

# Appendix D

*Foreign Acquisitions and  
Takeovers Act 1975*





# Foreign Acquisitions and Takeovers Act 1975

**Act No. 92 of 1975 as amended**

This compilation was prepared on 1 January 2005<sup>1</sup>  
taking into account amendments up to Act No. 120 of 2004

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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<sup>1</sup> The latest compilation of the Act can be accessed via ComLaw (Commonwealth Law) at  
[www.comlaw.gov.au](http://www.comlaw.gov.au).

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**Notes**

# **An Act relating to the foreign acquisition of certain land interests and to the foreign control of certain business enterprises and mineral rights**

## **Part I—Preliminary**

### **1 Short title** *[see Note 1]*

This Act may be cited as the *Foreign Acquisitions and Takeovers Act 1975*.

### **2 Commencement** *[see Note 1]*

This Act shall come into operation on a date to be fixed by Proclamation.

### **3 Transitional provisions**

- (1) The *Companies (Foreign Take-overs) Act 1972*, the *Companies (Foreign Take-overs) Act 1973* and the *Companies (Foreign Take-overs) Act 1974* are repealed.
- (2) Notwithstanding the repeal of the *Companies (Foreign Take-overs) Act 1972-1974*, that Act, other than section 17 shall be deemed to continue in force in relation to:
  - (a) an offer (including an offer constituting, or made in pursuance of an invitation constituting, a take-over offer) to sell or purchase shares that was accepted before the date of commencement of this Act; and
  - (b) an issue of shares that occurred before that date.
- (3) Without limiting the generality of subsection (2), orders may be made under sections 14 and 15 of the repealed Act in pursuance of that subsection.
- (4) For the purposes of this Act, but without limiting the operation of subsection (2):
  - (b) an order in force under subsection 13(6) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under section 22 of this Act;
  - (c) an order in force under paragraph 13(2)(c) or (3)(c) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under subsection 18(2) of this Act; and

- (d) an order in force under paragraph 13(2)(d) or (3)(d) of the repealed Act immediately before that date has effect on and after that date as if it were an order made under subsection 18(3) of this Act.
- (4A) For the purposes of the institution, after the commencement of this subsection, of proceedings for an offence referred to in section 21 of the *Companies (Foreign Take-overs) Act 1972*, the reference in that section to the Commonwealth Industrial Court shall be read as a reference to the Federal Court of Australia.
- (5) Nothing in this section affects the operation of section 8 of the *Acts Interpretation Act 1901-1973*.
- (6) Expressions used in this section have the same respective meanings as they had in the repealed Act.

#### **4 Additional operation of Act**

- (1) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on by a prescribed corporation or prescribed corporations together with any other person or persons.
- (2) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on solely by a person other than a prescribed corporation or persons other than prescribed corporations.
- (3) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in sections 19 and 21 to a foreign person were references to:
  - (a) a natural person not ordinarily resident in Australia;
  - (b) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
  - (c) a corporation (other than a foreign corporation) in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
  - (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or

- (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.
- (4) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if:
- (a) references in sections 19 and 21 to a foreign person were references to:
    - (i) a natural person not ordinarily resident in Australia;
    - (ii) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
    - (iii) a corporation (other than a foreign corporation) in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
    - (iv) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
    - (v) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest; and
  - (b) references in those sections to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on by a prescribed corporation or prescribed corporations together with any other person or persons.
- (5) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if:
- (a) references in sections 19 and 21 to a foreign person were references to:
    - (i) a natural person not ordinarily resident in Australia;
    - (ii) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
    - (iii) a corporation (other than a foreign corporation) in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
    - (iv) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or



- (v) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest; and
  - (b) references in those sections to an Australian business carried on solely by a prescribed corporation or prescribed corporations were references to an Australian business carried on solely by a person other than a prescribed corporation or persons other than prescribed corporations.
- (6) Without prejudice to its effect apart from this subsection, this Act also has, by force of this subsection, the effect it would have if references in section 21A to a foreign person were references to:
- (a) a natural person not ordinarily resident in Australia;
  - (b) a corporation (other than a foreign corporation) in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
  - (c) a corporation (other than a foreign corporation) in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest;
  - (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
  - (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

## 5 Interpretation

- (1) In this Act, unless the contrary intention appears:

**acquisition** includes an agreement to acquire, but does not include an acquisition:

- (a) by will or by devolution by operation of law; or
- (b) by way of enforcement of a security held solely for the purposes of a moneylending agreement.

**agreement** means any agreement, whether formal or informal and whether express or implied, other than a moneylending agreement.

**asset** includes an interest in an asset.

**Australia** includes the external Territories to which this Act extends.

**Australian corporation** means a corporation of a kind referred to in paragraph 13(1)(a), (b) or (c).

**Australian rural land** means land situated in Australia that is used wholly and exclusively for carrying on a business of primary production.

**Australian urban land** means land situated in Australia that is not Australian rural land.

**Australian urban land corporation** means a corporation to which section 13C applies.

**Australian urban land trust estate** means a trust estate to which section 13D applies.

**balance-sheet** includes a statement of assets and liabilities or any similar document.

**constituent document**, in relation to a corporation, means the constitution of the corporation or any rules or other document constituting the corporation or governing its activities.

**debenture** includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a corporation, whether constituting a charge on the assets of the corporation or not.

**director** includes any person occupying the position of director of a corporation, by whatever name called.

**financial corporation** means a financial corporation to which paragraph 51(xx) of the Constitution is applicable, and includes a corporation formed within the limits of Australia that carries on as its sole or principal business the business of banking or insurance, other than banking or insurance to which paragraph 51(xiii) or (xiv) of the Constitution, as the case may be, is not applicable.

**foreign corporation** means a foreign corporation to which paragraph 51(xx) of the Constitution is applicable or a corporation that is incorporated in an external Territory to which this Act does not extend.

**foreign government investor** has the meaning given by section 17F.

**foreign person** means:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
- (c) a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;

- (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

***interest in Australian urban land*** has the meaning given by section 12A.

***land*** includes a building or other structure, or a part of a building or other structure.

***lease*** includes a sub-lease.

***mineral right*** means:

- (a) a right (however described) under a law of the Commonwealth or of a State or Territory to recover minerals, other than a right to recover minerals for the purposes of prospecting or exploring for minerals;
- (b) a lease by virtue of which the lessee has a right falling within paragraph (a); or
- (c) an interest in a right falling within paragraph (a) or in a lease falling within paragraph (b).

***moneylending agreement*** means an agreement entered into in good faith in the ordinary course of carrying on a business of lending money, not being an agreement dealing with any matter unrelated to the carrying on of that business.

***officer***, in relation to a corporation, includes:

- (a) a director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

***prescribed foreign government investor*** has the meaning given by section 17G.

***prescribed foreign investor*** has the meaning given by section 17E.

***prescribed sensitive sector*** has the meaning given by section 17H.

***primary production*** has the same meaning as in the *Income Tax Assessment Act 1936*.

***profit and loss account*** includes any statement of profits and losses or any similar document.

***repealed Act*** means the *Companies (Foreign Take-overs) Act 1972-1974*.

**share**, in relation to a corporation, means a share in the share capital of the corporation, and:

- (a) includes stock into which all or any of the share capital of the corporation has been converted; and
- (b) except in section 11 or 26, includes an interest in such a share or in such stock.

**Territory** means an internal Territory or an external Territory to which this Act extends.

**trading corporation** means a trading corporation to which paragraph 51(xx) of the Constitution is applicable.

- (2) In this Act, a reference to the determination of the policy of a business of exploiting a mineral right includes a reference to the determination of questions relating to the disposal of the right.
- (3) In this Act:
  - (a) a reference to a person proposing to acquire shares or assets includes:
    - (i) a reference to a person making an offer to acquire shares or assets;
    - (ii) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of shares or assets to offer to dispose of shares or assets; and
    - (iii) a reference to a person taking part in, or proposing to take part in, negotiations with a view to the acquisition of shares or assets;
  - (aa) a reference to a person proposing to acquire an interest in Australian urban land includes:
    - (i) a reference to a person making an offer to acquire such an interest;
    - (ii) a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of such an interest to offer to dispose of that interest; and
    - (iii) a reference to a person taking part in, or proposing to take part in, negotiations with a view to the acquisition of such an interest;
  - (b) a reference to a person proposing to enter into an agreement or arrangement includes a reference to a person taking part in, or proposing to take part in, negotiations with a view to entering into an agreement or arrangement; and
  - (c) a reference to a person proposing to terminate an arrangement includes a reference to a person taking part in, or proposing to take part in, negotiations with a view to terminating an arrangement.

- (4) In this Act, a reference to entering into an arrangement is a reference to entering into any formal or informal scheme, arrangement or understanding, whether expressly or by implication, and, without limiting the generality of the foregoing, includes a reference to:
- (a) entering into an agreement, other than a moneylending agreement;
  - (b) creating a trust, whether express or implied; and
  - (c) entering into a transaction;
- and references to an arrangement shall be construed accordingly.
- (5) In this Act, a reference to entering into an agreement or arrangement includes a reference to altering or varying an agreement or arrangement.
- (6) In this Act, an act done or proposed to be done by an agent on behalf of his principal shall be deemed to be done or proposed to be done by his principal.
- (8) A reference in this Act to an offence against this Act or against a particular provision of this Act includes a reference to an offence consisting of an attempt to commit such an offence.

## **5A Ordinarily resident non-citizens**

- (1) For the purposes of this Act, a natural person who is not an Australian citizen is ordinarily resident in Australia at a particular time if and only if:
- (a) the person has actually been in Australia during 200 or more days in the period of 12 months immediately preceding that time; and
  - (b) at that time, either:
    - (i) the person is in Australia and the person's continued presence in Australia is not subject to any limitation as to time imposed by law; or
    - (ii) the person is not in Australia but, immediately before the person's most recent departure from Australia, the person's continued presence in Australia was not subject to any limitation as to time imposed by law.
- (2) For the purposes of paragraph (1)(b), but without otherwise limiting the generality of that paragraph, a person's continued presence in Australia is subject to a limitation as to time imposed by law if the person is an unlawful non-citizen within the meaning of the *Migration Act 1958*.

## **6 Associates**

For the purposes of this Act, the following persons are associates of a person:

- (a) the person's spouse or a parent or remoter lineal ancestor, son, daughter or remoter issue, brother or sister of the person;
- (b) any partner of the person;
- (c) any corporation of which the person is an officer;
- (d) where the person is a corporation—any officer of the corporation;
- (e) any employee or employer of the person;
- (f) any officer of any corporation of which the person is an officer;
- (g) any employee of a natural person of whom the person is an employee;
- (h) any corporation whose directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person or, where the person is a corporation, of the directors of the person;
- (i) any corporation in accordance with the directions, instructions or wishes of which, or of the directors of which, the person is accustomed or under an obligation, whether formal or informal, to act;
- (j) any corporation in which the person holds a substantial interest;
- (k) where the person is a corporation—a person who holds a substantial interest in the corporation;
- (ka) the trustee of a trust estate in which the person holds a substantial interest;
- (kb) where the person is the trustee of a trust estate—a person who holds a substantial interest in the trust estate;
- (l) any person who is, by virtue of this section, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph).

## **7 Australian business**

- (1) A reference in this Act to an Australian business is a reference to a business that is carried on wholly or partly in Australia in anticipation of profit or gain.
- (2) For the purposes of this Act, the holder of a mineral right shall, by virtue of his holding that right, be deemed to carry on in Australia, in anticipation of profit or gain, a business of exploiting that right, and that right shall be deemed to be an asset of that business.
- (3) A reference in this Act, other than this section, to an Australian business does not include a reference to a business that is, or is deemed to be, carried on by any of the following persons, whether alone or together with any other person or persons:

- (a) the Commonwealth, a State or a Territory;
- (b) a corporation constituted for a public purpose by a law of the Commonwealth or of a State or Territory; or
- (c) a local governing body.

## **8 Control of voting power**

A reference in this Act to control of the voting power in a corporation is a reference to control that is direct or indirect, including control that is exercisable as a result or by means of arrangements or practices, whether or not having legal or equitable force, and whether or not based on legal or equitable rights.

## **9 Substantial and controlling interests in corporations**

- (1) For the purposes of this Act:
  - (a) a person shall be taken to hold a substantial interest in a corporation if the person, alone or together with any associate or associates of the person, is in a position to control not less than 15 per centum of the voting power in the corporation or holds interests in not less than 15 per centum of the issued shares in the corporation; and
  - (b) 2 or more persons shall be taken to hold an aggregate substantial interest in a corporation if they, together with any associate or associates of any of them, are in a position to control not less than 40 per centum of the voting power in the corporation or hold interests in not less than 40 per centum of the issued shares in the corporation.
- (2) Where:
  - (a) a person holds a substantial interest in a corporation; or
  - (b) 2 or more persons hold an aggregate substantial interest in a corporation;that person shall be taken to hold a controlling interest in the corporation, or those persons shall be taken to hold an aggregate controlling interest in the corporation, as the case may be, unless the Treasurer is satisfied that, having regard to all the circumstances, that person together with the associate or associates (if any) of that person is not, or those persons together with the associate or associates (if any) of each of them are not, in a position to determine the policy of the corporation.

## **9A Substantial interests in trust estates**

- (1) For the purposes of this Act:

- (a) a person shall be taken to hold a substantial interest in a trust estate if the person, alone or together with an associate or associates, holds a beneficial interest in not less than 15% of the corpus or income of the trust estate; or
  - (b) 2 or more persons shall be taken to hold an aggregate substantial interest in a trust estate if the persons, together with an associate or associates, hold, in the aggregate, beneficial interests in not less than 40% of the corpus or income of the trust estate.
- (2) Where, under the terms of a trust, a trustee has a power or discretion as to the distribution of the income or corpus of the trust estate to beneficiaries, each beneficiary shall, for the purposes of subsection (1), be taken to hold a beneficial interest in the maximum percentage of income or corpus of the trust estate that the trustee is empowered to distribute to that beneficiary.

## **10 Holding corporations and subsidiaries**

- (1) For the purposes of this Act, but subject to subsection (2):
- (a) a corporation shall be deemed to be a subsidiary of another corporation if that other corporation:
    - (i) is in a position to control more than one-half of the voting power in the first-mentioned corporation; or
    - (ii) holds more than one-half of the issued shares in the first-mentioned corporation (excluding any shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital); and
  - (b) a corporation shall be deemed to be a subsidiary of another corporation if the first-mentioned corporation is a subsidiary of any corporation that is that other corporation's subsidiary (including a corporation that is that other corporation's subsidiary by another application or other applications of this paragraph).
- (2) In determining whether a corporation is a subsidiary of another corporation:
- (a) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
  - (b) subject to paragraphs (c) and (d), any shares held or power exercisable:
    - (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or



- (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary that is concerned only in a fiduciary capacity;  
shall be treated as held or exercisable by that other corporation;
  - (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first-mentioned corporation, or of a trust deed for securing any issue of such debentures, shall be disregarded; and
  - (d) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or the power is exercisable solely by way of security for the purposes of a moneylending agreement.
- (3) A reference in this Act to a holding corporation of another corporation is a reference to a corporation of which that other corporation is a subsidiary.

## **11 Interests in shares**

- (1) Subject to this section, a person holds an interest in a share if he has any legal or equitable interest in that share.
- (2) Without limiting the generality of subsection (1), where a person:
- (a) has entered into a contract to purchase a share;
  - (b) has a right, otherwise than by reason of having an interest under a trust, to have a share transferred to himself or to his order, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not;
  - (c) has the right to acquire a share, or an interest in a share, under an option, whether the right is exercisable presently or in the future and whether on the fulfilment of a condition or not; or
  - (d) is entitled (otherwise than by reason of his having been appointed a proxy or representative to vote at a meeting of members of a corporation or of a class of its members) to exercise or control the exercise of a right attached to a share, not being a share of which he is the registered holder;
- that person shall be deemed to hold an interest in that share.
- (3) A person shall not be deemed not to hold an interest in a share by reason only that he holds the interest in the share jointly with another person.

- (4) It is immaterial, for the purpose of determining whether a person holds an interest in a share, that the interest cannot be related to a particular share.
- (5) There shall be disregarded:
  - (a) an interest in a share of a person whose ordinary business includes the lending of money if he holds the interest solely by way of security for the purposes of a moneylending agreement;
  - (b) an interest of a person in a share, being an interest held by him by reason of his holding a prescribed office; and
  - (c) an interest of a prescribed kind in a share, being an interest of such person, or of the persons included in such class of persons, as is prescribed.
- (6) An interest in a share shall not be disregarded by reason only of:
  - (a) its remoteness;
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is or is capable of being made subject to restraint or restriction.
- (7) In relation to a corporation the whole or a portion of the share capital of which consists of stock, an interest of a person in any such stock shall be deemed to be an interest in an issued share in the corporation having the same nominal amount as the amount of that stock and having attached to it the same rights as are attached to that stock.

## 12 Interests in assets

For the purpose of determining whether a person holds an interest in an asset, the provisions of section 11 (other than paragraph (2)(d), subsection (4), paragraphs (5)(b) and (c) and subsection (7)) have effect as if references in those provisions to a share were references to an asset.

### 12A Interests in Australian urban land

- (1) In this Act, *interest in Australian urban land* means:
  - (a) a legal or equitable interest in Australian urban land, other than an interest under a lease or licence or in a unit in a unit trust estate;
  - (b) an interest in a share in a company that owns Australian urban land, being a share that entitles the holder to a right to occupy a dwelling of a kind known as a flat or home unit situated on the land;
  - (c) an interest as lessee or licensee in a lease or licence giving rights to occupy Australian urban land where the term of the lease or licence (including any extension) is reasonably likely, at the time the interest is acquired, to exceed 5 years;

- (d) an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, Australian urban land;
  - (e) an interest in a share in an Australian urban land corporation;
  - (f) an interest in a unit in an Australian urban land trust estate; or
  - (g) if the trustee of an Australian urban land trust estate is a corporation—an interest in a share in that corporation.
- (2) For the purposes of this Act, an interest is an interest in Australian urban land even if it is the only interest that exists in the land or other thing concerned.
- (3) For the purposes of this Act, a person acquires an interest in Australian urban land even if:
- (a) the person acquires the interest jointly with another person or persons;
  - (b) the person has previously acquired an interest in Australian urban land; or
  - (c) the interest is an increase in the amount of an existing interest of the person in Australian urban land.
- (4) For the purposes of this Act, where a person:
- (a) enters into an agreement; or
  - (b) acquires an option;
- to acquire an interest in Australian urban land, the person shall be taken to have acquired that interest in Australian urban land.
- (5) For the purposes of this Act, a person shall be taken not to acquire an interest in Australian urban land if the person acquires the interest:
- (a) solely to hold as security for the purposes of a moneylending agreement; or
  - (b) by way of enforcement of a security held solely for the purposes of a moneylending agreement.
- (6) For the purposes of this Act, a person shall be taken not to acquire an interest in Australian urban land if the person acquires the interest by will or by devolution by operation of law.
- (7) A reference in this Act to the acquisition of an interest in Australian urban land does not include a reference to the acquisition of an interest in Australian urban land from:
- (a) the Commonwealth, a State or a Territory;
  - (b) a corporation constituted for a public purpose by a law of the Commonwealth or of a State or Territory; or
  - (c) a local governing body.

- (8) Where the regulations provide that this Act, or a specified provision or provisions of this Act, does not or do not apply in relation to an acquisition, of a kind specified in the regulations, of an interest in Australian urban land, this Act, or the provision or provisions, does not or do not so apply.

## **12B Interests in trust estates**

- (1) For the purposes of this Act, a reference to a person holding an interest in a trust estate is a reference to a person holding a beneficial interest in the corpus or income of the trust estate.
- (2) For the purposes of this Act, where a person:
  - (a) has entered into a contract to purchase a beneficial interest in the corpus or income of a trust estate;
  - (b) has a right, otherwise than by reason of holding an interest in a trust estate, to have such an interest transferred to the person or to the person's order (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not; or
  - (c) has the right to acquire such an interest under an option (whether the right is exercisable presently or in the future) and whether on the fulfilment of a condition or not;the person shall be taken to hold that interest in the trust estate.
- (3) For the purposes of this Act, a person holds an interest in a trust estate even if the person holds the interest jointly with another person.
- (4) For the purposes of this Act, a person shall be taken not to hold an interest in a trust estate if:
  - (a) the person holds the interest solely by way of security for the purposes of a moneylending agreement; and
  - (b) the ordinary business of the person includes the lending of money.
- (5) For the purposes of this Act, a person holds an interest in a trust estate despite:
  - (a) its remoteness;
  - (b) the manner in which it arose; or
  - (c) the fact that the exercise of a right conferred by the interest is, or is capable of being made, subject to restraint or restriction.

## **12C Tracing of substantial interests in corporations and trust estates**

Where:

- (a) a person holds a substantial interest, or 2 or more persons hold an aggregate substantial interest, (including a substantial interest held

by that person, or an aggregate substantial interest held by those persons, by another application or other applications of this subsection) in a corporation or a trust estate (which corporation or the trustee of which trust estate is in this section called the *first level entity*); and

- (b) the first level entity:
  - (i) is in a position to control all or any of the voting power, or holds interests in all or any of the issued shares, in a corporation (in this section called the *second level corporation*); or
  - (ii) holds an interest in a trust estate (in this section called the *second level trust estate*);

the following provisions have effect for the purposes of this Act:

- (c) where subparagraph (b)(i) applies—the person or those persons together shall be taken to be in a position to control so much of the voting power of the second level corporation as the first level entity is in a position to control or to hold the interests in the issued shares in the second level corporation that the first level entity holds, as the case may be;
- (d) where subparagraph (b)(ii) applies—the person or those persons together shall be taken to hold the interest in the second level trust estate that the first level entity holds.

### **13 Prescribed corporations**

- (1) A reference in this Act to a prescribed corporation is a reference to:
  - (a) a trading corporation;
  - (b) a financial corporation;
  - (c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
  - (d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded \$20,000,000 or such other amount as is prescribed, being assets consisting of all or any of the following:
    - (i) land situated in Australia (including legal and equitable interests in such land);
    - (ii) mineral rights;
    - (iii) shares in a corporation incorporated in Australia;
  - (e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded \$20,000,000 or such other amount as is prescribed;

- (f) a corporation that was, on its last accounting date, a holding corporation of a foreign corporation referred to in paragraph (d) or (e);
  - (g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d), where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of that corporation and of all the subsidiaries of that corporation; or
  - (h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.
- (2) For the purposes of subsection (1), the assets of a corporation shall be deemed not to include any shares in a subsidiary of that corporation.
- (3) In this section, *last accounting date*, in relation to a corporation, means the date of the expiration of the most recent period in relation to which a profit and loss account of the corporation has been laid before it in general meeting, including an account so laid before it before the commencement of this Act.
- (4) For the purposes of this section, the value on a particular date of an asset of a corporation shall be taken to be:
- (a) the value of that asset as shown in the last balance-sheet of the corporation that was prepared and audited before that date; or
  - (b) if no balance-sheet of the corporation was prepared and audited before that date, the value of that asset as shown on that date in the accounting records of the corporation.

### **13A Exempt dealings**

- (1) Sections 18 and 26 do not apply to shares in an exempt corporation.
- (2) Section 20 does not apply to the control of an exempt corporation.
- (3) Sections 19 and 21 do not apply to the control of an exempt business.
- (4) For the purposes of this section:

*exempt corporation* means a corporation:

- (a) that is of a kind referred to in paragraph 13(1)(a), (b), (c), (g) or (h); and

- (b) the value of whose total assets, determined under section 13B, does not exceed:
  - (i) if more than 50% of the value of those assets is attributable to Australian rural land—\$3,000,000 or such other amount as is prescribed; or
  - (ii) in any other case—\$5,000,000 or such other amount as is prescribed;

***exempt business*** means a business the value of whose total assets, determined under section 13B, does not exceed:

- (a) if more than 50% of the value of those assets is attributable to Australian rural land—\$3,000,000 or such other amount as is prescribed; or
- (b) in any other case—\$5,000,000 or such other amount as is prescribed.

### **13B Valuation of assets for purposes of section 13A**

- (1) For the purposes of Part IA, or in determining whether a corporation is an exempt corporation, in relation to the application of section 18 or 26, the value of a corporation's total assets at a particular time is:
  - (a) where the corporation is not a holding corporation:
    - (i) the value of those assets as shown in the last balance-sheet of the corporation audited before that time or, if no balance-sheet was audited before that time, as shown at that time in the accounting records of the corporation; or
    - (ii) if the value of the issued shares of the corporation determined under subsection (2) or (3) is greater—that greater value; or
  - (b) where the corporation is a holding corporation:
    - (i) the aggregate value of the assets of the corporation, and of each of its subsidiaries that is a prescribed corporation carrying on an Australian business, determined, in each case, under subparagraph (a)(i); or
    - (ii) if the aggregate value of the issued shares of the corporation and each of those subsidiaries determined under subsection (2) or (3) is greater—that greater value.
- (2) For the purposes of subparagraphs (1)(a)(ii) and (b)(ii) in relation to the application of section 18, the value of the issued shares of a corporation, or the aggregate value of the issued shares of a group of corporations, is the value ascertained under the formula:

$$\frac{C \times TS}{NS}$$

where:

*C* is:

- (a) where the transaction referred to in section 18 is the proposed acquisition of shares—the total consideration for the acquisition; or
- (b) where the transaction is the issue of shares—the total issue price of all the shares to be issued;

*TS* is the total number of issued shares, immediately before the proposed acquisition or issue, of the corporation or group of corporations, as the case may be; and

*NS* is the number of shares proposed to be acquired or issued, as the case may be.

- (3) For the purposes of subparagraphs (1)(a)(ii) and (b)(ii) in relation to the application of section 26, the value of the issued shares of a corporation, or the aggregate value of the issued shares of a group of corporations, is the value ascertained under the formula:

$$\frac{C \times TS}{NS}$$

where:

*C* is the consideration for the shares acquired or proposed to be acquired under the agreement referred to in section 26;

*TS* is the total number of issued shares, immediately before the acquisition or proposed acquisition, of the corporation or group of corporations, as the case may be; and

*NS* is the number of shares to which the agreement relates.

- (4) For the purposes of Part IA, or in determining whether a business is an exempt business, in relation to the application of section 19, the value of a business' total assets is the consideration for the acquisition referred to in that section.
- (5) For the purposes of Part IA, or in determining whether a corporation is an exempt corporation, in relation to the application of section 20, the value of a corporation's total assets at a particular time is:
  - (a) where the corporation is not a holding corporation—the value of those assets as shown in the last balance-sheet of the corporation audited before that time or, if no balance-sheet was audited before



- that time, as shown at that time in the accounting records of the corporation; or
- (b) where the corporation is a holding corporation—the aggregate value of the assets of the corporation, and of each of its subsidiaries that is a prescribed corporation carrying on an Australian business, determined, in each case, under paragraph (a).
- (6) For the purposes of Part IA, or in determining whether a business is an exempt business, in relation to the application of section 21, the value of a business' total assets at a particular time is the value determined by a person who was at the time of the valuation a suitably qualified valuer acting at arm's length in relation to the valuation where:
- (a) the valuation was made at the particular time; or
  - (b) the valuation was made not more than 12 months before the particular time and the value had not increased significantly between the time of the valuation and the particular time.

### **13C Australian urban land corporations**

- (1) For the purposes of this Act, a corporation is an Australian urban land corporation if:
- (a) where the corporation is not a holding corporation—the value of its eligible land assets exceeds 50% of the value of its total assets; or
  - (b) where the corporation is a holding corporation—the sum of the values of the eligible land assets of the corporation and of each of its subsidiaries exceeds 50% of the sum of the values of the total assets of the corporation and of each of its subsidiaries.
- (2) Where a reasonable value of the eligible land assets or of the total assets of a corporation is:
- (a) shown in the last audited balance-sheet of the corporation; or
  - (b) if not shown in the last audited balance-sheet—shown in the accounting records of the corporation;
- the value of those assets as shown shall be taken to be their value for the purposes of subsection (1).
- (3) For the purposes of determining the values referred to in paragraph (1)(b), any asset of a corporation that consists of shares in any subsidiary of the corporation shall be disregarded.
- (4) In this section:

*eligible land assets*, in relation to a corporation, means so much of the corporation's total assets as consists of interests in Australian urban land.

### **13D Australian urban land trust estates**

- (1) For the purposes of this Act, a trust estate is an Australian urban land trust estate if it is a unit trust estate and the value of so much of its total assets as consists of interests in Australian urban land exceeds 50% of the value of its total assets.
- (2) Where a reasonable value of the particular assets or of the total assets of a trust estate is given in a valuation, that value shall be taken to be their value at a particular time for the purposes of subsection (1) if:
  - (a) the person giving the valuation was at the time of the valuation a suitably qualified valuer acting at arm's length in relation to the valuation;
  - (b) the valuation was made not more than 12 months before the particular time; and
  - (c) the value of those assets had not increased significantly between the time of the valuation and the particular time.

### **14 Voting power**

In this Act, a reference to the voting power in a corporation is a reference to the maximum number of votes that might be cast at a general meeting of the corporation.

### **15 Application of Act**

This Act does not apply in relation to:

- (a) an acquisition of shares or assets, or an issue of shares, that occurred before the date of commencement of this Act;
- (b) an arrangement that was entered into before that date; or
- (c) an acquisition of shares or assets occurring on or after that date, where notice in writing was issued by the Commonwealth Government before that date to the effect that the Commonwealth Government did not object to the acquisition or, in the case of an acquisition occurring by way of the exercise of an option, that it did not object to the acquisition of the option or to the acquisition of those shares or assets in pursuance of the option.

### **16 Extra-territorial operation of Act**

This Act applies both within and outside Australia and extends to every external Territory other than Papua New Guinea.

## **17 Persons obliged to comply with Act**

The obligation to comply with this Act extends to all natural persons, whether resident in Australia or not and whether Australian citizens or not, and to all corporations, whether incorporated or carrying on business in Australia or not.

## **Part IA—Exempt foreign investments**

### **17A Exempt foreign investments in prescribed corporations etc.**

- (1) Section 18 applies in relation to a prescribed corporation as if neither of the following were a foreign person for the purposes of that section:
  - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation;
  - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (2) Section 20 applies in relation to an Australian corporation as if neither of the following were a foreign person for the purposes of that section:
  - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation;
  - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (3) Sections 19 and 21 apply in relation to a business as if neither of the following were a foreign person for the purposes of those sections:
  - (a) a prescribed foreign investor that is covered by subsection 17B(3) in relation to the business;
  - (b) a prescribed foreign government investor that is covered by subsection 17C(2) in relation to the business.
- (4) Section 26 applies in relation to an Australian corporation as if neither of the following were a person covered by that section:
  - (a) a prescribed foreign investor that is covered by subsection 17B(1) or (2) in relation to the corporation;
  - (b) a prescribed foreign government investor that is covered by subsection 17C(1) in relation to the corporation.
- (5) In applying section 18, 19, 20, 21 or 26 in relation to an entity that is neither a prescribed foreign investor nor a prescribed foreign government investor, do not apply subsection (1), (2), (3) or (4) for the purposes of:
  - (a) determining whether 2 or more persons (whether or not those persons are associates) hold an aggregate controlling interest in a corporation; or
  - (b) determining whether 2 or more persons (whether or not those persons are associates) together are in a position to control an amount of the voting power in a corporation; or

- (c) determining whether 2 or more persons (whether or not those persons are associates) together hold interests in the issued shares in a corporation; or
- (d) determining whether 2 or more persons (whether or not those persons are associates) together are in a position to determine the policy of a business or corporation.

**17B Asset thresholds for exempt foreign investments in prescribed corporations etc.—prescribed foreign investors**

- (1) A prescribed foreign investor is covered by this subsection in relation to a corporation if:
  - (a) the corporation, or a subsidiary of the corporation, carries on a business wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor; and
  - (b) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation’s total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
  - (c) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph.
- (2) A prescribed foreign investor is covered by this subsection in relation to a corporation if:
  - (a) neither the corporation, nor a subsidiary of the corporation, carries on a business wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor; and
  - (b) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation’s total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
  - (c) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph.
- (3) A prescribed foreign investor is covered by this subsection in relation to a business if:
  - (a) both of the following conditions are satisfied:

- (i) the business is wholly or partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
  - (ii) the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subparagraph; or
- (b) both of the following conditions are satisfied:
  - (i) the business is neither wholly nor partly in a prescribed sensitive sector in relation to the prescribed foreign investor;
  - (ii) the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subparagraph.
- (4) Regulations made for the purposes of a particular provision of this section may provide for different amounts for different prescribed foreign investors, depending on all or any of the following:
  - (a) the kind of prescribed foreign investor concerned;
  - (b) in relation to subsection (1) or paragraph (3)(a)—the kind of prescribed sensitive sector concerned;
  - (c) in relation to subsection (1) or (2)—the kind of corporation concerned;
  - (d) in relation to subsection (3)—the kind of business concerned;
  - (e) any other matter.
- (5) Regulations made for the purposes of a particular provision of this section may provide for a method for indexing an amount.
- (6) Subsections (4) and (5) do not limit the regulations that may be made for the purposes of this section.

**17C Asset thresholds for exempt foreign investments in prescribed corporations etc.—prescribed foreign government investors**

- (1) A prescribed foreign government investor is covered by this subsection in relation to a corporation if:
  - (a) for a corporation covered by paragraph 13(1)(a), (b), (c), (g) or (h)—the value of the corporation's total assets, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this paragraph; and
  - (b) for a corporation covered by paragraph 13(1)(d), (e) or (f) because the corporation, or another corporation or other corporations, held certain assets on a particular date—the value of those assets on that date, determined in accordance with section 13, does not exceed the

amount ascertained in accordance with regulations made for the purposes of this paragraph.

- (2) A prescribed foreign government investor is covered by this subsection in relation to a business if the value of the total assets of the business, determined under section 13B, does not exceed the amount ascertained in accordance with regulations made for the purposes of this subsection.
- (3) Regulations made for the purposes of a particular provision of this section may provide for different amounts for different prescribed foreign government investors, depending on all or any of the following:
  - (a) the kind of prescribed foreign government investor concerned;
  - (b) in relation to subsection (1)—the kind of corporation concerned;
  - (c) in relation to subsection (2)—the kind of business concerned;
  - (d) any other matter.
- (4) Regulations made for the purposes of a particular provision of this section may provide for a method for indexing an amount.
- (5) Subsections (3) and (4) do not limit the regulations that may be made for the purposes of this section.

#### **17D Exempt foreign investments in financial sector companies etc.**

- (1) Section 18 applies in relation to a financial sector company as if a prescribed foreign investor covered by subsection (3) were not a foreign person for the purposes of that section.
- (2) Section 26 applies in relation to a financial sector company as if a prescribed foreign investor covered by subsection (3) were not a person covered by that section.
- (3) A prescribed foreign investor is covered by this subsection if the conditions specified in the regulations are satisfied in relation to the prescribed foreign investor.
- (4) In applying section 18 or 26 in relation to an entity that is not a prescribed foreign investor covered by subsection (3), do not apply subsection (1) or (2) for the purposes of:
  - (a) determining whether 2 or more persons (whether or not those persons are associates) hold an aggregate controlling interest in a corporation; or
  - (b) determining whether 2 or more persons (whether or not those persons are associates) together are in a position to control an amount of the voting power in a corporation; or

- (c) determining whether 2 or more persons (whether or not those persons are associates) together hold interests in the issued shares in a corporation; or
- (d) determining whether 2 or more persons (whether or not those persons are associates) together are in a position to determine the policy of a business or corporation.

(5) In this section:

*financial sector company* has the same meaning as in the *Financial Sector (Shareholdings) Act 1998*.

### **17E Prescribed foreign investor**

- (1) An entity is a *prescribed foreign investor* if:
  - (a) the conditions specified in the regulations are satisfied in relation to the entity; and
  - (b) the entity is not a foreign government investor.
- (2) The conditions specified in the regulations for the purposes of subsection (1) may include any or all of the following kinds of conditions:
  - (a) a condition that the entity be a national of a specified foreign country;
  - (b) a condition that the entity be incorporated under the law of a specified foreign country, or a specified part of a foreign country;
  - (c) a condition that the entity be constituted or organised under the law of a specified foreign country, or a specified part of a foreign country.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

(3) Subsection (2) does not limit the regulations that may be made for the purposes of subsection (1).

(4) In this section:

*entity* includes an individual.

### **17F Foreign government investor**

An entity is a *foreign government investor* if:

- (a) the entity is:
  - (i) a body politic of a foreign country; or
  - (ii) a body politic of part of a foreign country; or
  - (iii) a part of a body politic mentioned in subparagraph (i) or (ii); or



- (b) the entity is controlled by an entity mentioned in paragraph (a); or
- (c) an entity mentioned in paragraph (a) holds an interest in the entity that satisfies the conditions specified in the regulations.

### **17G Prescribed foreign government investor**

An entity is a *prescribed foreign government investor* if:

- (a) the entity is a foreign government investor; and
- (b) the conditions specified in the regulations are satisfied in relation to the entity.

### **17H Prescribed sensitive sector**

A kind of business activity is a *prescribed sensitive sector* in relation to a prescribed foreign investor if:

- (a) the conditions specified in the regulations are satisfied in relation to the prescribed foreign investor; and
- (b) the conditions specified in the regulations are satisfied in relation to the kind of business activity.

## Part II—Control of takeovers and other transactions

### 18 Acquisitions of shares

- (1) In this section, *corporation* means:
  - (a) a prescribed corporation that carries on an Australian business, whether alone or together with any other person or persons; or
  - (b) a holding corporation (other than a foreign corporation that is not a prescribed corporation) of such a prescribed corporation.
- (2) Where the Treasurer is satisfied that:
  - (a) a person proposes, or persons propose, to acquire shares in a corporation or a corporation proposes to issue shares;
  - (b) the proposed acquisition or acquisitions or the proposed issue would have the result that:
    - (i) in the case of a corporation not controlled by foreign persons—the corporation would be controlled by foreign persons; or
    - (ii) in the case of a corporation controlled by foreign persons—the corporation would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
  - (c) that result would be contrary to the national interest;the Treasurer may make an order prohibiting the proposed acquisition or all or any of the proposed acquisitions, or the proposed issue, as the case may be.
- (3) Where the Treasurer makes an order under subsection (2) prohibiting a proposed acquisition of shares in a corporation, he may also make an order in relation to a specified foreign person, or in relation to a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person, directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them:
  - (a) be in a position to control more of the total voting power in the corporation than:
    - (i) such proportion of the total voting power in the corporation as is equal to the proportion of the total voting power in the corporation at the time of the coming into operation of the first-mentioned order that that foreign person, together with any associate or associates of that person, was in a position to control at that time; or

- (ii) such greater proportion (if any) of the total voting power in the corporation as is specified in the order; or
- (b) hold interests in a number of issued shares in the corporation exceeding:
  - (i) the number that bears to the total number of issued shares in the corporation the same proportion as the number of issued shares in the corporation in which that foreign person, together with any associate or associates of that person, held interests at the time of the coming into operation of the first-mentioned order bears to the total number of issued shares in the corporation at that time; or
  - (ii) such greater number (if any) as is specified in the order.
- (4) Where a person has acquired shares in a corporation, and the Treasurer is satisfied that:
  - (a) the acquisition has had the result that:
    - (i) in the case of a corporation that, before the acquisition, was not controlled by foreign persons—the corporation is controlled by foreign persons; or
    - (ii) in the case of a corporation that, before the acquisition, was controlled by foreign persons—the corporation continues to be controlled by foreign persons, but those persons include a person who is not, or do not include a person who is, one of the foreign persons first referred to in this subparagraph; and
  - (b) that result is contrary to the national interest;the Treasurer may make an order directing the person who acquired the shares to dispose of those shares within a specified time to any person or persons approved in writing by the Treasurer.
- (5) Before the expiration of the time specified in an order made under subsection (4) or of that time as extended under this subsection, the Treasurer may, by writing signed by him, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (6) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless he is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the shares concerned.
- (7) For the purposes of this section:
  - (a) a corporation shall be taken to be controlled by foreign persons if, and only if, a foreign person holds a controlling interest in the

corporation or 2 or more foreign persons hold an aggregate controlling interest in the corporation;

- (b) where, by virtue of paragraph (a), a corporation is taken to be controlled by foreign persons by reason that a foreign person, together with an associate or associates, is in a position to control not less than 15 per centum of the voting power in the corporation or holds interests in not less than 15 per centum of the issued shares in the corporation, references to the foreign persons who control the corporation include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons; and
- (c) where, by virtue of paragraph (a), a corporation is taken to be controlled by foreign persons by reason that 2 or more foreign persons, together with an associate or associates of any of them, are in a position to control not less than 40 per centum of the voting power in the corporation or hold interests in not less than 40 per centum of the issued shares in the corporation, references to the foreign persons who control the corporation are references to any foreign persons, and any associates of foreign persons (whether or not those associates are in fact foreign persons), each of whom is in a position to control any of the voting power in the corporation or holds interests in any of the issued shares in the corporation.

## 19 Acquisitions of assets

- (1) In this section, *foreign person* means:
  - (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; or
  - (b) a foreign corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest.
- (2) Where the Treasurer is satisfied that:
  - (a) a person proposes, or persons propose, to acquire assets of an Australian business carried on solely by a prescribed corporation or prescribed corporations;
  - (b) the proposed acquisition or acquisitions would have the result that:
    - (i) in the case of a business not controlled by foreign persons—the business would be controlled by foreign persons; or
    - (ii) in the case of a business controlled by foreign persons—the business would continue to be controlled by foreign persons, but those persons would include a person who is not, or would

not include a person who is, one of the foreign persons first referred to in this subparagraph; and

(c) that result would be contrary to the national interest;

the Treasurer may make an order prohibiting the proposed acquisition or all or any of the proposed acquisitions, as the case may be.

- (3) Where the Treasurer makes an order under subsection (2) prohibiting a proposed acquisition of assets of an Australian business, he may also make an order in relation to a specified foreign person, or in relation to a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person, directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them, acquire any interests in assets of that business, or acquire any such interests except to a specified extent.
- (4) Where a person has acquired assets of an Australian business carried on solely by a prescribed corporation or prescribed corporations, and the Treasurer is satisfied that:
- (a) the acquisition has had the result that:
    - (i) in the case of a business that, before the acquisition, was not controlled by foreign persons—the business is controlled by foreign persons; or
    - (ii) in the case of a business that, before the acquisition, was controlled by foreign persons—the business continues to be controlled by foreign persons, but those persons include a person who is not, or do not include a person who is, one of the foreign persons first referred to in this subparagraph; and
  - (b) that result is contrary to the national interest;
- the Treasurer may make an order directing the person who acquired the assets to dispose of those assets within a specified time to any person or persons approved in writing by the Treasurer.
- (5) Before the expiration of the time specified in an order made under subsection (4) or of that time as extended under this subsection, the Treasurer may, by writing signed by him, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (6) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless he is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the assets concerned.
- (7) For the purposes of this section:

- (a) an Australian business shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the business; and
- (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the business, references to the foreign persons who control the business include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

## 20 Arrangements relating to directorate of corporations

- (1) In this section, *corporation* means:
  - (a) an Australian corporation that carries on an Australian business, whether alone or together with any other person or persons; or
  - (b) a holding corporation (other than a foreign corporation) of such an Australian corporation.
- (2) Where the Treasurer is satisfied that:
  - (a) a person proposes to enter into an agreement in relation to the affairs of a corporation or it is proposed to alter a constituent document of a corporation;
  - (b) under the proposed agreement or in consequence of the proposed alteration, a director or directors of the corporation will be under an obligation to act in accordance with the directions, instructions or wishes of a foreign person who holds a substantial interest in the corporation or of an associate of such a foreign person;
  - (c) the proposed agreement or alteration would have the result that:
    - (i) in the case of a corporation not controlled by foreign persons—the corporation would be controlled by foreign persons; or
    - (ii) in the case of a corporation controlled by foreign persons—the corporation would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
  - (d) that result would be contrary to the national interest;the Treasurer may make an order prohibiting the entering into of the proposed agreement or prohibiting the proposed alteration, as the case may be.

- (3) Where an agreement has been entered into in relation to the affairs of a corporation, or an alteration has been made to a constituent document of a corporation, and the Treasurer is satisfied that:
- (a) the agreement or alteration has had, or will have, the result that:
    - (i) in the case of a corporation that, before the agreement was entered into or the alteration was made, was not controlled by foreign persons—the corporation is or will be controlled by foreign persons; or
    - (ii) in the case of a corporation that, before the agreement was entered into or the alteration was made, was controlled by foreign persons—the corporation continues or will continue to be controlled by foreign persons, but those persons include or will include a person who is not, or do not or will not include a person who is, one of the foreign persons first referred to in this subparagraph; and
  - (b) that result is or will be contrary to the national interest;
- the Treasurer may, for the purpose of restoring the control of the corporation as closely as possible to the position in which it was before the agreement was entered into or the alteration was made or for the purpose of preventing the occurrence of a change in the control of the corporation of a kind mentioned in paragraph (a), as the case may be, make orders directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.
- (4) Where a time is specified in an order made under subsection (3), the Treasurer may, before the expiration of that time or of that time as extended under this subsection, by writing signed by him, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (5) For the purposes of this section:
- (a) a corporation shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the corporation; and
  - (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the corporation, references to the foreign persons who control the corporation include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

## 21 Arrangements relating to control of Australian businesses

(1) In this section:

*arrangement*, in relation to an Australian business, means an arrangement relating to the leasing or letting on hire of, or the granting of other rights to use, assets of such a business or relating to the participation by a person in the profits or management of such a business;

*foreign person* means:

- (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest; or
- (b) a foreign corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest.

(2) Where the Treasurer is satisfied that:

- (a) a person proposes to enter into an arrangement in relation to an Australian business carried on solely by a prescribed corporation or prescribed corporations or proposes to terminate an arrangement that exists in relation to such an Australian business;
- (b) the proposal, if carried out, would have the result that:
  - (i) in the case of a business not controlled by foreign persons—the business would be controlled by foreign persons; or
  - (ii) in the case of a business controlled by foreign persons—the business would continue to be controlled by foreign persons, but those persons would include a person who is not, or would not include a person who is, one of the foreign persons first referred to in this subparagraph; and
- (c) that result would be contrary to the national interest;

the Treasurer may make an order prohibiting the entering into of the proposed arrangement or prohibiting the termination of the existing arrangement, as the case may be.

(3) Where an arrangement has been entered into in relation to an Australian business carried on solely by a prescribed corporation or prescribed corporations or an arrangement that existed in relation to such an Australian business has been terminated, and the Treasurer is satisfied that:

- (a) the entering into or the termination of the arrangement has had, or will have, the result that:
  - (i) in the case of a business that, before the entering into or termination of the arrangement, was not controlled by foreign



persons—the business is or will be controlled by foreign persons; or

- (ii) in the case of a business that, before the entering into or termination of the arrangement, was controlled by foreign persons—the business continues or will continue to be controlled by foreign persons, but those persons include or will include a person who is not, or do not or will not include a person who is, one of the foreign persons first referred to in this subparagraph; and

(b) that result is or will be contrary to the national interest;

the Treasurer may, for the purpose of restoring the control of the business as closely as possible to the position in which it was before the arrangement was entered into or terminated or for the purpose of preventing the occurrence of a change in the control of the business of a kind referred to in paragraph (a), as the case may be, make orders directing specified persons to do within a specified time, or refrain from doing, specified acts or acts of a specified kind.

- (4) Where a time is specified in an order made under subsection (3), the Treasurer may, before the expiration of that time or of that time as extended under this subsection, by writing signed by him, extend or further extend that time or that time as so extended, and in that event the order has effect as if the time as so extended or further extended had been specified in the order.
- (5) For the purposes of this section:
  - (a) an Australian business shall be taken to be controlled by foreign persons if, and only if, the Treasurer is satisfied that a foreign person or foreign persons, alone or together with an associate or associates of that foreign person or of any of those foreign persons, is or are in a position to determine the policy of the business; and
  - (b) where an Australian business is so taken to be controlled by foreign persons by reason that a foreign person or foreign persons, together with an associate or associates, are in a position to determine the policy of the business, references to the foreign persons who control that business include references to that associate or those associates, whether or not that associate is, or those associates are, in fact foreign persons.

## **21A Acquisitions of interests in Australian urban land**

- (1) In this section:

*foreign person* means:

- (a) a foreign corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
  - (b) a foreign corporation in which 2 or more persons, each of whom is a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.
- (2) Where the Treasurer is satisfied that:
- (a) a foreign person proposes to acquire an interest in Australian urban land; and
  - (b) the proposed acquisition would be contrary to the national interest; the Treasurer may make an order prohibiting the proposed acquisition.
- (3) Where the Treasurer makes such an order in relation to an interest in Australian urban land, he or she may also make an order in relation to:
- (a) a specified foreign person; or
  - (b) a specified foreign person and specified associates, or the persons included in a specified class of associates, of that person;
- directing that that person shall not, or none of those persons shall, whether alone or together with any other or others of them, acquire:
- (c) any interest in the land or other thing concerned; or
  - (d) any such interest except to a specified extent.
- (4) Where a foreign person has acquired an interest in Australian urban land and the Treasurer is satisfied that the acquisition is contrary to the national interest, the Treasurer may make an order directing the foreign person to dispose of that interest within a specified period to any person or persons approved in writing by the Treasurer.
- (5) Before the end of the period specified in the order or of that period as extended under this subsection, the Treasurer may, by writing signed by the Treasurer, extend or further extend that period or that period as so extended, and in that event the order has effect as if the period as so extended or further extended had been specified in the order.
- (6) For the purposes of subsection (4), but without limiting the generality of that subsection:
- (a) a foreign person shall be taken to have acquired an interest in Australian urban land if the person becomes, with or without the knowledge of the person, a beneficiary in a trust estate (other than a deceased estate) that consists of or includes an interest in Australian urban land; and
  - (b) where paragraph (a) applies and the trust estate is a discretionary trust estate—a reference to the disposal of the interest of the foreign person is a reference to the disposal of such assignable benefits in

relation to that trust estate as may ultimately vest in that foreign person.

- (7) The Treasurer shall not refuse to approve a person for the purposes of subsection (4) unless the Treasurer is satisfied that the person is a foreign person and that it would be contrary to the national interest for that person to acquire the interest concerned.

## **22 Interim orders**

- (1) For the purpose of enabling due consideration to be given to the question whether an order should be made under subsection 18(2), 19(2), 20(2), 21(2) or 21A(2), the Treasurer may make an order of the kind that he would be empowered to make under that subsection if it were applicable.
- (2) An order made under this section has effect for such period, not exceeding 90 days after the coming into operation of the order, as is specified in the order.

## **23 Revocation of orders**

The Treasurer may at any time make an order revoking an order made under section 18, 19, 20, 21, 21A or 22 or an order referred to in subsection 3(4).

## **24 Publication of orders**

An order made by the Treasurer under this Part shall be made in writing signed by him, shall be published in the *Gazette* within 10 days after the date on which it is made, and comes into operation:

- (a) except in a case to which paragraph (b) applies—on the date of publication; or
- (b) in the case of an order under subsection 18(3) or (4), 19(4), 20(3), 21(3) or 21A(3) or (4)—on such date as is specified in the order, being a date not earlier than 30 days after the date of publication.

## **25 Effect of notification of transactions**

- (1) This section has effect where the Treasurer receives:
  - (a) a notice from a person stating that the person proposes to acquire shares, assets or interests or to enter into an agreement or enter into or terminate an arrangement;
  - (b) a notice from a corporation stating that the corporation proposes to issue shares; or

- (c) a notice from a corporation stating that it is proposed to alter a constituent document of the corporation.
- (1A) Where the Treasurer is empowered to make an order under subsection 18(2), 19(2), 20(2), 21(2) or 21A(2) in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice, the Treasurer may, instead of making such an order, decide that the Commonwealth Government has no objection to the proposal specified in the notice, provided that the person or corporation complies with conditions that the Treasurer, when making the decision, considers necessary in order that the proposal, if carried out, will not be contrary to the national interest.
- (1B) Where the Treasurer makes a decision under subsection (1A), the person or corporation shall be given advice in writing of the decision, being advice that includes a statement of the conditions to be complied with, before the end of 10 days after the day on which the decision is made.
- (1C) If the person or corporation:
  - (a) is given an advice under subsection (1B) of a decision; and
  - (b) carries out the proposal to which the decision relates; and
  - (c) does or fails to do an act, resulting in a contravention of a condition set out in the advice;the person or corporation is guilty of an offence punishable on conviction, by:
  - (d) in the case of a natural person—a fine not exceeding 500 penalty units, or imprisonment for a period not exceeding 2 years, or both; or
  - (e) in the case of a corporation—a fine not exceeding 2,500 penalty units.
- (1D) If the person or corporation:
  - (a) is given advice under subsection (1B) of a decision; and
  - (b) carries out the proposal to which the decision relates;the Treasurer may only make an order under subsection 18(4), 19(4), 20(3), 21(3) or 21A(4) in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice if:
  - (c) the person or corporation is convicted of an offence against subsection (1C) in relation to a condition; or
  - (d) an order is made under section 19B of the *Crimes Act 1914* in relation to the person or corporation in respect of such an offence.
- (2) If 30 days pass after the day on which the Treasurer receives the notice and by the end of that period:
  - (a) the Treasurer has not:

- (i) made a decision under subsection (1A) in relation to the proposal specified in the notice, being a decision of which advice is given in writing to the person or corporation before the end of 10 days after the day on which the decision is made; or
  - (ii) made an order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
- (b) the person or corporation has not carried out the proposal;
- the Treasurer is not empowered:
- (c) to make an order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration; or
  - (d) to make a decision under subsection (1A) in relation to the proposal.
- (3) If:
- (a) before the end of 30 days after the day on which the Treasurer receives the notice, the Treasurer makes an order under section 22 in relation to the acquisition, agreement, arrangement, issue or alteration specified in the notice;
  - (b) the order is published in the *Gazette* before the end of 10 days after the day on which the order is made; and
  - (c) 90 days pass after the day on which the order is published and by the end of that period:
    - (i) the Treasurer has not:
      - (A) made a decision under subsection (1A) in relation to the proposal specified in the notice, being a decision of which advice is given in writing to the person or corporation before the end of 10 days after the day on which the decision is made; or
      - (B) made any other order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration, being an order published in the *Gazette* before the end of 10 days after the day on which the order is made; and
    - (ii) the person or corporation has not carried out the proposal;
- the Treasurer is not empowered:
- (d) to make a further order under this Part in relation to the acquisition, agreement, arrangement, issue or alteration; or
  - (e) to make a decision under subsection (1A) in relation to the proposal.
- (4) For the purposes of this section, a notice stating that a person has an option to acquire shares or assets shall be taken to be a statement that the person proposes to acquire the shares or assets, and references in this

section to the proposal and to the acquisition shall be construed accordingly.

(4A) For the purposes of this section but without limiting its generality, a person or corporation may be given advice in writing of a decision of the Treasurer in relation to a proposal if that advice in writing is given to the person or corporation at an address specified, in the notice containing the proposal, as the address for service of notices in relation to the proposal.

(5) In this section, *notice* includes a notice furnished under section 26 or 26A.

## **26 Compulsory notification of certain section 18 transactions**

(1) In this section, *person to whom this section applies* means:

- (a) a natural person not ordinarily resident in Australia;
- (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
- (c) a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest;
- (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
- (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

(2) Where a person to whom this section applies:

- (a) enters into an agreement by virtue of which he acquires a substantial shareholding in an Australian corporation and did not, before entering into the agreement, furnish to the Treasurer a notice stating his intention to enter into that agreement; or
- (b) having furnished a notice to the Treasurer stating his intention to enter into an agreement by virtue of which he is to acquire a substantial shareholding in an Australian corporation, enters into that agreement before:
  - (i) the expiration of 40 days after the date on which the notice was received by the Treasurer; or

- (ii) the date on which advice is given that the Commonwealth Government does not object to the person entering into that agreement (whether or not the advice is subject to conditions imposed under subsection 25(1A));  
whichever first occurs;  
the person is guilty of an offence and is punishable, on conviction, by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.
- (3) Where:
  - (a) a person enters into an agreement of a kind mentioned in subsection (2); and
  - (b) the provisions of the agreement that relate to the acquisition of the interests in the shares concerned do not become binding until the fulfilment of a condition or conditions set out in the agreement;  
the person shall not be taken, for the purposes of that subsection, to have entered into the agreement until the time when those provisions become binding.
- (4) Without affecting the operation of section 25, this section does not apply in relation to a shareholder of a corporation subscribing for shares in the corporation if:
  - (a) the shares were subscribed for in pursuance of a resolution by the corporation or the directors of the corporation agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to persons who were registered as the holders of shares in the corporation on a date specified in the resolution; and
  - (b) the number of shares for which the shareholder so subscribed bears to the total number of shares made available for allotment in pursuance of the resolution as nearly as practicable the same proportion as the number of issued shares in the corporation held by him immediately before the date specified in the resolution bears to the total number of issued shares in the corporation immediately before that date.
- (5) For the purposes of subsection (4), it is immaterial that the shares in the corporation comprise 2 or more classes of shares to which different rights are attached.
- (5A) Without affecting the operation of section 25, this section does not apply in relation to the acquisition of a substantial shareholding in an Australian corporation if that acquisition is also an acquisition of an interest in Australian urban land.

- (6) In this section, a reference to an agreement by virtue of which a person acquires a substantial shareholding in a corporation is a reference to an agreement by virtue of which the person acquires any interests in any shares in the corporation where:
- (a) he already holds a substantial interest in the corporation; or
  - (b) upon the acquisition by him of those interests, or of those interests and of any interests in other shares in the corporation, being interests that he has offered to acquire, he would hold a substantial interest in the corporation.
- (7) For the purposes of subsection (6), a reference to a person offering to acquire interests in shares includes a reference to a person making or publishing a statement, however expressed, that expressly or impliedly invites a holder of interests in shares to offer to dispose of interests in shares.

## **26A Compulsory notification of certain section 21A transactions**

- (1) In this section, *person to whom this section applies* means:
- (a) a natural person not ordinarily resident in Australia;
  - (b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest;
  - (c) a corporation in which 2 or more persons, each of whom is a natural person not ordinarily resident in Australia or a foreign corporation hold an aggregate substantial interest;
  - (d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
  - (e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.
- (2) Where a person to whom this section applies:
- (a) enters into an agreement by virtue of which he or she acquires an interest in Australian urban land and did not, before entering into the agreement, furnish to the Treasurer a notice stating his or her intention to enter into that agreement; or
  - (b) having furnished a notice to the Treasurer stating his or her intention to enter into an agreement by virtue of which he or she is to acquire an interest in Australian urban land, enters into that agreement before:
    - (i) the end of 40 days after the day on which the notice was received by the Treasurer; or



- (ii) the day on which advice is given that the Commonwealth Government does not object to the person entering into that agreement (whether or not the advice is subject to conditions imposed under subsection 25(1A));

whichever first occurs;

the person is guilty of an offence and is punishable, on conviction, by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.

- (3) Where:

- (a) a person enters into an agreement by virtue of which he or she acquires an interest in Australian urban land; and
- (b) the provisions of the agreement that relate to the acquisition of the interest do not become binding until the fulfilment of a condition or conditions set out in the agreement;

the person shall not be taken, for the purposes of subsection (2), to have entered into the agreement until the time when those provisions become binding.

- (4) Without affecting the operation of section 25, this section does not apply to an acquisition of an interest in Australian urban land if:
  - (a) that interest is an interest in a share in a corporation;
  - (b) the acquisition occurs because of a shareholder subscribing for shares in the corporation;
  - (c) the shares were subscribed for in pursuance of a resolution by the corporation or the directors of the corporation agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to persons who were registered as the holders of shares in the corporation on a day specified in the resolution; and
  - (d) the proportion of the total shares made available for allotment represented by the shares for which the shareholder so subscribed is as near as practicable to the proportion of the issued shares in the corporation, immediately before the day specified in the resolution, that were held by the shareholder immediately before that day.
- (5) For the purposes of subsection (4), it is immaterial that the shares in the corporation comprise 2 or more classes of shares to which different rights are attached.

## **27 Form of notification**

A notice does not have effect for the purposes of section 25, 26 or 26A unless it is in accordance with the prescribed form and complies with the directions set out in the form.

## **28 Notification of options**

A notice furnished in accordance with section 25 stating that a person proposes to acquire an option to acquire a share or asset has effect as if it included a statement that the person proposes to exercise that option.

## **Part III—Miscellaneous**

### **30 Offences**

- (1) A person who contravenes or fails to comply with an order made under Part II is guilty of an offence against this section.
- (2) Where a person has been convicted of an offence consisting of a contravention, or failure to comply with, an order made under Part II and the contravention or failure continues after he has been so convicted, the person is guilty of a further offence against this section.
- (3) Where an order made under Part II requires a person to do anything within a particular time and the person fails to do that thing within that time, the person shall be deemed to continue to fail to comply with the order until he does that thing.
- (4) A person who is convicted of an offence against this section is punishable by a fine not exceeding 500 penalty units or imprisonment for a period not exceeding 2 years, or both.

### **31 Offences by officers of corporations**

- (1) Where an offence against a provision of this Act is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section and is punishable on conviction by the penalty provided in that provision.
- (2) A reference in subsection (1) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who authorizes or permits the commission of the offence.

### **35 Powers of court to enforce Treasurer's orders**

- (1) Where a person (in this section referred to as *the offender*) has contravened or failed to comply with an order in force under Part II, the Supreme Court of a State or Territory may, on the application of the Treasurer, whether or not that contravention or failure still continues, and whether or not other proceedings in respect of that contravention or failure have been or are to be instituted, make such order or orders as it thinks fit for the attainment of the purpose for which the order was made by the Treasurer.

- (2) The orders that may be made under subsection (1) in relation to a change in the control of a corporation other than a foreign corporation (in this section referred to as *the corporation concerned*) or a change in the control of an Australian business (in this section referred to as *the business concerned*) include, but are not limited to:
- (a) an order restraining the exercise of any rights attached to shares or assets held by the offender;
  - (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of shares or assets held by the offender;
  - (c) an order directing the disposal of shares or assets held by the offender;
  - (d) an order that any exercise of rights attached to shares or assets held by the offender be disregarded;
  - (e) an order prohibiting a person from acting as a director of the corporation concerned or from being involved in the management of the corporation or business concerned; and
  - (f) an order directing the corporation concerned to make such alterations of any of its constituent documents as are specified in the order.
- (3) For the purpose of subsection (2):
- (a) a reference to shares is a reference to shares in the corporation concerned; and
  - (b) a reference to assets is a reference to assets of the corporation or business concerned.
- (4) The orders that may be made under subsection (1) in relation to a change in the control of a foreign corporation include, but are not limited to:
- (a) an order restraining the exercise of any rights attached to shares held by the foreign corporation in an Australian subsidiary;
  - (b) an order prohibiting or deferring the payment of any sums due to the foreign corporation in respect of shares held by it in an Australian subsidiary;
  - (c) an order directing the disposal of shares in, or assets of, an Australian subsidiary of the foreign corporation;
  - (d) an order directing the disposal of assets of the foreign corporation that consist of assets of an Australian business carried on by the foreign corporation (whether alone or together with any other person or persons) or prohibiting or deferring the payment of any sums due to the foreign corporation in respect of any such assets;
  - (e) an order that any exercise of rights attached to shares held by the foreign corporation in an Australian subsidiary be disregarded;
  - (f) an order that any exercise of rights attached to assets of the foreign corporation of a kind referred to in paragraph (d) be disregarded;

- (g) an order prohibiting a person from acting as a director of, or from being concerned in the management of, an Australian subsidiary of the foreign corporation; and
  - (h) an order directing an Australian subsidiary of the foreign corporation to make such alterations of any of its constituent documents as are specified in the order.
- (4A) The orders that may be made under subsection (1) in relation to the acquisition of an interest in Australian urban land include, but are not limited to:
- (a) an order restraining the exercise of any rights attached to any interest held by the offender in the land or other thing concerned;
  - (b) an order prohibiting or deferring the payment of any sums due to the offender in respect of any such interest held by the offender;
  - (c) an order directing the disposal of any such interest held by the offender; and
  - (d) an order that any exercise of rights attached to any such interest held by the offender be disregarded.
- (5) In addition to the powers conferred on a Court by subsections (1), (2), (4) and (4A), the Court:
- (a) has power, for the purpose of securing compliance with any other order made under this section, to make an order directing any person to do or refrain from doing a specified act; and
  - (b) has power to make an order containing such ancillary or consequential provisions as the Court thinks just.
- (6) The Court may, before making an order under this section, direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.
- (7) The Court may, by order, rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.
- (10) In this section, *Australian subsidiary*, in relation to a foreign corporation, means a corporation incorporated in Australia that is a subsidiary of that foreign corporation.

### **36 Treasurer may require information**

- (1) Where the Treasurer has reason to believe that a person is capable of giving information or producing documents relating to matters that are relevant to the exercise by the Treasurer of his powers under this Act, he may, by notice in writing served on that person, require that person:
- (a) to furnish, within the time and in the manner specified in the notice, any such information to him by writing signed by that person or, in

the case of a corporation, by a competent officer of the corporation;  
or

(b) to produce, in accordance with the notice, any such documents to him or to a person specified in the notice acting on his behalf.

(2) A person who does not comply with a notice under subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding 20 penalty units or imprisonment for 12 months, or both.

(2A) Subsection (2) does not apply if the person complies with the notice to the extent to which the person is capable of complying with it.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A), (see subsection 13.3(3) of the *Criminal Code*).

(3) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document might tend to incriminate him, but his answer to any question asked in the notice, or his furnishing of any other information in pursuance of the notice, is not admissible in evidence against him in any criminal proceedings other than proceedings under this Act.

### **37 Effect of Act on other laws**

It is the intention of the Parliament that this Act shall not apply to the exclusion of any law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

### **38 Validity of acts done in contravention of Act**

An act is not invalidated by the fact that it constitutes an offence against this Act.

### **38A Anti-avoidance**

(1) In this section, *scheme* means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

(2) Where:

- (a) a person or persons enter into, commence to carry out or carry out a scheme (other than a scheme entered into before the commencement of this section);

- (b) it would be concluded that the person, or any of the persons, who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to any person or persons (whether or not a person or persons who entered into, commenced to carry out or carried out the scheme or any part of the scheme); and
- (c) the scheme or the part of the scheme has achieved, or apart from this section, would achieve, that purpose;

the Treasurer may make any order under this Act that the Treasurer would have been able to make if the scheme or the part of the scheme had not achieved that purpose.

- (3) Subsection (2) does not authorise the making of an order prohibiting a person from doing any thing that has already been done by the person before the order is made.

### 39 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Notes to the *Foreign Acquisitions and Takeovers Act 1975*

### Note 1

The *Foreign Acquisitions and Takeovers Act 1975* as shown in this compilation comprises Act No. 92, 1975 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 24 November 2000 is not included in this compilation. For subsequent information *see* Table A.

### Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Foreign Takeovers Act 1975</i>	92, 1975	28 Aug 1975	1 Jan 1976 ( <i>see Gazette 1975, No. S267</i> )	

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Foreign Takeovers Amendment Act 1976</i>	93, 1976	20 Sept 1976	Ss. 1, 2, 3(2), 5, 9, 11 and 12: Royal Assent Remainder: 1 Jan 1976	Ss. 11 and 12
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 124
<i>Commonwealth Functions (Statutes Review) Act 1981</i>	74, 1981	18 June 1981	Part XII (ss. 185–187): Royal Assent (a)	—
<i>Foreign Takeovers Amendment Act 1989</i>	14, 1989	13 Apr 1989	1 Aug 1989 (see <i>Gazette</i> 1989, No. S240)	S. 32
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	S. 85: 1 Sept 1994 (b)	—
<i>Crimes and Other Legislation Amendment Act 1997</i>	20, 1997	7 Apr 1997	Schedule 2 (item 5): Royal Assent (c)	—
<i>Company Law Review Act 1998</i>	61, 1998	29 June 1998	Schedule 4 (item 10): 1 July 1998 (see <i>Gazette</i> 1998, No. S317) (d)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 1) 2001</i>	31, 2001	28 Apr 2001	Ss. 1–3, Schedule 1 (items 1–4) and Schedule 2: Royal Assent Schedule 1 (items 171, 172): 18 Jan 2001 (see s. 2(2)) Remainder: 15 Dec 2001 (see s. 2(4))	—
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 5: 1 Jan 2005	—

(a) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Part XII (sections 185–187) only of the *Commonwealth Functions (Statutes Review) Act 1981*, subsection 2(1) of which provides as follows:

- (1) Parts I, IV, IX, X, XI, XII, XIII, XVII (other than sections 220, 221, 222, 223, 225, 226, 227, 228, and 230), XX, XXI, XXII and XXIII shall come into operation on the day on which this Act receives the Royal Assent.



Appendix D: *Foreign Acquisitions and Takeovers Act 1975*

- (b) The *Foreign Acquisitions and Takeovers Act 1975* was amended by section 85 only of the *Migration Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.
- Section 3 commenced on 1 September 1994.
- (c) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Schedule 2 (item 5) only of the *Crimes and Other Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (d) The *Foreign Acquisitions and Takeovers Act 1975* was amended by Schedule 4 (item 10) only of the *Company Law Review Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsection (3), section 3 and Schedules 1, 2, 3 and 4 commence on a day to be fixed by Proclamation.

## Table of Amendments

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

Provision affected	How affected
Title.....	rs. No. 14, 1989
<b>Part I</b>	
S. 1.....	am. No. 14, 1989
S. 3.....	am. No. 93, 1976; No. 19, 1979
S. 4.....	am. No. 14, 1989
S. 5.....	am. No. 93, 1976; No. 74, 1981; No. 14, 1989; No. 61, 1998; No. 120, 2004
S. 5A.....	ad. No. 14, 1989 am. No. 60, 1994
Ss. 6, 7.....	am. No. 14, 1989
S. 8.....	am. No. 93, 1976
S. 9.....	am. No. 14, 1989
S. 9A.....	ad. No. 14, 1989
Ss. 12A–12C.....	ad. No. 14, 1989
S. 13.....	am. No. 14, 1989
S. 13A.....	ad. No. 14, 1989
S. 13B.....	ad. No. 14, 1989 am. No. 120, 2004
Ss. 13C, 13D.....	ad. No. 14, 1989
S. 15.....	am. No. 93, 1976
<b>Part IA</b>	
Part IA.....	ad. No. 120, 2004
Ss. 17A–17H.....	ad. No. 120, 2004
<b>Part II</b>	
Heading to Part II.....	am. No. 14, 1989
S. 21A.....	ad. No. 14, 1989
Ss. 22–24.....	am. No. 14, 1989
S. 25.....	am. No. 14, 1989; No. 31, 2001
S. 26.....	rs. No. 93, 1976 am. No. 74, 1981; No. 14, 1989; No. 31, 2001
S. 26A.....	ad. No. 14, 1989 am. No. 31, 2001
S. 27.....	am. No. 14, 1989
S. 28.....	rs. No. 93, 1976
S. 29.....	rep. No. 93, 1976
<b>Part III</b>	
S. 30.....	am. No. 14, 1989; No. 31, 2001
S. 32.....	am. No. 14, 1989 rep. No. 31, 2001
S. 33.....	rep. No. 20, 1997
S. 34.....	rep. No. 14, 1989
S. 35.....	am. No. 14, 1989
S. 36.....	am. No. 14, 1989; No. 31, 2001
S. 36A.....	ad. No. 14, 1989 rep. No. 137, 2000

Appendix D: *Foreign Acquisitions and Takeovers Act 1975*

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

Provision affected	How affected
S. 38 .....	rs. No. 93, 1976
S. 38A.....	ad. No. 14, 1989

## **Table A**

### **Application, saving or transitional provisions**

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences)*  
*Act 2000 (No. 137, 2000)*

## **Schedule 2**

### **418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
  - (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

### **419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
- (b) any or all of those other provisions are repealed by this Schedule; and
- (c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.