



AGRIBUSINESS



Foreign Investment changes and the effects on Agriculture

AUTHORS // TIM FERRIER AND STEPHEN WEBB

NOVEMBER 2015

FOREIGN INVESTMENT REVIEW BOARD ("FIRB")
CHANGES EFFECTIVE 1 DECEMBER 2015

1. RURAL LAND

At present, foreign persons are required to obtain FIRB approval prior to acquiring an interest in rural land in Australia where the combined value of the rural land and any other rural land held by the foreign person is equal to or exceeds \$15,000,000. Currently, there are no fees payable to FIRB by foreign persons seeking approval to acquire agricultural land.

APPLICATION FEES

From **1 December 2015**, foreign persons will be required to pay an application fee to seek an approval to acquire rural land where their cumulative value of Australian rural land holdings is \$15,000,000 or more.

The following is a breakdown of the Application fees:

Agricultural land value	FIRB fee payable
\$1,000,000 or less.	\$5,000
\$1,000,001 to \$1,999,999	\$10,000
\$2,000,000 to \$2,999,999	\$20,000
\$3,000,000 or more*	\$30,000.00*
* \$30,000 fee increases incrementally by \$10,000 per additional \$1,000,000 in agricultural land value. For example, for agricultural land valued at \$4,400,000 the FIRB fee payable will be \$40,000.	

Rural land means land that is used wholly and exclusively for carrying on a business of primary production. The government has flagged that this definition is likely to be replaced by a broader

definition similar to the definition of Agricultural land as adopted by the ATO (to include land that could be used for primary production) however any change will not be known until the legislation is introduced but it is intended to apply from **1 December 2015**.

2. RURAL BUSINESSES

From **1 December 2015** foreign persons will be required to obtain approval prior to acquiring a direct interest in an agribusiness in Australia where the agribusiness is valued at \$55,000,000 or above. The government will be introducing a new definition for "agribusiness". The government has called for submissions in determining the definition of agribusiness and this definition is intended to apply from **1 December 2015**.

APPLICATION FEES

The following is a breakdown of the Application fees:

Agribusiness value	FIRB fee payable
\$55,000,000 to \$999,999,999	\$25,000
\$1,000,000,000 or more	\$100,000

FREE TRADE AGREEMENT (FTA) COUNTRIES

The \$15,000,000 and \$55,000,000 investment screening thresholds for rural land and agribusiness respectively do not apply to acquisitions by foreign persons from certain countries which have FTA's with Australia. The screening threshold for rural land and agribusiness investments for foreign persons from the United States of America, New Zealand and Chile is substantially higher at \$1,094,000,000 and the screening threshold for rural land investments for foreign persons from Singapore and Thailand is \$50,000,000.

ClarkeKann is a commercial law firm with offices in Brisbane and Sydney. Our expertise covers commercial & corporate transactions, employment & IR, financial services, litigation, risk management and insolvency, property transactions and resources projects, across a range of industries. For a full list of our legal services, please visit our website at www.clarkekann.com.au. To update your contact details or unsubscribe to any of our publications, email us at publications@clarkekann.com.au.

This bulletin is produced as general information in summary for clients and subscribers and should not be relied upon as a substitute for detailed legal advice or as a basis for formulating business or other decisions. ClarkeKann asserts copyright over the contents of this document. This bulletin is produced by ClarkeKann. It is intended to provide general information in summary form on legal topics, current at the time of publication. The contents do not constitute legal advice and should not be relied upon as such. Formal legal advice should be sought in particular matters. Liability limited by a scheme approved under professional standards legislation.

[Privacy Policy](#)



CONTRACTUAL CONSIDERATIONS

Foreign persons who enter into contracts to acquire agricultural land or agribusinesses should, where FIRB approvals are required, ensure they have obtained FIRB approval prior to entering into the contract or alternatively ensure that a condition precedent is included making the contract subject to the foreign person obtaining FIRB approval.

NO REFUND OF APPLICATION FEES

It would appear that any application fees paid to FIRB for approval to acquire rural land and agribusinesses will not be refunded regardless of whether or not the application is successful and regardless of whether the transaction proceeds.

FOR MORE INFORMATION, PLEASE CONTACT:



TIM FERRIER //
Consultant

T 61 7 3001 9215

E t.ferrier@clarkekann.com.au



STEPHEN WEBB //
Lawyer

T 61 7 3001 9263

E s.webb@clarkekann.com.au