

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Oversight of ASIC, the Takeovers Panel and the Corporations Legislation

2022 - 2023

Division: Foreign Investment Division
Topic: Application categories
Reference: Spoken
Senator: Deborah O'Neill

Question:

CHAIR: That's what sparked my interest in the audit; I've followed it since that period of time. My concern at that stage was that there was billions of dollars of investment in Australia, and much of it was approved with some conditions. Is that the way the board still works—that there will be approval but with conditions, such as protecting Australia's information and demands that identity details be kept securely on Australian soil?

Ms Kelley: Yes, that is absolutely true. As you are aware, as part of the assessment process Treasury goes through we consult with a range of other government entities. In some cases it is the recommendation of those other departments that they would like to put some conditions on it, to ensure it is within the national interest or it is addressing any national security concerns. In terms of the breakdown of those numbers I gave you before, the total: of the ones in 2021 that were approved with conditions there were 821. In 2021-22 there were 804. This year, to the end of March, there were 428. It is something that we use, and, I think, as we have spoken about in previous hearings, we have really focused on making sure we have a consistent approach and a consistent library of conditions that we use as well.

CHAIR: You can select from a range of options in terms of good governance and management of this—that's the library you're referring to?

Ms Kelley: That's right. It might cover data, it might cover governance—a range of things.

CHAIR: On notice, can you give us—we don't necessarily need access to the library; I'm sure you don't want that!—categories that might be used in terms of the application you mentioned to data.

Ms Kelley: We can do that.

CHAIR: Fantastic; thank you.

Answer:

The categories of conditions in the library of commonly-used conditions are tax; board and governance controls; health patient data; cyber security; treatment of other sensitive data; operational control; new business (limitations on business scope); conditions to restrict the types of activity permitted on land in proximity to Australian Government facilities; vacant commercial land development; mineral and resource reporting; collective cap on investment holdings; commercial tenancies (notification of ownership and operation change, sensitive commercial information, and access conditions); and exemption certificate conditions (financial limits, registration of land interests, open and transparent sale process requirements, development conditions, and excluded local government areas).

The library also includes conditions for compliance reporting and independent audit requirements, and conditions which can be imposed retrospectively when an investor fails to notify an investment action before it is taken (to implement procedures to ensure compliance with the *Foreign Acquisitions and Takeovers Act 1975*).