



AUSTRALIAN BANKERS'
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20 March 2015

David Earl
International Investment and Trade Unit
Foreign Investment and Trade Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
Email: ForeignInvestmentConsultation@treasury.gov.au

Dear Mr Earl,

Strengthening Australia's Foreign Investment Framework Options Paper February 2015

The Australian Bankers' Association (ABA) is pleased to have the opportunity to provide comments on the proposals for strengthening Australia's Foreign Investment Framework described in the February 2015 Options Paper.

We appreciate the opportunity to have discussed this matter with you and your colleague Derek Colman on 17 March 2015 with other members of the Electronic Conveyancing Group (ECG).

The ABA provides these comments on behalf of its 24 member banks which comprise the four major banks, regional banks which operate on a national scale and foreign banks operating as Australian banks.

Given the limited time available to provide feedback and the desire of the Government to address the public perception about the level of foreign investment in agricultural and residential real estate in Australia, we wish to focus our comments on a few of the aspects arising from the Options Paper.

The ABA remains ready and available to provide further details to assist Treasury in this consultation process.

1. The nature of the Australian residential and investment housing market

In March the ABA published a research paper providing perspective on trends in the Australian housing market.¹

The paper identifies that the primary driver of the recent acceleration in house prices is historically low interest rates. This relationship between interest rates and house prices is broadly in line with previous cycles. Borrowing by investors for housing is more volatile than borrowing by owner occupiers, rising more quickly in the upswings in credit growth and decelerating more quickly in the downswings.

¹ See http://www.bankers.asn.au/ArticleDocuments/134/Key_truths_on_housing_in%20Australia_FINAL_March_2015.pdf.aspx

The recent surge in investor borrowings since mid-2011 is in this respect nothing unusual, though the upswing has been particularly marked in Sydney and to a lesser extent in Melbourne. Investors' share of housing loans outstanding has been relatively stable at around one third over the past decade after rising steadily over the decade and a half prior to that, although it is now edging a little higher. Investors are not increasing their use of high LVR loans.

There is no evidence of a surge in non-resident purchases although it is recognised that official Foreign Investment Review Board (FIRB) data may not capture all transactions.

The quality of the currently available data on foreign investment in residential property was a regular topic of discussion in the written submissions to the House of Representatives Economic Committee inquiry referred to in the Options Paper and in the evidence given to the Committee at public hearings. A consistent theme emerged from this evidence, which is that data needs to be improved to enable better informed decision-making.

The principal source of data on foreign investment in residential real estate currently comes from FIRB approvals. However, this information cannot precisely determine the levels of foreign purchases of residential real estate. Further it is noted that The Treasury stressed in its submission to the inquiry that *"care must be exercised when analysing FIRB approval data because it represents approvals and does not reflect actual purchases"*.

The Committee formed the view that while there is an argument that foreign investors may be over-represented in the data, equally, it may be argued that if there are foreign investors that do not currently comply with screening requirements, there may be an underestimate. This is, however, difficult to prove, hence the need for better and more complete data.

Accordingly, the Committee recommended that the Government, in conjunction with the States and Territories, establish a national register of land title transfers that records the citizenship and residency status of all purchasers of Australian real estate. The Committee added that this information should be accessible by relevant agencies from a single database.

2. Need for the Government to proceed with regulation according to good regulatory practice

There being a general consensus that current data available to the Government is inadequate to form a clear response to addressing community concerns over the perceived level of foreign investment in Australian real estate, the ABA believes that obtaining the relevant data should precede any regulatory step that would impose compliance obligations on third parties such as financiers, conveyancing practitioners and other private sector businesses.

According to sound Australian regulatory practice, the first step should be to identify the problem, often described as the "market failure" and then to explore a range of options, regulatory and non-regulatory. Otherwise, there is the risk of the situation where a solution is seeking a problem.

For this reason, the ABA does not support a model where State and Territory land titles registries would be required to capture and hold on their registers information specifically identifying registered proprietors who may be foreign residents.

Of course, the means by which a wider range of information as proposed in the Options Paper such the foreign residency of a purchaser would become part of a titles register, if that were to be required, would entail real estate agents, finance brokers, financiers and conveyancing practitioners to obtaining this information for inclusion in registry instruments.

Currently, and progressively financiers and practitioners are to take reasonable steps to identify a transacting party but this does not extend to ascertaining that person's residency. Further, apart from natural persons, transacting parties can include corporations and trusts where the ultimate investor or beneficiary may not be ascertainable or ascertainable only after making extensive searches and inquiries. Financiers, practitioners and other services providers simply are not in a position to verify the true residential status of a purchaser.

Further, acquisitions by foreign residents may not involve financing at all or not financed through formal financing intermediaries.

The additional steps for financiers, practitioners and others to obtain information about foreign residency, potentially about every one of their customers or clients, would be complex, sensitive, and time consuming adding to the cost of conveyancing and lending. There could be a significant level of inaccuracy in this information. Many of these private sector entities that could be required to undertake searches and inquiries will be, in the main, small businesses. They would see the additional requirements imposed upon them as part of a conveyancing transaction as unreasonable and just "red tape" by a Government committed to reducing red tape for businesses.

Land titles registers are publically available to be searched by anyone. This raises the question of privacy considerations.

The registers are title registers in order for purchasers, financiers and other interested parties to identify with legal certainty the title holder of a particular piece of real estate and the existence of any encumbrances which may affect that title. Registers are not designed or intended to contain information other than which is necessary to provide legal certainty for dealings with land and including an address to which service of notices can be addressed.

3. Transparency of foreign investment in Australian real estate

The ABA understands that the Government will seek to establish its own foreign ownership information data base.

The ABA recommends that this data base should not be accessible by the public. The data base would be maintained by a Government agency and would provide reports periodically to the Government on statistics, trends and changes in foreign ownership over time.

This could be achieved first by reviewing and, where necessary, augmenting the powers and resourcing of the FIRB and secondly by initiating its own research project to identify what existing data is available and where there are gaps that need to be addressed.

This approach should ensure that the private sector is not called upon to address a problem which is primarily of public sector origin.

In conclusion the ABA as a member of the ECG supports the concerns expressed in submissions by the ECG and its other members.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.