



The examination of foreign investment applications is rigorous. The assessment process seeks to ensure that particular proposed investments are not contrary to Australia’s national interest. In fulfilling this objective, proposed investments are examined with a view to identifying any sensitivity regarding the national interest and determining whether these sensitivities can be mitigated or managed.

FIRB involvement

The Board provides advice on the application of the foreign investment framework across the range of proposed investments received and on foreign investment policy issues. It provides specific advice on the more significant applications received and also reviews the general handling of other applications. The Board performs this role with the benefit of weekly reports on applications received and through regular meetings and discussions with the Executive Member and Treasury or ATO officers. Formal Board meetings are generally held monthly, with telephone discussions taking place in the intervening weeks. The Board members draw on their considerable collective and individual professional and commercial experience in discharging their advisory role.

Handling of commercially sensitive and personal information

The Board recognises that much of the information required to assess an application will be commercially sensitive or of a private or confidential nature. Consequently, appropriate measures are in place to ensure that confidentiality is protected.

In the event that access to confidential information is sought for purposes other than the assessment of an application, FIRB agencies are subject to legislative provisions that govern if information received under the framework may be used or disclosed. Circumstances in which information can be disclosed include for the administration of specified Commonwealth statutes, to certain law enforcement bodies and in aggregate form, such as the public reporting of FIRB data in this report. Unauthorised disclosure of protected information under the framework is an offence subject to a maximum of two years imprisonment, a \$25,000 fine, or both.

Application screening process

Key elements of the application screening process are outlined below, and summarised in Figure C.1.

Initial examination

The initial examination seeks to determine whether an application meets the notification requirements for a proposal in so far as the *Foreign Acquisitions and Takeovers Act 1975* (the Act) applies, whether the application contains sufficient detail and that the correct application fee has been paid. Timing is also considered, including deadlines that are commercially important to the applicant. The Board has direct and early involvement in significant or sensitive applications.

Consultation arrangements

For significant applications, consultations are undertaken with Australian Government departments, state and territory government departments, national security agencies and authorities with responsibilities relevant to the proposed investment. Advice and comments provided by such agencies are important in assessing the implications of proposed investments and in particular, in determining whether they raise any national interest issues. The Board may also receive unsolicited submissions from third parties.

National interest factors

The Act empowers the Treasurer to prohibit an investment if satisfied it would be contrary to the national interest. However, the general presumption is that foreign investment is beneficial, given the important role it plays in Australia's economy.

The national interest, and what would be contrary to it, is not defined in the Act. Instead, the Treasurer can decide in each case whether the investment would be contrary to the national interest. Across all applications the Government typically considers the following factors:

- national security;
- competition;

- other Government policies (including taxation);
- impact on the economy and the community; and
- the character of the investor.

Recognising their significance, additional factors are considered as part of the national interest test for proposed investments in the agricultural sector and for residential land as well as for applications made by foreign government investors. General guidance on the national interest factors is published in *Australia's Foreign Investment Policy*.

Extending the statutory timeframe

The Act requires a decision to be made on applications within 30 calendar days of the correct fee being paid, unless the application is a variation application. The Act provides a further 10 calendar days for the applicant to be notified of the decision. If a decision is not made within this time or the applicant has not been advised, the application is deemed to be 'approved' since 'no objection' to the proposal has been made or an exemption certificate is deemed granted.

If such applications cannot be decided within 30 days, because they are complex or further information is needed to properly assess them, the applicant can voluntarily extend in writing the decision period where it is clear that more time will be required. In practice, this is the common way of extending the statutory timeframes. Alternatively, the Treasurer can issue an Interim Order extending the timeframe up to a further 90 days.²¹

Approvals and Conditions

The Board, Treasury and the ATO work closely with applicants, and in some cases, vendors. If a proposed investment raises potential national interest concerns, these concerns are discussed with the applicant and the applicant is provided an opportunity to comment. If the applicant proposes mitigating actions, these will also be taken into account.

Where a proposed investment raises no national interest concerns or that any concerns are adequately addressed by conditions, the applicant is notified in writing of no objection or no objection subject to conditions, or granted an exemption certificate. Once an applicant receives a no objection or no objection subject to condition notification or is granted an exemption certificate, the applicant may proceed with the proposed investment. If national interest concerns remain and may not be able to be addressed, the proposed investment may be prohibited by the Treasurer, or in the case of an exemption certificate, the Treasurer may decline to grant the exemption certificate. The Treasurer declining to grant an exemption certificate is without prejudice to future applications for specified targets that the foreign person may lodge.

²¹ Interim Orders are not available for exemption certificate applications.

Figure C.1: FIRB application screening process

