Short-term visitors such as tourists, business people and those here for a medical procedure are **not** temporary residents.

# Changes - Second Hand Real Estate for Students



- **Change** – Foreign students can buy more expensive second hand homes – no maximum purchase price
- **Change** - The restriction preventing student visa holders from purchasing a principal dwelling over \$300 000 is removed

Approval is likely to be given to the purchase of a residence where the student is over 18 years of age, studying at a recognized tertiary institution and where the student holds a student visa valid for the next 12 months, and where the residence is near the university.

## Changes - Second Hand Real Estate Foreign Companies



- Foreign companies with Australian businesses can now purchase second hand dwellings for the use of their Australian based staff provided that they undertake to sell or rent the dwelling if dwelling is expected to be vacant for more than 6 months
- **Change** - Allows more flexibility to buy for all staff, not just named executives, and allows the option to rent vacant property if not occupied, rather than requirement that it be sold
- **Change** - No limit on number of second hand dwellings acquired for staff accommodation. Previously restriction was 2 dwellings

## Changes - Second Hand Real Estate - Redevelopment



- Foreign persons may purchase second hand real estate for redevelopment provided redevelopment increases the number of dwellings. No rental income can be obtained from the existing dwelling prior to demolition and owner is required to expend at least 50% of purchase price in construction
- **Change** - Allows owner 2 years rather than 1 year to commence and demolish.

# Changes - Single Block Vacant Land



- Currently, foreign interests can buy vacant land if construction of a house is commenced within 12 months and 50% of land value is spent on construction
- **Change** - Removal of condition for minimum expenditure
- **Change** - Longer time to commence construction – now 24 months
- **Change** - Post construction notification to FIRB is no longer required
- **Change** - Temporary residents will be exempt from notification to FIRB
- Note this does not include large tracts for subdivision or redevelopment which will require submission for approval

## Changes - New Dwellings & Off the Plan



- Positive change for developers of new and off the plan real estate products
- **Change** - Existing requirement that developers sell only 50% of new dwellings to foreign persons has been removed provided that developers market locally as well as overseas
- **Change** - “New units” now may be rented by the developer for up to 12 months, until they find a buyer
- **Change** - No more pre-approvals to developers for sale of 50% to foreigners, but approval process is to be streamlined

# Changes – New Stand Alone Dwellings



- Easier for small builders and developers to sell new houses to foreign persons
- Developers are no longer required to concurrently develop a similar dwelling in order to be eligible to sell a new stand-alone dwelling to a foreign person
- **Change** – Previously developers were required to develop a similar dwelling contemporaneously and sell it to an Australian or eligible buyer

## Changes –Resorts and Hotels



- Some accommodation facilities such as (resorts and hotels) will be treated as commercial real estate rather than residential real estate
- **Change** - Acquisitions to value of \$50 million (or \$5 million for heritage listed properties) will not require FIRB approval
- Accommodation facility must retain its commercial character (short term rental) for exemption to apply

## Changes - Streamlined Administrative Procedures



- More exemptions – so less requirement for notification for temporary residents
- Non resident foreign persons still need to apply
- Different system for off the plan sales – no pre approvals, so applications must be made
- Less delays in approvals – aim is to reduce 30 day time period for approvals
- Reduction of post construction notification
- New forms and notices

# Compliance



- The Treasurer has a wide range of powers under *The Foreign Acquisitions and Takeovers Act 1975* (the Act) to prosecute persons and companies who fail to obtain prior approval to buy property or to comply with conditions
- Penalties can include forced sale, fines or imprisonment

# Contract Process



3 questions for each acquisition:-

Do foreign investment restrictions apply?

Is notification required or is buyer exempt?

What documentation is given to FIRB if notification is required?

If notification is required, contracts should be conditional on FIRB approval – email us for *sample condition for inclusion in contract* [info@msslawyers.com.au](mailto:info@msslawyers.com.au)

# FIRB Application



- Application must be made by prescribed form
- New forms in use since 31 March 2009
- Application forms differ depending on type of purchase and buying entity
- Application may in some instances be made by seller
- Application must in most instances be specific
- FIRB approval is available before purchase – this is particularly important for buyers bidding at auctions where property is sold on unconditional basis
  
- Get it right the first time, let **msl** | michael sing lawyers help!

# How can msl assist



- 25 years of experience in dealing with foreign buyers and sellers and working with FIRB
- Conveniently located Brisbane and Gold Coast offices
- All residential and commercial transactions
- Pre-contractual advice and contract preparation
- Preparation of FIRB applications
- Advice re compliance and non compliance remedies
- Advise on correct buying entity for foreign interests
- Arranging trust and company structures for buyers

## Services we offer



- Conveyancing and Property transactions
- Migration Law
- Commercial and business services
- Banking and Finance Law
- Family and De Facto Law
- Insurance and Risk Management
- Intellectual Property
- Local government, environment and planning
- Litigation and Dispute Resolution
- Sports Law
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# Australian Migration Lawyers



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# Australian Migration Lawyers



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Located on the Gold Coast and Brisbane

- Assists with all cases of migration
- Experienced team with proven technical ability and enthusiasm
- Knowledgeable in all aspects of migration
- Professional and ethical approach
- Advice from preliminary assessment to cancellations and appeals



# Contact Details



Our offices:

## **Brisbane**

Level 10, 410 Queen Street  
Brisbane QLD 4000  
GPO Box 3246 Brisbane QLD 4001 Australia  
t 61 7 3229 6099  
f 61 7 3226 9001  
e [brisbane@msslawyers.com.au](mailto:brisbane@msslawyers.com.au)  
w [www.msslawyers.com.au](http://www.msslawyers.com.au)

## **Gold Coast**

Level 5, Corporate Centre One  
Cnr Bundall Road & Slatyer Avenue  
Bundall QLD 4217  
PO Box 9073 GCMC QLD 9726 Australia  
t 61 7 5597 8888  
f 61 7 5597 8899  
e [info@msslawyers.com.au](mailto:info@msslawyers.com.au)  
w [www.msslawyers.com.au](http://www.msslawyers.com.au)

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