

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Inquiry into the FOREIGN INVESTMENT PROPOSALS

2019 - 2020

Division: Foreign Investment Division
Topic: Met Conditions
Reference: Written

Question:

How does Treasury determine whether a condition has been met?

- a) How does Treasury audit self-reporting?
- b) Does Treasury allow companies to appoint an auditor? If so, how does Treasury ensure an auditor's report has not been altered at the request of the company?
- c) What other means does Treasury have to confirm compliance with foreign investment conditions?
- d) How effective as a strategy is relying upon members of the public to report instances of suspected noncompliance if conditions are not routinely published?
- e) Treasury to provide a copy of the compliance framework and any other documents detailing the process/procedure for monitoring compliance with the conditions placed on a foreign investment approval.

Answer:

Determining compliance with conditions can include: review of compliance reporting; compliance reviews; independent compliance audits procured by investors; and audits carried out through a Treasury-led audit program.

(a)

Conditions routinely require compliance reporting. These reports are received via a dedicated compliance inbox, and are allocated to compliance officers for review. Where issues are identified with regard to the content, timeliness or reporting, these are followed up with the investor. Guidance Note 51, available on the FIRB website (<https://firb.gov.au/guidance-resources/guidance-notes/gn51>), provides guidance to investors in relation to compliance reporting, and reflects the standards against which that reporting is assessed.

(b)

As described in IQ20-000037, it is current practice for all no objection notifications imposing conditions include a requirement for regular compliance reporting, either by an officer of the investor in a prescribed form (for lower risk investments) or by independent audit with a formal requirement for an approved remediation plan in the event of non-compliance (for higher risk investments). As described in Guidance Note 52 on the FIRB website (<https://firb.gov.au/guidance-resources/guidance-notes/gn52>), the independent audit requirement will generally require that the Treasury approve the scope of the audit and the identity of the audit firm or auditors that will undertake the audit. Guidance Note 52 describes the factors that Treasury will consider in doing so, and refers to the Framework for Assurance

Engagements published by the Auditing and Assurance Standards Board, which sets out expectations in relation to ethical standards and quality control.

(c)

Review of compliance reporting; independent compliance audits procured by investors; and audits carried out through a Treasury-led audit program

(d)

Determining compliance with conditions is not reliant on reporting from the public (please also see question 20 – refer to IQ20-000050) although any relevant information provided by the public is taken into account.

(e)

Information on Treasury's compliance approach, including a Compliance Framework Policy Statement, is available on the FIRB website (<https://firb.gov.au/guidance-resources/compliance-approach>). Guidance Notes 51 and 52 provide guidance to investors and outline Treasury's approach respectively to: reviewing compliance reporting on conditions, and independent audits of conditions. (Link to guidance notes: <https://firb.gov.au/guidance-resources/guidance-notes?page=2>)