Australian Government
The Treasury

Foreign Investment: Compliance and Enforcement Policy

Foreign Acquisitions and Takeovers Act 1975

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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, water and community. We pay our respects to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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About this policy

Foreign investment contributes to the prosperity of Australia's businesses, communities and economy. Effective compliance and enforcement support a transparent and predictable foreign investment framework, encouraging investment while safeguarding Australia's national interest.

This Compliance and Enforcement Policy (the Policy) outlines Treasury's approach to promoting and enforcing compliance with Australia's foreign investment laws. It sets out our objectives, priorities and regulatory approach, and explains how we determine the appropriate response to non-compliance.

Treasury's role

Treasury is responsible for administering Australia's foreign investment framework, which is established by the *Foreign Acquisitions and Takeovers Act 1975* (FATA).

We advise the Australian Government on all aspects of foreign investment policy and review investment proposals. This includes:

- screening investment proposals covered by the foreign investment framework to ensure they are not contrary to the national interest or national security, and
- monitoring and enforcing compliance with the FATA.

The Australian Taxation Office (ATO) administers the FATA in relation to foreign investment in Australian residential property.

More information about the foreign investment framework is available in Australia's Foreign Investment Policy.

Our objective

Treasury's objective is to maintain the integrity of, and public confidence in, Australia's foreign investment framework. We do this by helping investors understand and meet their obligations while minimising unnecessary regulatory burden.

The FATA requires that:

- investments above monetary thresholds are notified to the Treasurer and screened
- investors comply with conditions imposed on approvals, directions, enforceable undertakings or orders issued under the Act
- information provided to Treasury in support of screening applications is not false or misleading
- investors do not circumvent foreign investment laws by attempting to avoid investment screening under the FATA.

Our approach

Treasury's approach to compliance focuses on areas of highest risk to the national interest and national security and takes compliance and enforcement action proportionate to these risks.

Where non-compliance is identified, we act in accordance with this Policy's guiding principles to address and deter non-compliant behaviour. We actively monitor investor conduct through data, reporting and intelligence, and respond proportionately to emerging risks. We use the regulatory tools and powers available under the legislation to promote compliance, address breaches and enforce the law.

Guiding Principles

Treasury's approach to compliance and enforcement is guided by the following principles:

- **Encouraging voluntary compliance** through clear communication, guidance and education
- **Taking a risk-based and proportionate approach** that directs resources to areas of greatest risk and impact
- **Responding promptly** to allegations of non-compliance, new information and emerging risks to prevent harm to the national interest or national security
- **Focusing on outcomes** by selecting the most appropriate regulatory response to achieve compliance and address risks
- **Making fair, consistent and evidence-based decisions** that treat similar cases alike while taking account of relevant facts and circumstances
- **Maintaining confidence** in the integrity and effectiveness of the foreign investment framework.

Compliance and enforcement strategy

Treasury's compliance and enforcement strategy is underpinned by a legislative framework that promotes compliance and addresses non-compliance. The framework also guides how we identify, assess and prioritise compliance and enforcement matters.

Foreign Investment Compliance Framework

Treasury administers the foreign investment compliance framework, which is supported by legislation, policy settings, regulatory powers, and a range of compliance and enforcement tools. Table 1 outlines the framework and the key activities we undertake to achieve our compliance and enforcement objectives.

Table 1: The Foreign Investment Compliance Framework

Foreign Investment Compliance Framework
• Foreign Acquisitions and Takeovers Act 1975 (the FATA) • Foreign Acquisitions and Takeovers Regulation 2015 (the FATR) • Regulatory Powers (Standard Provisions) Act 2014 (the RPA) – triggered by the FATA • Australia's Foreign Investment Policy
Compliance and Enforcement
Objective • To strengthen confidence that foreign investors are meeting their obligations while limiting regulatory burden where possible
How
Education, Campaigns, and Industry Engagement • educating foreign investors about their obligations under Australia's foreign investment laws **Market Intelligence** • using data and information to identify emerging risks, high-risk sectors and potential instances of non-compliance **Compliance Assurance** • assessing and assuring compliance through monitoring, audits, inspections and investigations **Enforcement** • taking proportionate enforcement action where non-compliance is identified, and using outcomes to encourage compliance, promote understanding of the law and deter future non-compliance

Priorities and focus areas

Each year, Treasury evaluates how effectively its compliance and enforcement activities address risks to Australia's national interest and national security. These assessments guide our priorities, regulatory focus and allocation of resources.

The Australian Government may also provide targeted funding to Treasury to support foreign investment regulation in specific sectors or areas.

Treasury publishes its Foreign Investment Compliance and Enforcement Priorities separately from this Policy. These priorities inform our decisions about which matters to pursue, based on risk and potential impact.

How we assess and prioritise alleged contraventions

Treasury considers all referrals and self-reports of alleged contraventions of the FATA. We assess the circumstances of each matter to determine whether compliance or enforcement action is warranted. In doing so, we consider a range of **prioritisation factors** including:

- the seriousness of the conduct, including its nature, intent, and potential or actual harm to Australia's national interest or national security
- whether the conduct was deliberate or forms part of a pattern of non-compliance
- whether the harm is ongoing, imminent or likely to recur
- the compliance history of the person or entity involved
- the investor's attitude to compliance, including whether the conduct was intentional, dishonest, or negligent
- the extent to which Treasury action may deter similar conduct
- whether the matter aligns with Treasury's compliance and enforcement priorities.

Treasury may decide not to pursue a matter where an alleged contravention:

- presents limited risk or impact
- is not supported by available information or evidence; or
- is more appropriately addressed by another regulator.

Compliance and education activities

Treasury's compliance activities help foreign investors and other stakeholders understand their rights and obligations under the FATA and stay informed about changes to the law. They also support early intervention to address emerging issues.

The activities we undertake are set out below.

Education, campaigns, and industry engagement

Treasury helps foreign investors to comply with the FATA by providing clear information about their rights and obligations. This includes guidance and communications on the Foreign investment website. Treasury also delivers targeted education campaigns to raise awareness of the FATA's requirements and support compliance.

Market intelligence

Treasury identifies potential contraventions through its compliance activities, information from other sources, and referrals from partner agencies. We also work with other regulators, intelligence agencies, law enforcement agencies and national security agencies.

Members of the public can report suspected non-compliance or make whistleblower disclosures through the foreign investment portal.

Compliance monitoring and assurance

Treasury monitors compliance with the FATA, including conditions attached to foreign investment approvals.

To assess compliance, we review investors' reports, initiate targeted audits of compliance with conditions imposed on higher-risk investments, and run proactive reminder campaigns to help investors meet their obligations.

For investments that present higher national interest or national security risks, approval conditions may require independent audits and compliance reports. These measures help Treasury monitor compliance and manage risks more closely.

Investigations

Treasury investigates potential breaches of Australia's foreign investment laws. Investigations may involve requests for information or documents from foreign persons whose activities are subject to the FATA, as well as relevant third parties, to establish the facts and determine whether a breach has occurred.

The FATA also gives Treasury powers to compel a person to provide information and documents relating to matters under the FATA. Compliance with statutory notices is mandatory and failure to comply may lead to a penalty, imprisonment, or both.

Treasury provides procedural fairness to foreign investors other relevant entities or individuals who are the subject of an investigation. We give affected parties an opportunity to make submissions and provide information for consideration before conclusions are reached on a matter.

Inspections

The *Regulatory Powers (Standard Provisions) Act 2014* (RPA) gives authorised officers powers to enter premises with a foreign investor's consent or, where appropriate, under a court-issued warrant. Inspections help Treasury assess compliance and investigate potential breaches of the FATA.

Compliance and enforcement approach

Treasury promotes voluntary compliance with the Act and takes a risk-based and proportionate approach to enforcement.

We have a range of compliance tools available to support compliance with, and enforce, the FATA. These include orders and directions that require investors to take specific actions or stop certain activities. Failure to comply with the FATA may result in infringement notices, civil penalties or criminal sanctions. Treasury's monitoring and investigation powers under the RPA further support this approach.

For lower-risk matters, Treasury promotes compliance through education, guidance and engagement, helping investors understand and meet their obligations.

Our compliance and enforcement model

Figure 1 illustrates Treasury's approach to compliance and enforcement decision-making.

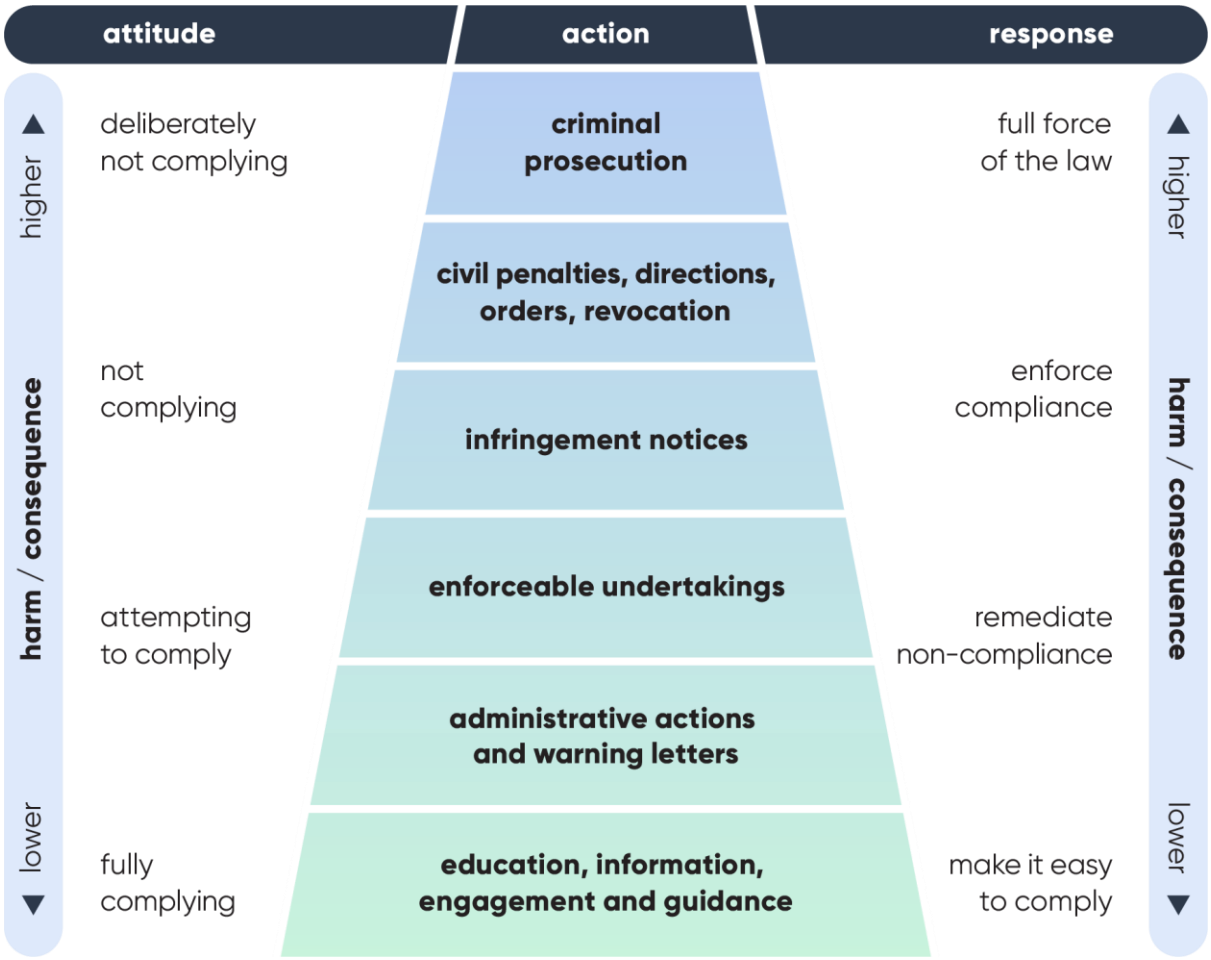


Figure 1 – Our compliance and enforcement model

Treasury expects all foreign investors to comply with conditions and other obligations. We support this by providing clear information and guidance to help investors understand and meet their obligations.

We recognise that foreign investors have different levels of understanding, capability and willingness to comply with their obligations. Consistent with our risk-based and proportionate approach, we tailor our compliance and enforcement response to the circumstances of each matter.

When deciding how to address an alleged contravention, we consider the prioritisation factors outlined above, together with other relevant considerations. We then determine the most appropriate compliance or enforcement response.

We are more likely to take stronger enforcement action where an alleged contravention is serious or deliberate. Relevant factors include repeated breaches, a poor compliance history, and conduct that shows avoidance of, or disregard for, the law. Stronger action may also be warranted where the matter poses a high risk to the national interest or national security.

While Treasury may treat a first instance of non-compliance less severely, we may still take strong enforcement action where the conduct has caused, or may cause, significant harm or risk to Australia's national interest and national security.

Compliance and enforcement actions

Treasury uses a graduated set of enforcement options to address non-compliance, as outlined below. Where we suspect or identify a contravention, we will respond in proportion to the level of risk and potential harm.

When deciding how to respond, we consider which action will most effectively achieve compliance and address the identified risk.

We encourage investors to engage early on compliance issues. Information about foreign investment compliance obligations is available on the Foreign investment website. Treasury also receives and assesses self-reports of non-compliance from investors, as well as reports of suspected breaches from third parties, through the Foreign Investment Portal.

Administrative actions

Administrative actions sit at the lower end of the enforcement model. Treasury typically uses them where risk is lower, investors cooperate, or issues can be corrected quickly.

One example is a remediation action plan (RAP). A RAP sets out actions or remedies agreed with a foreign investor to address non-compliance. It aims to restore compliance and reduce the risk of future non-compliance.

Treasury may also issue a warning where it considers an investor has allegedly contravened the FATA. A warning notifies the investor of the alleged contravention, and advises that further investigation or stronger enforcement action may be taken if the conduct continues or further non-compliance occurs.

Enforceable undertakings

The Treasurer may accept an enforceable undertaking from a person to prevent, address or remedy non-compliance with the FATA. The Treasury typically accepts enforceable undertakings where an investor is cooperative and willing to remedy non-compliance. They provide a flexible and efficient way to restore compliance. If breached, they remain enforceable through the courts.

The Treasurer may also accept an enforceable undertaking alongside a civil penalty order or infringement notice. This may be necessary to address a contravention, remedy its impacts or reduce the risk of future non-compliance.

Infringement notices

An infringement notice may be issued where there are reasonable grounds to believe a civil penalty provision under the FATA has been breached. Treasury generally issues infringement for alleged contraventions where a matter can be resolved without initiating court proceedings.

The penalty amount depends on the infringement tier. Lower penalties may apply if the foreign investor reports the non-compliance before Treasury identifies it.

Directions

If there is reason to believe that a person has engaged, is engaging or will engage in conduct that contravenes the FATA, the Treasurer may issue a written direction. A direction may require the investor to address the contravention or prevent a similar or related contravention.

Directions allow the Treasurer to respond early and proportionately. They help manage risks to the national interest or national security before a breach occurs or escalates.

Revocation

The Treasurer may revoke a No Objection Notification (NON) or exemption certificate[1] if a person provides false or misleading information or documents, or omits a material fact.

This applies where the information was relevant to the decision to issue a NON or Exemption Certificate.

Civil penalty proceedings

A court may make a civil penalty order requiring a person to pay a financial penalty if it finds they have contravened a civil penalty provision of the FATA.

Treasury may seek a civil penalty order for more serious or repeated contraventions where stronger deterrence is warranted. We may also seek a civil penalty order where the nature of the asset or investment warrants a stronger response.

Civil penalty proceedings may also be commenced if an infringement notice remains unpaid. A court may impose a higher penalty than the amount specified in the infringement notice.

Criminal prosecution

Treasury may refer a matter to the Commonwealth Director of Public Prosecutions for the prosecution of an alleged offence under the FATA.

[1] Exemption Certificates may be revoked or amended. No objection notifications may be revoked.

This is the most serious enforcement response. We reserve it for intentional, high-risk or egregious non-compliance where other enforcement measures would not adequately address the conduct.

Compliance history and applications for foreign investment approval

Under the foreign investment framework, the 'character of the investor' is one of the national interest factors considered by the Treasurer when assessing foreign investment proposals.

A foreign investor's compliance history is one factor in that assessment. It may help indicate whether the investor is likely to meet future obligations.

Treasury assesses any past non-compliance by the foreign investor. This includes considering how long ago the conduct occurred and all other relevant circumstances.

Legislative and Policy Framework

Foreign Acquisitions and Takeovers Act 1975

Foreign Acquisitions and Takeovers Regulation 2015

Regulatory Powers (Standard Provisions) Act 2014

Australia's Foreign Investment Policy