



Australian Government
Foreign Investment Review Board

REGULATOR PERFORMANCE FRAMEWORK

Foreign Investment Review Board

Report 2015-16

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INTRODUCTION

The Government released its Regulator Performance Framework (the Framework) as part of the 2014 Spring Repeal Day. It is a key part of the 'Cutting Red Tape' agenda.

The Foreign Investment Review Board (FIRB) is subject to the Framework as a regulator of foreign investment. The FIRB supports the Framework and is committed to continuous improvement in its regulatory approach.

The FIRB is supported by the Foreign Investment Division (FID) within the Department of the Treasury and by the Australian Taxation Office (ATO). FID is responsible for the day to day administration of the foreign investment framework in relation to business, agriculture and commercial land proposals and the ATO is responsible for administering foreign investment into residential real estate.

Commencing with this report covering 1 July 2015 to 30 June 2016, the FIRB's performance will be assessed annually through externally validated self-assessments against the Framework.

The Framework encourages regulators to minimise the regulatory burden created through their administration of regulation. It is focussed on the administration, monitoring and enforcement of regulation, not the setting of policy.

The Framework establishes a common set of six key performance indicators (KPIs) that will allow for the comprehensive assessment of regulator performance and their engagement with stakeholders, specifically:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities;
2. Communication with regulated entities is clear, targeted and effective;
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed;
4. Compliance and monitoring approaches are streamlined and coordinated;
5. Regulators are open and transparent in their dealings with regulated entities; and
6. Regulators actively contribute to the continuous improvement of regulatory frameworks.

In consultation with the Foreign Investment Committee of the Law Council of Australia (the Committee), the FIRB has established Treasurer-approved metrics for each KPI as a base from which the annual assessment of the FIRB's performance will be made.

Many of the metrics appear in more than one measure and in more than one KPI. To avoid repetition metrics that are repeated are not addressed in every KPI in which they appear.

The Committee is the Ministerial-approved consultation body for the FIRB for the purposes of the Framework. Members of the Committee, along with other organisations that interact with the FIRB on a regular basis, were surveyed in relation to the FIRB's performance as a regulator and the responses have been used to inform this assessment and to determine areas of focus for the coming year.

OVERVIEW OF 2015/16

The Australian Government welcomes foreign investment. It has helped build Australia's economy and will continue to enhance the wellbeing of Australians by supporting economic growth and innovation into the future.

Australia's foreign investment review framework balances the need to welcome foreign investment against the need to reassure the community that the national interest is being protected, whilst minimising the regulatory burden on foreign investors.

All foreign investment applications are reviewed against the national interest on a case by case basis with recommendations made to the Treasurer or other decision maker. If it is ultimately determined that an application is contrary to the national interest, the FIRB may recommend that it not be approved, or that conditions be applied to safeguard the national interest.

During the reporting year the Government introduced changes to strengthen Australia's foreign investment framework through amendments to the *Foreign Acquisitions and Takeovers Act 1975* and the introduction of the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015*. The legislation strengthens the laws around foreign investment, introduces application fees and imposes penalties for breaching the foreign investment rules.

At the same time responsibility for considering applications to purchase residential real estate was transferred to the ATO. The ATO also collects all foreign investment application fees.

The changes to the framework in December 2015, including the introduction of fees, caused a significant increase in the number of cases in the preceding months. Around 16,000 applications were received in November, including almost 8,000 in the final week, compared to the average number of monthly applications for 2014-15 of around 3,200. This caused an increase in the average time taken to process applications in subsequent months.

The extended caretaker period as a result of the Federal election in July 2016 also impacted on the time taken to process applications.

Consideration of the national interest is an inherently complex matter and a significant change to the framework will require a period of adjustment. The introduction of new legislation strengthening the laws around foreign investment and the introduction of application fees understandably had an impact on the FIRB and its stakeholders.

In order to minimise the ongoing impact the FIRB proposed, and in some cases has already put in place, a number of changes to streamline the application process where possible.

To assist in the transition, the FIRB also significantly increased its stakeholder engagement during the year with a number of consultations and information sessions around the country on the framework generally as well as on specific areas of the foreign investment process.

ASSESSMENT AGAINST KEY PERFORMANCE INDICATORS

KPI 1 – REGULATORS DO NOT UNNECESSARILY IMPEDE THE EFFICIENT OPERATION OF FOREIGN INVESTORS

Measures of good regulatory performance	Activity-based evidence and metrics
<p>Demonstrate an understanding of the operating environment of the industry or organisation, or the circumstances of individuals and the current and emerging issues that affect the sector.</p>	<ul style="list-style-type: none"> • Regular, ongoing consultations or engagement with stakeholders on policies and processes to be undertaken, including industry associations: <ul style="list-style-type: none"> – Number of FIRB information sessions. – Number of meetings with industry associations. – Number of meetings with government agencies. • Reporting will include a qualitative assessment of stakeholder satisfaction with these consultations. • Have in place processes and regularly monitor to ensure the confidentiality of information provided by applicants.
<p>Minimise the potential for unintended negative impacts of regulatory activities on foreign investors.</p>	<ul style="list-style-type: none"> • Incorporate feedback from stakeholders into our processes. • Seek feedback on processes from other Government agencies and how this impacts on the FIRB processes.
<p>Implement continuous improvement strategies to reduce the costs of compliance for foreign investors.</p>	<ul style="list-style-type: none"> • A qualitative assessment on processes will be undertaken and appropriate changes made to processes. • Ensure a consistent and commercially neutral approach to reviewing applications: <ul style="list-style-type: none"> – An internal manual is available to staff which provides guidance on reviewing applications consistently and on a commercially neutral basis.

To ensure that there is a shared understanding of the foreign investment framework and environment the FIRB holds regular sessions with stakeholders ranging from individuals to peak bodies, industry advisors and government agencies. These sessions allow the FIRB to provide advice on the foreign investment framework as well as to receive feedback on its role as a regulator. See [Appendix A](#) for number of sessions held.

Survey respondents were evenly split between there being enough consultation and more needed while more than half rated the quality of consultation as high or very high with the remainder rating it as acceptable.

Overall, performance in relation to this metric was good. Notwithstanding the challenges arising out of the commencement of new and complex legislation, a new process with greater scrutiny of applications and the introduction of fees, the survey results are a positive reflection of the increased commitment and focus on stakeholder engagement over 2015-16.

KPI 2 – COMMUNICATION WITH FOREIGN INVESTORS IS CLEAR, TARGETED AND EFFECTIVE

Measures of good regulatory performance	Activity-based evidence and metrics
<p>Provide guidance and information that is up to date, clear, accessible and concise through media appropriate to the target audience.</p>	<p>Information on the website is clear, accessible and up to date.</p> <ul style="list-style-type: none"> • Where possible, the FIRB website conforms to the Government’s accessibility guidelines and web content is aligned across ATO, FIRB and other relevant government agencies. • A qualitative assessment will be made on the clarity and timing of the website publication.
<p>Consider the impact on foreign investors and engage with industry groups and representatives of the affected stakeholders before changing policies, practices or service standards.</p>	<ul style="list-style-type: none"> • In consultation with stakeholders, FIRB considers the possible impacts of potential policy changes when making recommendations to Government. <ul style="list-style-type: none"> – Number of FIRB information sessions. – Number of meetings with industry associations. – Number of meetings with government agencies. • A qualitative assessment of stakeholder satisfaction with the consultation process will be undertaken.
<p>Provide decisions and advice in a timely manner, clearly articulating expectations.</p>	<p>A qualitative assessment of stakeholder satisfaction with the timeliness of general advice will be undertaken. Awareness of commercial deadlines under which applicants are operating.</p> <ul style="list-style-type: none"> • Notification on the decisions taken is provided as soon as possible after that decision has been reached. • Proportion of applications completed within the statutory period of 30 days.

The FIRB communicates with foreign investors in a number of ways including through the FIRB websites (Treasury and ATO), through regular meetings with stakeholders and through consultation on specific issues such as proposed changes to the framework. The FIRB has a general enquiries telephone line and email address and all applications are allocated a case officer with whom an investor can discuss their application.

Three quarters of survey respondents rated the quality of information on FIRB's websites as high or very high. No respondents felt that the quality of the website was unacceptable. Comments on the website ranged from being pleased with the increased number of guidance notes to suggestions that the number was becoming unwieldy but reflected the complexity of the underlying legislation.

A number of survey respondents commented that while they appreciate the dedication of FIRB personnel in assisting applicants to meet commercial deadlines, most applications are requiring an extension beyond 30 days. This was mostly attributed to the complexity of the underlying legislation introduced in December 2015, particularly the introduction of fees. Average processing times decreased in the subsequent months but were impacted again by the caretaker period leading up to the Federal election in July 2016.

The FIRB recognises that the increased case processing times due to the December 2015 changes and the caretaker period leading up to the Federal election was a significant concern for investors.

We will continue working with stakeholders to ensure that applications are processed in a timely manner.

The FIRB considers our performance under this KPI to be an area of comparatively high achievement. We have been able to provide high quality information to the regulated population in a challenging regulatory environment.

KPI 3 – ACTIONS UNDERTAKEN BY REGULATORS ARE PROPORTIONATE TO THE REGULATORY RISK BEING MANAGED

Measures of good regulatory performance	Activity-based evidence and metrics
<p>Apply a risk-based, proportionate approach to compliance obligations, engagement and regulatory enforcement actions. Recognise the compliance record of foreign investors.</p>	<p>FIRB ensures that there is sufficient and appropriate public information to aid stakeholders in complying.</p> <ul style="list-style-type: none"> • FIRB website information is updated in a timely manner. • Reporting will be based on a qualitative assessment of the timeliness of web updates and, more generally, the comprehensiveness of information provided to assist stakeholders to comply. <p>Compliance action and scrutiny is risk-based (that is, the level of scrutiny takes account of the compliance record and degree of risk).</p> <p>Application of penalties takes account of factors such as the compliance record of the foreign investor.</p>
<p>Consider all available and relevant data on compliance.</p>	<p>Compliance strategies utilise a range of information available, including information from third parties with a view to reducing the burden of compliance on the foreign investor.</p> <ul style="list-style-type: none"> • Types of information sources used such as information from ATO, immigration and Austrac. • Qualitative assessment undertaken on types of information sources used.

In order to assist foreign investors to comply with their obligations under the foreign investment framework the FIRB ensures that information conveyed to foreign investors is regularly reviewed and updated to remain clear, relevant and current. Even numbers of respondents thought that the FIRB websites were updated in either an acceptable or very timely fashion.

The FIRB considers each application on its merit and considers whether the investment is contrary to the national interest. The FIRB consults with Australian, state and territory government departments, national security agencies and authorities with responsibilities relevant to the applications. Conditions may be recommended to the decision maker and in extremely rare cases a recommendation may be made to prohibit the action.

As part of its compliance activities the FIRB conducts data matching using various sources including taxation, immigration, banking, land titles etc. The FIRB also receives annual and exception-based reports from foreign investors on their compliance with conditions as well as information from third parties such as other regulators and the public generally. These reports are assessed by the FIRB and the appropriate action taken, taking into account the type of breach. Data on compliance activities is in [Appendix A](#).

During 2015-16 five real estate applications were declined while no non-real estate applications were declined. Thirty residential properties were required to be divested. Penalties issued under infringement notices were applied to minor breaches.

The FIRB believes that it works closely with foreign investors to assist them in meeting their obligations under the foreign investment framework and that regulatory action is risk based and appropriate.

Overall our performance under this KPI was good.

KPI 4 – COMPLIANCE AND MONITORING APPROACHES ARE STREAMLINED AND COORDINATED

Measures of good regulatory performance	Activity-based evidence and metrics
<p>Utilise existing information to limit the reliance on requests made to foreign investors and share the information among other regulators, where possible.</p>	<p>Information is shared among government agencies.</p> <ul style="list-style-type: none"> • Number of inter-departmental committee (IDCs) meetings. • Consult with relevant government agencies. • Draw on other government agencies’ information, data and systems (as appropriate) to reduce information requests to applicants where possible. • Draw on previous applications as appropriate and where possible. • Utilise public sources of information including information such as search engines and stock exchange filings. <p>A qualitative assessment undertaken on the sharing and use of existing information.</p>
<p>Base monitoring and inspection approaches on risk and where possible, takes into account the circumstance and operational needs of foreign investors.</p>	<p>Regular review and assessment of agreed conditions and undertakings imposed on foreign investment proposals.</p> <ul style="list-style-type: none"> • Number of reviews of conditions and undertakings in a year.

When assessing an application, or compliance with an approval, the FIRB consults with Australian, state and territory government departments, national security agencies and authorities with relevant responsibilities in each case (our consult partners). This allows the FIRB to utilise the expertise and information in those organisations to streamline the information and advice gathering process and ultimately the assessment of the application.

Conditions are imposed on a case by case basis to mitigate risks and to ensure that investments are not contrary to the national interest. Similarly, foreign investor reporting obligations range from quarterly to an on exception basis, depending on a number of factors including the investor, the type of investment and the condition itself.

The FIRB reviews conditions and undertakings imposed on acquisitions on a six-monthly basis and when requested by foreign investors.

It is general policy for FIRB to report potential breaches of the Act to the Department of Immigration and Border Protection, the ATO, the Australian Federal Police, national security agencies and other government agencies as appropriate.

The FIRB holds regular meetings with its consult partners to ensure that information is being shared and that we are working together to ensure an efficient and effective process. The FIRB also holds interdepartmental committee meetings with respect to particular investment applications and foreign investment issues (see [Appendix A](#)).

The FIRB believes that it has close working relationships with its consult partners and will continue to refine those relationships to improve co-ordination and turnaround times. These close partnerships have enabled us to perform to a high standard under this KPI.

KPI 5 – REGULATORS ARE OPEN AND TRANSPARENT IN THEIR DEALINGS WITH FOREIGN INVESTORS

Measures of good regulatory performance	Activity-based evidence and metrics
Ensure information on risk-based frameworks is publicly available in a format which is clear, understandable and accessible where possible.	<p>Clear information on FIRB website, including for example policy documents, guidance notes and annual reports, which gives an overview of the framework, including the decision making process.</p> <p>A qualitative assessment undertaken of the information on the website.</p>
Be open and responsive to requests from foreign investors regarding the operation of the regulatory framework, and approaches implemented by regulators.	<p>Email and phone queries are adequately responded to:</p> <ul style="list-style-type: none"> • Data on phone enquiries including waiting times and number of calls taken. • Number of stakeholder engagement events.
Ensure performance measurement results are published to ensure accountability to the public.	Performance-related information published in annual reports in a timely manner.

The FIRB aims to be transparent in its role and its approach to the regulation of foreign investment. The role of the FIRB is published on its website. The Government’s approach to the regulation of foreign investment is clearly outlined in the *Australia’s Foreign Investment Policy* document, also available on the website.

There are multiple sources of information on the FIRB website to provide guidance on the operation of the foreign investment framework.

Three quarters of survey respondents rated the quality of information on FIRB’s websites as high or very high with the remainder rating it as acceptable.

The FIRB regularly engages with foreign investors, their representatives or agents and Australian businesses to provide information on the operation of the foreign investment framework.

Some feedback from stakeholders commended the FIRB on being more available than in the past and willing to engage on difficult issues. In contrast other feedback was that extensions are being requested on the majority of applications and this is causing uncertainty for foreign investors and that more transparency of the process and timing would be helpful.

Statistics on phone enquiries and stakeholder engagements are at [Appendix A](#).

While there is some criticism that some changes to the Foreign Investment Framework may not have involved adequate consultation the FIRB believes that every effort was made to consult where possible and will continue to work with stakeholders to ensure that they are kept informed of developments in the Foreign Investment Framework. For this reason, we believe our performance under this KPI was good and note our ongoing efforts to improve our openness and transparency in dealing with foreign investors.

KPI 6 – REGULATORS ACTIVELY CONTRIBUTE TO THE CONTINUOUS IMPROVEMENT OF REGULATORY FRAMEWORKS

Measures of good regulatory performance	Activity-based evidence and metrics
Establish cooperative and collaborative relationships with stakeholders to promote trust and improve the efficiency and effectiveness of the regulatory framework.	Qualitative assessment of processes designed to allow active and regular engagement with stakeholders. <ul style="list-style-type: none"> • Number of stakeholder engagement events.
Engage stakeholders in the development of options to reduce compliance costs.	Number of stakeholder events held to facilitate participation in the development and/or amendment of regulatory frameworks and a qualitative assessment of stakeholder satisfaction with those events.
Regularly share feedback from stakeholders and performance information with policy departments and across the Foreign Investment Division (FID) and other areas in Treasury to improve the operation of the regulatory framework and administrative processes.	Processes are in place to facilitate the flow of information between the regulator on policy and regulatory functions in FID, other areas of Treasury and also other government agencies. <ul style="list-style-type: none"> • Number of IDC meetings held. • Number of stakeholder engagement events. Processes in place to improve understanding of foreign investment regime. <ul style="list-style-type: none"> • Attend external meetings and seminars.

The FIRB actively engages with potential foreign investors and their representatives, industry peak bodies, Australian, state and territory government departments, national security agencies and authorities that are relevant to the foreign investment review process.

Regular and ad hoc feedback sessions are held with these organisations, which are designed to develop a shared understanding of the foreign investment environment and to improve the experience of all participants.

The FIRB participates in the Community of Practice for Commonwealth Regulators which provides invaluable insights into the approaches and methods used by other regulators.

Our overall performance under this KPI has been good and this is supported by the statistics on stakeholder engagement available at [Appendix A](#).

FUTURE FOCUS AREAS

The FIRB is committed to continuous improvement in its regulatory approach. We work closely with all our stakeholders to improve the regulatory experience and process. Feedback received on an ongoing basis, as well as through the Framework and the drafting of this report, is incorporated into our processes where possible.

Overall the FIRB has performed well under the standards set by the KPIs and metrics. Survey responses, however, highlighted a number of areas for improvement.

Based on this feedback the key areas that the FIRB intends to focus on over the next period are:

- improving the timeliness of information request responses and application processing times more generally by working closely with consult partners to agree timelines and priorities and to improve the flow of information;
- streamlining the fee process by addressing system issues with the calculation of fees for certain types of applications, by further utilising the payment receipt capabilities of the ATO and by streamlining the fee adjustment process;
- redesigning the online application portal to provide a more flexible, user friendly experience for all foreign investors; and
- ensuring that while there is sufficient guidance available on FIRB's website that is complete and accurate, that it does not become overwhelming. This can be monitored through discussions with stakeholders in regular meetings and through ad hoc feedback.

APPENDIX A - QUANTITATIVE DATA

Metric	Residential	Non residential
Number of FIRB information sessions	32	6
Number of IDCs	3	13
Number of stakeholder engagement events	23	179
Number of attendees at stakeholder events		2,500
Number of phone calls received via the FIRB Enquiry Line (not including calls made directly to case officers)	14,234	12,614

2015-16 Compliance activities	
Number of matters referred for investigation	2,104
Number of properties required to be sold	30
Value of properties required to be sold	\$78,384,819
Number of Penalties	134

APPENDIX B - EXTERNAL VALIDATION OF THE FIRB'S SELF-ASSESSMENT

The Foreign Investment Committee of the Law Council of Australia is the Ministerial-approved consultation body for the FIRB for the purposes of the Framework and this report.

The Committee has been consulted in the drafting of this report, its feedback has been taken into account, and it agrees with the assessment.