

Macquarie Agricultural Funds Management

A Member of the Macquarie Group

Level 11, 1 Martin Place Telephone (02) 8232 0579
Sydney NSW 2000 Facsimile (02) 8232 9999



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Land Register Consultations Working Group
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
Australia

By email: landregisterconsultations@treasury.gov.au

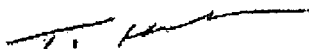
Dear Madam/Sir,

**Consultation paper on establishing a national foreign ownership register for
agricultural land**

Please find enclosed our submission to the Land Register Consultations Working Group on the consultation paper dated November 2012 on establishing a national foreign ownership register for agricultural land. This submission addresses the questions for consultation in the consultation paper.

Should you have any questions regarding this submission, please contact myself on 02 8232 0579.

Yours sincerely



Tim Hornibrook
Co-Head
Macquarie Agricultural Funds Management

February | 13

Consultation paper on establishing a national foreign ownership register for agricultural land

Submission by:
Macquarie Agricultural Funds Management

Level 11, 1 Martin Place
Sydney NSW 2000

About Macquarie Agricultural Funds Management

Macquarie Agricultural Funds Management (MAFM) is an operating business within the Macquarie group of companies. The Macquarie Group is a large, diversified financial services organisation with over 13,400 employees in more than 73 offices in 28 countries and approximately \$341 billion of assets under management¹. Macquarie Group Limited is listed in Australia (ASX:MQG; ADR:MQBKY) and is regulated by APRA, the Australian banking regulator, as the owner of Macquarie Bank Limited, an authorised deposit taker.

MAFM and the funds it manages employ over 200 staff and are responsible for managing over 3.6 million hectares of agricultural land in Australia and Brazil². As at 31 December 2012, MAFM funds had over \$A1 billion of funds committed / under management. In Australia, MAFM manages farms diversified across Northern Territory, Queensland, New South Wales, Victoria and Western Australia.

Since 2003, MAFM has managed Macquarie Group's real asset agricultural fund initiatives. MAFM is responsible for both owning and operating agricultural assets on behalf of investors. MAFM manages, or has formerly managed, investments across livestock, row crops, permanent crops, dairy and forestry. The management team has extensive farm management and investment management experience. With people located in Australia, Brazil, Hong Kong, the United Kingdom and the United States, MAFM is able to take a global view of the opportunities in agriculture.

Executive Summary

This submission seeks to provide comment on the consultation paper dated November 2012 issued by the Land Register Consultations Working Group in relation to the Government's announcement on 23 October 2012 that it will implement a national foreign ownership register for agricultural land (Register). The submission addresses a number of the Working Group's questions for consultation set out in the consultation paper. This submission also outlines the business and principles by which MAFM operates in Australia.

MAFM supports the Australian Government's initiatives to continue to maintain an open and welcoming approach to foreign investment. MAFM is supportive of the proposed implementation of the Register and is pleased to be involved in the consultation process. We raise the following issues in this submission:

- The Register should be a post-transaction system. The Register should not restrict Australia's ability to attract foreign investment to the farm sector.
- To continue to attract necessary foreign capital, Australia needs a simple Register system that is easy to understand.
- The Register should be administered nationally, rather than as a State-based system.
- To manage privacy considerations, the Register should not be publicly available as details of land holdings are commercially sensitive and disclosure to the public would be a disincentive to invest in Australia for foreign owners. The agency should report to the public regularly at an aggregated regional level, rather than identify specific properties or enterprises.

¹ Current as at 30 September 2012

² Currently 11,000 hectares of farmland are operated in Brazil

1. Background to the Submission

Since 2003, Macquarie Agricultural Funds Management (MAFM) has managed Macquarie Group's real asset agricultural fund initiatives. MAFM is responsible for both owning and operating agricultural assets on behalf of investors. MAFM and the funds it manages employ over 200 staff and are responsible for managing over 3.6 million hectares of agricultural land in Australia and Brazil. As at 31 December 2012 MAFM had over \$A1 billion of funds committed / under management.

MAFM is aware there have been community concerns raised recently regarding the sale of rural land to foreign owners. We are supportive of the Government's steps to address these concerns by improving (i) the transparency of foreign ownership of rural land and (ii) the understanding of the role of foreign capital to supplement domestic savings which benefits the Australian economy and rural communities; in particular by establishing a register of foreign-owned agricultural land.

One of our overarching comments on the establishment of the Register is the need to ensure it does not in any way decrease Australia's ability to attract foreign investment to the farm sector. As an export oriented agricultural producer, it is important that Australia remains globally competitive as a destination for foreign investment. Australia is competing for offshore capital to invest into agriculture against not only all of the major agricultural producers but also a host of emerging producers. MAFM's submission is that establishing the Register will not be an impediment to raising capital, provided the Register is not an administrative burden and the information collected is not misused.

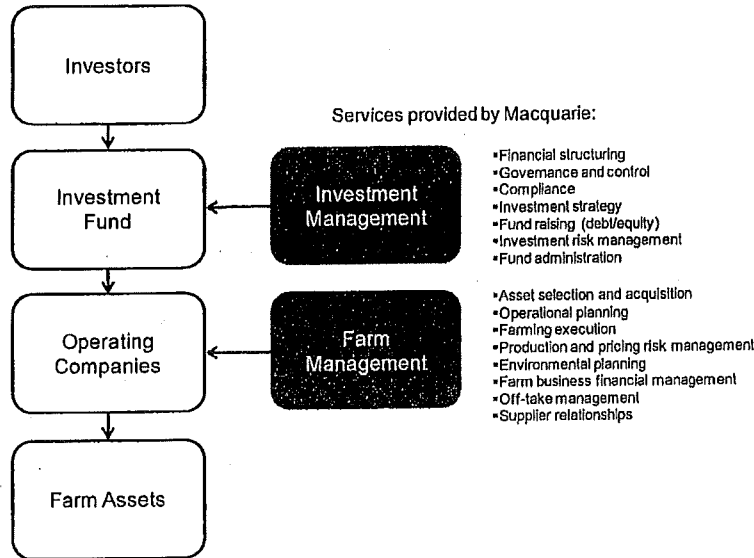
MAFM's real asset agricultural funds

MAFM's business is to raise capital from investors with an appetite for agricultural investments. Many of these investors are overseas financial institutions. In MAFM's experience, most of the demand for direct farm gate agricultural investments in Australia has come from overseas institutional investors. There are two categories of foreign ownership of Australian assets: foreign direct investment and portfolio investment. Portfolio investment refers to the purchase of shares or other instruments such as units in an Australian unit trust.

MAFM currently attracts portfolio investment which does not result in foreign management and direct control of the farms. MAFM's funds are not currently listed and are generally illiquid. There is no established market to sell in a short period.

MAFM is headquartered in Australia with an Australian management team with extensive experience in Australian agriculture across livestock, row crops, permanent crops, dairy and forestry. MAFM's agricultural funds currently use an own and operate model. The funds and their underlying operating companies both own and operate the farms within a well defined investment strategy and for the long term. MAFM is responsible as manager for these investments. Therefore MAFM's management team has extensive farm management and investment management experience. Key decisions relating to farm ownership and the exercise of rights over farming properties are made by MAFM and local Australian boards, rather than the indirect foreign owners themselves. This also means the day-to-day operating decisions such as where farm commodities are sold are driven by market forces and not by political or offshore strategic concerns such as food security.

The following diagram illustrates the main division in functions across MAFM's business:



The MAFM business model provides the following benefits:

- MAFM's clients are typically financial investors such as investment or pension funds seeking to generate a return from ownership of farm gate enterprises; rather than strategic investors, supply chain participants or government owned enterprises that may be investing to access new markets, control the assets or secure supply.
- MAFM is appointed as an experienced Australian farm manager of the farm assets acquired. This ensures day-to-day management stays with an Australian team.
- Additional capital is invested in the properties to increase their value and introduce new technology to improve productivity.
- Employment, training and career progression opportunities are offered to Australian staff. MAFM markets its career opportunities at agricultural school and university career days.
- The underlying operating companies of MAFM managed funds support local communities through sponsorship and community efforts. For example individual properties have sponsored local events such as the Brunnette Races and Cloncurry Stockman's Challenge & Campdraft.

Also by being an active participant in the farming sector MAFM provides the following additional benefits:

- Farm investment provides income and economic activity benefiting those Australian farmers wishing to sell their property either to reinvest or exit the industry.
- The management services provided by MAFM generate fee revenues in Australia. This creates farm management and funds management jobs and increases Australia's overall tax revenue.
- MAFM and the underlying operating companies of MAFM managed funds use local staff, currently employing 171 casual and permanent full time staff in Australia.

- MAFM purchases many farm inputs, equipment, machinery and contracting services from local businesses. Currently MAFM and the underlying operating companies of MAFM managed funds deals with over 2,000 suppliers in Australia.
- MAFM undertakes land-care and biodiversity activities on some of its pastoral properties.

2. Questions for consultation

Below are MAFM's responses to the questions for consultation that the Working Group seeks submissions on:

2.1 What should be the scope of a national foreign ownership register for agricultural land, including definitions?

- We support the current consultation paper, and the Government's announcement to design the Register to improve transparency of foreign ownership in agricultural land. Notwithstanding, it is important that the Register is not an administrative burden and the information collected is not misused.
- It is important that the Register only records foreign ownership post-transaction. A register system that requires pre-transaction notification or approvals would be detrimental to the attractiveness of investment in Australian agricultural land. Larger acquisitions of agricultural land subject to the *Foreign Acquisitions and Takeovers Act 1975* (FATA) would continue to be examined by the Foreign Investment Review Board (FIRB).
- We prefer that the Register be administered nationally with one main point of contact and accountability, rather than be a State-based system. This is similar to the United States register and consistent with the current regulation of foreign investment in Australia by FIRB. Owners of land across State boundaries should have the benefit of a centrally operated Register.
- This should make compliance as simple as possible to reduce costs and avoid different rules emerging across the States. Divergence across the States would be particularly problematic for large scale businesses like MAFM which manages farm portfolios diversified across different States.

2.2 What interests should or should not be included when defining foreign ownership?

- We prefer that the Register captures ownership or equity interests in land. Perpetual leases where the term of the lease is 25 years or more should also be included, in line with the current position in Queensland under the *Foreign Ownership of Land Register Act 1988*. This is simple and clear in the case of the own and operate model used by MAFM. Where agricultural land is foreign owned, that land should be reported on the Register.
- The interests in rural land that should be entered on the Register should follow the acquisition and control provisions in the FATA.
- There are various ways foreign investors can gain exposure to agriculture. In the case of a sale and lease back model, the foreign owner may acquire the land and lease it to an unrelated operator or neighboring farmer. In this case registration of the foreign ownership would be required.
- Our view is that there is little value in collecting information on foreign lease-hold interests³, security interests held by banks, profit-sharing arrangements or other contractual arrangements. Hybrid arrangements such as convertible debt could still be

³ Leases where the term of the lease is less than 25 years, consistent with the position in Queensland

captured when converted from debt to equity. As proposed above, we prefer the relevant trigger point is equity ownership of the land title.

- The Register should capture both land acquisitions and land disposal transactions. This means transactions that deal with the ownership of the title to land are recorded. This should ensure the Register gives an accurate balance of the size of foreign agricultural landholdings, and includes land sales by foreign investors. For completeness, any person owning agricultural land who subsequently becomes a foreign person should be required to register.

2.3 What do you view as the most important data requirements of a national foreign ownership register for agricultural land, and why?

- Firstly, one of the key issues is to determine which level of ownership interests are recorded in the Register. Foreign investment is normally made via a local entity. Therefore the immediate owner of the land title may be an Australian company. It is therefore necessary to provide meaningful and transparent data to the Register that the test for foreign ownership 'look-through' the corporate ownership chain.
- However, the test for disclosure should only look-up to the level of indirect foreign ownership with control of the investment. The test should prevent complex examination of offshore holding structures and not put undue administrative burden on participants in Australia's agriculture sector. The distinction should be made between widely held and controlled entities. In other words, cross border corporate structures should continue to look-through to the ownership level where the foreign owner is widely held by a smaller number of entities and is not controlled by a single entity. For example some foreign investors may be investment funds or pension plans with widely held beneficial owners. Control of investment decisions is held at the investment vehicle level, rather than by the ultimate beneficial owners.
- Secondly, it may also be commercially sensitive to publicly disclose specific details of ultimate foreign owners. This level of disclosure may be a disincentive to invest in Australia for some foreign owners that may not want to have details of their portfolio investments disclosed to the public or available for analysis by competitors. We are supportive of disclosure of direct investments by entities controlled by foreign governments.
- Therefore, we propose that the type of data to be required for notification to the Register is consistent with the current foreign ownership information required in Queensland. The important difference is that MAFM considers the Register should not be public. The agency responsible for the Register should report regularly to the public the aggregated percentages and total hectares of foreign owned land by region rather than specifically identifying individual properties or enterprises.
- Details for notification on the Register should include:
 - Property details by reference to the land title.
 - Country of residence of indirect foreign owners.
 - Type of entity of foreign investor. For example:
 - natural person;
 - company/corporation wholly foreign owned;
 - company/corporation partly foreign controlled. In this case include percentage foreign and country of foreign shareholders.
 - Whether any foreign interests are State owned.

- Thirdly, we consider that the price of transactions or value of land acquired or disposed not be disclosed and included in the Register. This information is commercially sensitive and agreed by private negotiations between parties. There are separate market mechanisms for analyzing and recording land prices and transactions, such as land titles offices, local government (valuations for rates), ABARES, RP Data, independent valuers and real estate agents.

2.4 How do you think the following terms should be defined for a national foreign ownership register for agricultural land, and why?

- ***Agricultural land***
 - We do not have any objections to the current term 'rural land' as used in the foreign investment regulatory framework.
 - We prefer that the Register exclude rural land below the minimum threshold discussed in 2.6 below.
- ***Foreign ownership***
 - The key terms defining foreign ownership, such as 'foreign corporation' or 'foreign person' should use the existing foreign control provisions of the FATA.

2.5 What additional information could a national foreign ownership register for agricultural land collect, and why? For example, what types of water access rights (such as a water access entitlement) could be included?

- Water rights should be treated in a similar way to land and captured in the Register. Australia is unique in that it has a well regulated and tradeable market for water independent of land. Water is both a scarce resource and a key input to much of Australia's agricultural production. It is important to have transparency in this market as well as ownership of agricultural land.
- The same distinction should be made as for land and the Register only capture details of equity-like ownership and not other interests in water. This means it only applies to permanent water entitlements and not to temporary allocations and leases over water.

2.6 Is it desirable to exclude from a national foreign ownership register of agricultural land some smaller transactions? If so, what threshold is appropriate, and why?

- MAFM's preference is that small transactions be excluded from the Register. The thresholds used in the United States would be a sensible starting point, being areas of less than four hectares, so long as the land does not yield more than \$1,000 in gross annual sales. The Register should focus on more commercially sized properties and not hobby farms. This is consistent with the definition of primary production business used in Australia's foreign investment policy which does not include hobby farms.
- With the small minimum threshold above, the majority of farm transactions involving foreign owners would be captured by the Register. Foreign investors tend to make larger acquisitions to justify the greater due diligence costs and risks of investing offshore. Accumulation of very small land interests below four hectares to avoid disclosure would generally not be practical. In most cases land titles for commercial farms are larger than four hectares.

2.7 Do you consider it important that the national foreign ownership register for agricultural land should include an initial stocktake of land holdings by foreign persons noting the potential compliance and other costs that may be involved? Why?

- Yes an initial stocktake of land holdings should be conducted due to the fact that agricultural land generally only changes hands infrequently. This will help with drawing statistical inferences from the data such as the absolute level of foreign ownership as well as changes over time.
- A generous allowance or grandfathering period should be given to allow market participants to understand the new rules and communicate with foreign owners to comply with the new laws. We have no objections to the six month period suggested in the consultation paper.

2.8 What is the most effective way to undertake an initial stocktake?

- MAFM has no comments to offer on this question.

2.9 What specific rules or other arrangements do you consider important to include in any compliance framework?

- MAFM has no comments to offer on this question.

2.10 Having regard to arrangements in Australian jurisdictions and overseas, what timeframe for the provision of registration information do you consider appropriate?

- We consider the timeframes in Queensland and the United States to be reasonable. They require foreign owners to report acquisitions or disposals within 90 days after the transaction.

2.11 How should information collected in the register be reported and disclosed, and in what level of detail, while meeting privacy and confidentiality obligations?

- We prefer the Register be administered nationally, similar to the United States register. MAFM's preference to manage privacy considerations, is that the Register should be kept by the agency responsible and not be publicly available. The agency could regularly report aggregated percentages and total hectares of foreign owned land by region rather than specifically identifying individual properties or enterprises. Reporting ownership levels and trends at a regional level should allow for meaningful reporting to the public.

2.12 How could the data collection processes underpinning a national foreign ownership register for agricultural land be coordinated with other related data collection processes?

- As discussed earlier, we prefer that the Register is administered nationally, rather than by State-based administrators. The central body would be responsible for coordinating with State or Territory governments, for example in relation to land titles or for reporting at regional levels. Through having a centralized system, there should be a single level of ultimate accountability for the integrity of the Register and improved coordination across States.

2.13 Do you have any suggestions or comments on how to minimize the regulatory burden associated with a national foreign ownership register for agricultural land?

- Owners of land across State boundaries should have the benefit of a centrally operated Register. A centralized system and single body with responsibility may avoid differences between rules and processes across the States.
- We also submit the test for foreign persons should limit tracing up through offshore corporate chains to the final beneficial owners. This could add significant compliance burdens to participants in Australia's agriculture sector. Instead, the test for disclosure should only look-up to the level of indirect foreign ownership with control of the investment. The overriding aim should be to avoid creating disincentives for foreign investment in Australian farmland.

2.14 Please consider providing any general or additional feedback to the working group to assist in developing a national foreign ownership register for agricultural land?

- No additional comments.

