



Foreign Acquisitions and Takeovers Regulations 1989

Statutory Rules 1989 No. 177 as amended

made under the

Foreign Acquisitions and Takeovers Act 1975

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1 Name of Regulations [see Note 1]

These regulations are the *Foreign Acquisitions and Takeovers Regulations 1989*.

2 Interpretation

In these regulations, unless the contrary intention appears:

accommodation facility means premises used, or suitable for use, as accommodation of persons on either a long-term or short-term basis, including, in particular, hotels, motels, hostels, guesthouses, serviced apartments and holiday units.

charitable institution means:

- (a) any charitable, religious, scientific or educational institution (including an institution providing residential accommodation wholly or principally for full-time students attending an educational institution);
- (b) any institution being, or carrying on, a hospital; and
- (c) any institution the sole or principal purpose of which is to assist in the saving of life, or the prevention of loss or damage to property, whether at sea or otherwise;

being an institution which is not carried on for the purpose of profit or gain to its individual members and which is not empowered to make any distribution, whether in money, property or otherwise, to its members.

foreign person includes a person to whom section 26A of the Act applies.

spouse, in relation to a person, includes another person who, although not legally married to the person, lives with the person on a *bona fide* domestic basis as the husband or wife of the person.

the Act means the *Foreign Acquisitions and Takeovers Act 1975*.

3 Exempt acquisitions of interests in Australian urban land

The Act does not apply in relation to an acquisition of an interest in Australian urban land of each of the following kinds, namely, the acquisition of such an interest by a foreign person:

- (a) that is:

- (i) a charitable institution operating in Australia primarily for the benefit of persons ordinarily resident in Australia; or
- (ii) a trustee of a foreign-controlled trust established for charitable or benevolent purposes, where the beneficiaries of the trust are persons ordinarily resident in Australia;
- (b) that is a life insurance company operating in Australia and the acquisition is made by way of investment of its statutory funds within the meaning of the *Life Insurance Act 1945* primarily for the benefit of policy holders ordinarily resident in Australia;
- (c) that is an insurance company (other than a life insurance company) operating in Australia and the acquisition:
 - (i) is made from the reserves of the company; and
 - (ii) is consistent with the company's obligations under the *Insurance Act 1973*;
- (d) that is a corporation operating in Australia that maintains a superannuation fund for its employees, within the meaning of the *Occupational Superannuation Standards Act 1987*, for the benefit of the members of the fund or their dependents, being persons ordinarily resident in Australia, and the acquisition is made as an investment of all or part of the assets of that fund;
- (e) where:
 - (i) the acquisition is of an interest in land on which a dwelling will be or is being constructed; and
 - (ii) the Treasurer has certified that the sale of that interest, (whether or not the certificate also refers to other interests) by a specified real estate developer to foreign persons is not contrary to the national interest; and
 - (iia) the conditions (if any) set out in the certificate are satisfied; and
 - (iii) the real estate developer provides the foreign person with a copy of that certificate;
- (f) where:
 - (i) the land is being used, or is able to be used immediately and in its present state, for industrial or non-residential commercial purposes; and
 - (ii) the acquisition is wholly incidental to the conduct of the existing or proposed business activities of the foreign person (other than business activities that include acquisitions of land or the development of, or investment in, land or the development or operation of any form of accommodation facility);

- (g) where the acquisition is of an interest in a time share scheme and the entitlement of the foreign person and any of that person's associates is not in the aggregate greater than 4 weeks in any year;
- (h) where:
 - (i) the Treasurer has certified that a programme of land acquisitions by a foreign person in respect of a year is not contrary to the national interest; and
 - (ii) the acquisition is an acquisition referred to in that certificate;
- (i) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate that the corporation has not developed itself, being an Australian urban land corporation that is:
 - (i) publicly listed on an Australian Stock Exchange; and
 - (ii) primarily involved in the development of land;
- (j) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate, being an Australian urban land corporation that is publicly listed on an Australian Stock Exchange, or, where 2 or more foreign persons hold interests in the Australian urban land corporation, those foreign persons hold less than an aggregate substantial interest in that corporation;
- (k) who is an Australian citizen not ordinarily resident in Australia;
- (l) that is a corporation in which the government of an overseas country within the meaning of the *Diplomatic Privileges and Immunities Act 1967* holds a substantial interest and the acquisition is of an interest in land where the land is to be used exclusively for the purposes of the diplomatic mission of that country or as a diplomatic residence;
- (m) that is an Australian corporation that is a foreign person only because of direct interests held in it by Australian citizens not ordinarily resident in Australia;
- (n) that is a trustee of a trust estate, where the trustee is a foreign person only because of direct interests held in the trust estate by Australian citizens not ordinarily resident in Australia;
- (o) where the acquisition is of units in a unit trust as a consequence of which:

- (i) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders;
 - (C) that is primarily engaged in the development of land; and
 - (D) that has less than 10 per cent of its real estate assets in the form of developed residential real estate that the trust has not developed itself; or
 - (ii) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders; and
 - (C) that has less than 10 per cent of its real estate assets in the form of developed residential real estate;

or, where 2 or more foreign persons hold interests in the Australian urban land trust estate, those foreign persons hold less than an aggregate substantial interest in that trust estate;
- (p) if:
- (i) the land is non-residential commercial land valued at:
 - (A) for land the whole or part of which is entered in the Register of the National Estate — less than \$5,000,000; and
 - (B) in any other case — less than \$50,000,000; and
 - (ii) the land is not:
 - (A) vacant land; or
 - (B) land the whole or part of which comprises an accommodation facility;
- (q) where the acquisition is of an interest in land that is zoned as residential property and the person:
- (i) is, at the time of acquisition, the holder of a permanent visa within the meaning of the *Migration Act 1958*; or
 - (ii) is, at the time of acquisition, the holder of a special category visa within the meaning of that Act; or

- (iii) if he or she had entered Australia lawfully immediately before the time of acquisition, would have been entitled to the grant, on presentation of a passport, of a special category visa within the meaning of that Act; or
 - (iv) is an Australian corporation that is a foreign person only because of a direct interest held in it by a person to whom subparagraph (i), (ii) or (iii) applies; or
 - (v) is the trustee of a trust estate, where the trustee is a foreign person only because of a direct interest held in the trust estate by a person to whom subparagraph (i), (ii) or (iii) applies;
- (r) if:
- (i) the acquisition is of an interest in land on which a dwelling exists that is, or may be, used for residential purposes, other than land that is part of a subdivided building in which hotel services are provided; and
 - (ii) the Treasurer has certified that the sale of an interest of that kind to foreign persons is not contrary to the national interest; and
 - (iii) the conditions (if any) set out in the certificate are satisfied; and
 - (iv) the person who intends to dispose of the interest gives the foreign person a copy of the certificate;
- (s) if:
- (i) the acquisition is of an interest in land that is, or would be, part of a subdivided building:
 - (A) that exists or may be constructed; and
 - (B) in which hotel services are, or would be, provided; and
 - (ii) the Treasurer has certified that the sale of an interest of that kind to foreign persons is not contrary to the national interest; and
 - (iii) the conditions (if any) set out in the certificate are satisfied; and
 - (iv) the person who intends to dispose of the interest gives the foreign person a copy of the certificate;
- (t) where the acquisition is of an interest in land that is zoned as residential property and:
- (i) the person is the spouse of an Australian citizen; and
 - (ii) the interest is held by the person and his or her spouse as joint tenants;

- (u) that is the responsible entity of a managed investment scheme registered under section 601EB of the Corporations Law and the acquisition is primarily for the benefit of scheme members ordinarily resident in Australia.

4 Prescribed corporations — value of assets of foreign corporation

- (1) For paragraph 13 (1) (d) of the Act, the amount of \$50,000,000 is prescribed.
- (2) For paragraph 13 (1) (e) of the Act, the amount of \$50,000,000 is prescribed.

5 Exempt dealings — value of assets

- (1) For subparagraph (b) (i) of the definition of *exempt corporation* in subsection 13A (4) of the Act, the amount of \$50,000,000 is prescribed.
- (2) For subparagraph (b) (ii) of the definition of *exempt corporation* in subsection 13A (4) of the Act, the amount of \$50,000,000 is prescribed.
- (3) For paragraph (a) of the definition of *exempt business* in subsection 13A (4) of the Act, the amount of \$50,000,000 is prescribed.
- (4) For paragraph (b) of the definition of *exempt business* in subsection 13A (4) of the Act, the amount of \$50,000,000 is prescribed.

Notes to the *Foreign Acquisitions and Takeovers Regulations 1989*

Note 1

The *Foreign Acquisitions and Takeovers Regulations 1989* (in force under the *Foreign Acquisitions and Takeovers Act 1975*) as shown in this consolidation comprise Statutory Rules 1989 No. 177 amended as indicated in the Tables below.

Table of Statutory Rules

| Year and number | Date of notification in Gazette | Date of commencement | Application, saving or transitional provisions |
|------------------------|--|---|---|
| 1989 No. 177 | 6 July 1989 | 1 Aug 1989 (see Gazette 1989, No. S240) | — |
| 1991 No. 302 | 30 Sept 1991 | 30 Sept 1991 | — |
| 1994 No. 295 | 31 Aug 1994 | 1 Sept 1994 | — |
| 1995 No. 416 | 19 Dec 1995 | 19 Dec 1995 | — |
| 1999 No. 199 | 10 Sept 1999 | 10 Sept 1999 | — |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|--|
| R. 1 | rs. 1999 No. 199 |
| R. 2 | am. 1995 No. 416; 1999 No. 199 |
| R. 3 | am. 1991 No. 302; 1994 No. 295; 1995 No. 416; 1999 No. 199 |
| Rr. 4, 5 | ad. 1999 No. 199 |



Foreign Acquisitions and Takeovers (Notices) Regulations

Statutory Rules 1975 No. 226 as amended

made under the

Foreign Acquisitions and Takeovers Act 1975

This compilation was prepared on 20 November 2000
taking into account amendments up to SR 1989 No. 197

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

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| 1. Citation [see Note 1] | |
| These Regulations may be cited as the Foreign Acquisitions and Takeovers (Notices) Regulations. | |
| 2 Commencement [see Note 1] | |
| These Regulations shall come into operation on the date of commencement of the Act. | |
| 3 Interpretation | |
| In these Regulations, <i>the Act</i> means the <i>Foreign Acquisitions and Takeovers Act 1975</i> . | |
| 4 Prescribed forms of notice | |
| (1) The prescribed form of notice under section 25 of the Act is Form 1 in the Schedule. | |
| (2) The prescribed form of notice under section 26 of the Act is Form 2 in the Schedule. | |
| (3) The prescribed form of notice under section 26A of the Act is Form 3 in the Schedule. | |
| 5 Balance sheet and profit and loss account to be furnished by corporation | |
| Where a corporation furnishes a notice under section 25 of the Act stating that: | |
| (a) the corporation proposes to enter into an agreement, being an agreement in relation to the affairs of the corporation; | |
| (b) the corporation proposes to enter into or terminate an arrangement, being an arrangement in relation to an Australian business of the corporation; | |
| (c) the corporation proposes issue shares; or | |
| (d) it is proposed to alter a constituent document of the corporation; | |

the corporation shall annex to the notice a copy of the balance sheet and a copy of the profit and loss account of the corporation for each period in relation to which a profit and loss account of the corporation has been laid before it in general meeting during the preceding four years.

6 Documents relating to agreement or arrangement

Where a person furnishes:

- (a) a notice under section 25 of the Act stating that the person proposes to enter into an agreement, being an agreement of the kind referred to in section 20 of the Act, or to enter into or terminate an arrangement, being an arrangement of the kind referred to in section 21 of the Act; or
 - (b) a notice under section 26 or 26A of the Act;
- the person shall annex to the notice copies of all documents and other papers in the person's possession or control relating to or evidencing the agreement or arrangement to which the notice relates.

7 Constituent document

Where a corporation furnishes a notice under section 25 of the Act stating that it is proposed to alter a constituent document of the corporation, the corporation shall annex to the notice a copy of that constituent document.

8 Person signing notice

- (1) A notice under section 25, 26 or 26A of the Act furnished by a natural person shall be signed:
 - (a) if the person is not ordinarily resident in Australia — by that person or by his Australian agent; or
 - (b) in any other case — by the person furnishing the notice.
- (2) A notice under section 25, 26 or 26A of the Act furnished by a corporation shall be signed by a person authorized in writing by the corporation to sign the notice for and on behalf of the corporation.