



THE LAW SOCIETY
OF NEW SOUTH WALES

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25 March 2015

Manager
International Investment and Trade Unit
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

By email: ForeignInvestmentConsultation@treasury.gov.au

Dear Sir or Madam,

Strengthening Australia's foreign investment framework – options paper

I am writing on behalf of the Rural Issues Committee ("Committee") of the Law Society of New South Wales. The Rural Issues Committee represents the Law Society on rural issues, as they relate to the legal needs of people in rural and remote NSW. The Committee includes experts drawn from the ranks of the Law Society's membership.

The Committee has reviewed The Treasury options paper *Strengthening Australia's foreign investment framework* ("paper") issued on 25 February 2015 and provides the following comments on the paper.

1. Water licences

The paper does not make any reference to foreign investment in water licenses. The purchase of water licences forms part of the current foreign investment framework and is an important component of many foreign investment proposals in agriculture. The paper proposes significant reforms to the foreign investment framework for the agricultural sector and the Committee is of the view that foreign investment in water licences should form part of any review of the framework.

2. Consultation question 7

The Committee notes that the Australian Government is proposing a legislative definition of the term "agribusiness". This term is not currently used or defined in the *Foreign Acquisitions and Takeovers Act 1975* (Cth) or the *Foreign Acquisitions and Takeovers Regulations 1989* (Cth).

If the definition of “agribusiness” is to include all primary production business as well as certain first stage downstream business beyond the farm gate, the Committee is of the view that the definition must be carefully crafted. The Committee notes that the nature of primary production businesses means that the purchase of a business is rare. Acquisitions that are not acquisitions of companies or trusts carrying on those businesses are generally simply asset acquisitions. In particular, any definition of “agribusiness” needs to ensure that the definition does not unintentionally capture everyday business transactions (such as the purchase of livestock, crops, plant and equipment).

3. Consultation question 8

The Committee supports the inclusion of *Division A – Agriculture, Forestry and Fishing* from the *Australian and New Zealand Standard Industrial Classification* codes (“ANZSIC”) in the proposed definition of “agribusiness”. However, the Committee is of the view that the proposed definition should not be too prescriptive or include the detailed subdivisions and groups within ANZSIC. If the proposed definition was too prescriptive or detailed, this could create uncertainty for agricultural businesses. Agricultural businesses change from one type of agriculture to another in the normal course of business and a detailed definition of “agribusiness” could potentially require a fresh investment application prior to each change.

4. Consultation question 13(a)

The paper proposes that a foreign ownership register of agricultural land would collect details such as the name and contact details of the parties, location and size of the property, size of interest acquired, country of origin of the purchaser and their Australian Business Number or Australian Company Number, if applicable.

The Committee notes that privacy implications can arise when considering the proposal to publish ownership details on a register and is of the view that it would be undesirable to publish the address details of any property on the register.

The paper also proposes that legislation would be developed requiring notification of all substantial foreign interests in agricultural land (as at 1 July 2015) to an Australian Taxation Office (“ATO”) register by 30 September 2015. The Committee submits that the proposed deadline of three months for lawyers to report to the ATO on behalf of foreign clients is too short a time frame. This task would require lawyers to identify clients who may be required to self-report and then to contact these clients to obtain necessary information for the register. It may be impossible to complete this task within three months in matters where a lawyer acted for a client in a purchase of rural land a number of years ago.

5. Further consultation

The Committee considers that further consultation with professionals who deal with the transfer of primary production businesses and rural land on a regular basis will be essential when developing any legislation. The Committee suggests that The Treasury give serious consideration to establishing a stakeholder working group prior to the development of a final reform package, or any proposed draft legislation to implement reforms.



The Committee would welcome an opportunity to be involved any future stakeholder consultation. Questions can be directed to Emma Liddle, policy lawyer for the Committee. Ms Liddle is available on 9926 0212 or emma.liddle@lawsociety.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John F Eades', written in a cursive style.

John F Eades
President