



Foreign Investment Application Checklist

This checklist sets out the information that **must be included in all foreign investment applications** (except residential real estate applications). For guidance on residential real estate applications, please visit

<https://www.ato.gov.au/general/foreign-investment-in-australia/residential-investment>.

Please note additional tax information requirements may be relevant to your application, including where you are considering reorganising your structure. For more detail, visit <https://foreigninvestment.gov.au>

Early engagement is encouraged, noting that all information may not be available at the outset, it will however still be required prior to the decision being made. Applicants should note that significant delays in processing can be expected for applications that do not include the required information outlined in the checklist.

All applications must have a cover letter that:

- Contains a clear statement of each of the significant actions, notifiable actions, notifiable security actions and reviewable national security actions under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA) that are proposed to be taken, or have been taken, including references to the relevant sections of the legislation, why the transaction is captured and the legal entity taking the action.
- Provides the details of the entity that is taking, or has taken, the action (e.g. the acquirer – the entity that will be directly acquiring the proposed interest), the parent entity and the target (if relevant), including:
 - name (including legal name), major activities and locations, incorporation or proposed incorporation details, Australian Business Number (ABN) / Australian Company Number (ACN), major subsidiaries and associated entities, or proposed incorporation, Australia and New Zealand Standard Industrial Classification (ANZSIC) code (current use of target) and details of any Australian subsidiaries and operations;
 - if the acquiring entity is not yet established, provide the intended ownership and incorporation details and indicate they will be updated during the assessment;
 - all existing investments or assets in Australia of the entity, the parent entity and associated entities (including the value of the investments or assets) in Australian dollars (AUD);
 - total global assets or assets under management for the entity, the entity’s ultimate parent, and the target (including market capitalisation if applicable) in AUD;
 - details of any existing relationship or economic interests (including beneficial interests) between the parties.

Provides the following details about the proposed transaction:

- commercial rationale behind the transaction including any information regarding the size and significance of the target;
- any relevant commercial deadlines and the quantifiable impact if the transaction is delayed;
- description of the acquirer’s intentions for the business or land, Australia and New Zealand Standard Industrial Classification (**ANZSIC**) code (current use of target), any changes to the board composition, management structure or strategic direction of the target;
- information about any sales process, including details of the vendor;
- the consideration and calculation basis (broken down by asset) in AUD;
- description of the type of interest and any associated rights and obligations (e.g. assets, shares, land); and
- implementation steps diagram or explanation that describes the source of funds (including debt) and flow of funds to the acquirer to implement the transaction.

For applications involving significant actions and/or notifiable actions, reasons why the proposed transaction is not contrary to the national interest (see Australia’s Foreign Investment Policy (<https://foreigninvestment.gov.au/guidance>), including:

- the extent to which the transaction may affect Australia’s ability to protect its strategic and security interests and any steps (proposed or taken) to mitigate potential risk;
- whether the entity (including related entities) has interests in any Australian assets which compete directly or indirectly with, or operate upstream or downstream in the supply chain from, the target’s interests, and, if so, outline the overlapping products and/or services, key competitors, and the likely effect of the transaction on competition (such as market shares);
- impact of transaction on other government policies including taxation, environmental impacts and native title;
- engagement with other Australian regulatory agencies (e.g. ATO, ACCC) including details of the engagement and contacts at those agencies;
- impact of the investment on the economy and community, including changes in employment, investment in the local area, and the entity’s future plans for the target and timing (including the amount of post transaction investment flowing to the target); and
- any information regarding domestic or international investigations; rulings or ineligibilities, or conditions imposed as part of previous foreign investment approvals; or exclusions relating to the entity, the parent entity, associated entities or the target.

For applications involving notifiable national security actions or reviewable national security actions, reasons why the proposed transaction is not contrary to national security (see <https://foreigninvestment.gov.au/guidance>).

Ownership and control details of the entity, including:

- identities and country of origin and percentage of ownership of all investors (including the parent entity) or shareholders who hold an interest of greater than 5 per cent and details of any beneficial owners, including:

- for foreign government investors, details of why they meet the definition of foreign government investor, identities and country of origin of all foreign government investors where the aggregate interest of foreign government investors from one country is 5 per cent or more (directly or via a fund), as well as each foreign government investor which has an interest of 5 per cent or more (directly or via a fund);

for fund managers, details of investors and country of origin for both the fund manager and the fund;

for trusts, details of the country of origin for both the trust, beneficial ownership of the trust and any trustees;

- level of control of all investors identified, including the types of rights that the investors have (e.g. voting rights, veto rights); and
- aggregate percentage of any beneficial ownership by foreign government investors (by country).

All cover letters must also include the following additional information:

Entities and businesses

If the proposal related to interests in entities or businesses, including the following additional information:

Please provide structure diagrams including holding entities (both direct and indirect) of the entity, target and target group both (1) pre-implementation and (2) post-implementation. Pre and post implementation structure diagrams are required for all applications with interest details (ie: per cent holdings) outlined up to the ultimate owner. Where several steps are undertaken, a structure diagram for each step.

Copies of last financial year's audited financial statements or, if unavailable, latest financial records or unaudited financial statements of the target and the acquirer.

For acquisitions of interests in securities, please provide details of whether the acquisition is occurring as a result of a buy-back, unit redemption or other form of capital reduction.

Australian land

If the proposal relates to interests in Australian land, include the following additional information:

Title details of all land interests that are being acquired.

A map of the land with sufficient detail to allow the location to be determined (such as a nearby town or landmark).

The value of interests in Australian land and the value as a proportion of the target's total assets.

Consideration (broken down by title) for all titles.

Size of the Australian land (hectares).

For agricultural land and mining or production tenements, a map showing the land being acquired and the surrounding area.

An explanation of the current use of the land in accordance with definitions in the FATA (agricultural land, mining or production tenements, residential land and/or commercial land).

For agricultural land, evidence of an open and transparent sales process (see see Guidance 3 – Agriculture for more details <https://foreigninvestment.gov.au/guidance>).

For licence interests, confirmation of whether the entity will obtain a right to occupy Australian land.

For leasehold and licence interests, details of the term of the lease/licence (including any extension or renewal).

Actions involving starting an Australian business or starting a national security business

If the proposal is to start an Australian business or start a national security business, include the following additional information:

Description of the proposed business plan, including:

- primary activity proposed and target clientele and relevant ANZSIC code;
- proposed location of head office and where it will operate, including intended lease holdings or property to be purchased;
- total funds to be invested and timeframe for investment; and
- expected number of employees.

Details of any (including proposed) patents, royalty, export franchises and licensing arrangements.

List of any regulatory approvals that the new business will require in Australia.

Funding of an Australian business

For each entity in the post-implementation structure provide the following details:

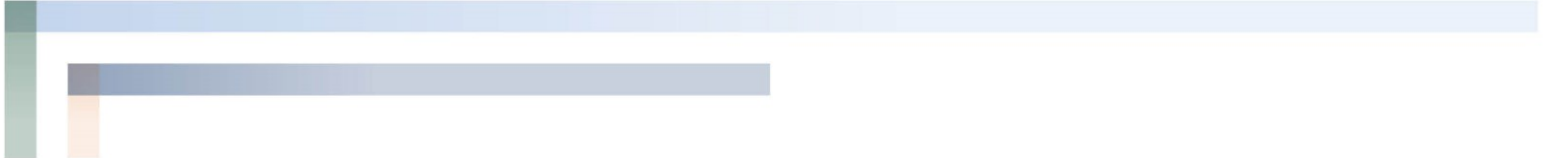
– **Equity instrument** (existing or proposed):

- a. name of the entity issuing the equity instrument;
- b. nature of the equity instrument (e.g. ordinary share, ordinary unit, with or without voting or distribution rights);
- c. identity of each holder of equity instruments;
- d. number or percentage of equity instrument held of that type by each holder; and
- e. amount paid by each holder for their equity instrument.

– Where applicable, details of the counterparties to any equity swap or similar arrangement (for a single counterparty and its associates) covering more than a 1 per cent economic interest in the same company.

– **Debt instrument** (existing or proposed):

- a. name of the entity issuing the debt instrument;
- b. nature of each debt instrument issued (e.g. type, term, principal, interest rate, subordination/security, external bank facility, investor loan);
- c. identity of each holder of the debt instrument;
- d. amount provided by each holder under the debt instrument;
- e. details of any derivative and/or guarantee associated with the debt instrument; and
- f. risk rating for each cross-border related party financing arrangement entered into, or to be entered into, by the parties as per ATO Practical Compliance Guideline PCG 2017/4.



Detail any other type of financing not identified above, of the entities in the structure.

For the purposes of Division 820 of the *Income Tax Assessment Act 1997* (Cth) detail:

- the revaluation of any assets; and
- the method applied to determine the maximum allowable debt amount and advise any exemptions that may be claimed.