



WORKING OUT VALUES INCLUDING CONSIDERATION, ASSET VALUES AND ISSUED SECURITIES VALUE

This Guidance Note provides information on how to determine the consideration and the monetary threshold value where necessary for certain actions (for example, for fees and in determining if there is a significant action). This includes:

- consideration (section 14 of the Regulation), which is applicable for determining most fees and for some threshold tests;
- assets, that is:
 - the total asset value of an entity (section 20 of the Regulation), which is applicable for some threshold tests for entities in section 51 of the Act, and in the Regulation, applicable to determining when an entity is an agribusiness, or a mining, production or exploration entity, or if the exception in subsection 56(4) applies (that is, the exception for foreign government investors acquiring non-material interests in businesses that are not sensitive businesses); or
 - value of assets of entities or businesses (section 23 of the Regulation), which is applicable for some threshold tests for entities in section 51 of the Act, and in the Regulation, applicable to determining when an Australian business is an agribusiness; and
- total issued securities value (section 21 of the Regulation), which is only applicable for when considering the threshold test for acquiring interests in securities in an entity, or issuing securities in an entity.

Where amounts are expressed in a currency other than Australian dollars, section 25 of the Regulation also applies.

CONSIDERATION

Under section 14 of the Regulation, consideration is taken to mean consideration in any form (including consideration that is ‘in kind’), as well as any Goods and Services Tax (GST) or any equivalent tax payable under a law of a foreign country or a part of a foreign country and any consideration that is contingent on the occurrence or non-occurrence of a particular event.

Generally consideration is the value set out in the agreement relating to the action (so long as the parties to the agreement are dealing at arm’s length).

- An example of an agreement where the parties are not dealing at arm’s length would be if a family member proposed to gift to a relative an interest in land, such as ownership of an established dwelling, for either a nil amount or only a nominal amount (that did not reflect the market value of the interest to be transferred).

Otherwise, the consideration is based on a reasonable assessment. Examples of a reasonable assessment include:

- An assessment of consideration on a particular day if it is worked out on the basis of a price that was publicly available no more than seven days earlier. For example, a reasonable assessment of consideration:
 - for listed and unlisted public offer entities may be based on the publicly quoted daily closing price of the security, or if under a trading halt, the last quoted price.
 - for land, may be the price publicly advertised by, or on behalf of, the vendor.
 - for a house and land package, it would be the advertised price for the package.
- For an acquisition of an interest in securities made under a takeover bid, paragraph 14(4)(b) provides that an assessment of consideration is reasonable if it is worked out on the basis of the first amount specified for the interest in the bidder's statement (within the meaning of the Corporations Act) or any equivalent document under a law of a foreign country or part of a foreign country.

While what is a reasonable assessment of the consideration will depend on the facts and circumstances of the action, examples of what may be a reasonable assessment of consideration in other particular circumstances are as follows.

- Consideration for a leasehold interest in Australian land will generally be the total of any:
 - up-front initial payments (other than taxes and regulatory charges) for the grant of the leasehold interest;
 - periodic payments for the benefit and enjoyment of the Australian land (for example, annual lease payments including amounts as increased in accordance with a formula over the term of the lease);
 - amounts likely to be paid for an extension or renewal of the lease (if prescribed under the lease agreement); and
 - the value of any interest in a wind or solar power station on the land (for more information see Guidance Note 50).
- Consideration for interests related to security interests (that are not otherwise exempt under the Act):
 - For grant of a security interest, the sum of up-front initial payments (ongoing interest payments are disregarded if reflecting a market rate of interest).
 - For interests acquired through the enforcement of a security interest, the sum of the outstanding loan balance likely to be recouped by the lender and any penalties levied on the borrower.

Subsection 14(5) of the Regulation provides that for acquisitions of interests in securities of foreign entities consideration may be apportioned to the acquisition of the Australian business or entity on the basis of the earnings of the foreign entity and the Australian business or entity.

TOTAL ASSET VALUE

Assets to be taken into account

When determining the total asset value of an entity, the following assets of entities are taken into account:

- for an Australian entity—the total assets of the entity; and
- for a foreign entity—the total relevant Australian assets, and any other assets in Australia, of the entity.
 - Under section 4 of the Act, relevant Australian assets means Australian land, including legal and equitable interests (within the ordinary meaning of the term) in such land; and securities in an Australian entity.

The meaning based on holding or non-holding entity

Section 20 of the Regulation prescribes a meaning for the following circumstances:

- entities that are not holding entities, it will be the assets to be taken into account based on the entity type (see above);
- holding entities without financial statements that meet subsection 24(2) or (3) of the Regulation (that is, do not have appropriate consolidated financial statements or equivalent: see below), it is the aggregate value of the assets to be taken into account based on the entity type (as above), of the holding entity and each relevant subsidiary of the entity (disregarding any securities in those subsidiaries of the holding entity); and
- holding entities with financial statements that meet subsection 24(2) or (3) of the Regulation (that is, have appropriate consolidated financial statements or equivalent: see below), it is the aggregate value of the total assets to be taken into account as set out in the financial statements or other document.

Section 20 also prescribes that:

- for entities whose securities are stapled, the value of the assets of the stapled entity is taken to include the value of the assets of the other entity or entities that its securities are stapled to; and
- for entities operating on a unified basis (for example, under a Dual Listed Company arrangement) the value of the assets includes the value of the assets of the other entities with which the entity is operating on a unified basis.

Entities that prepare Consolidated Financial Statements

The value of the assets for an entity that prepares Consolidated Financial Statements is the value of the asset set out in those statements that are prepared in accordance with the International Financial Reporting standards (IFRS).

If the entity does not prepare its consolidated financial statements in accordance with the IFRS, the entity may produce a separate set of accounts that reconcile the financial statements with the relevant pronouncements of the IFRS. Where there is such a reconciliation document, the value of the assets of the entity is the value set out in that document.

VALUE OF THE ASSETS OF AN ENTITY OR BUSINESS

Section 23 of the Regulation provides that the value on a particular day of an asset of an entity or business is generally:

- if there is a most recent financial statement and an event affecting the value of the asset as shown in the financial statement has not occurred since the financial statement was most recently audited or reviewed, the value of the asset as shown in the financial statement; or

- the value of that asset as shown on that day in the accounting records of the entity.

The above does not apply if the value shown is not a reasonable value. However, values will generally be reasonable values if determined in accordance with accounting standards and related pronouncements of the Australian Accounting Standards Board or in accordance with the IFRS.

TOTAL ISSUED SECURITIES VALUE

Under section 21 of the Regulation, the total issued securities value for an entity is the total of the class values worked out for each class of security of the entity.

- Entities may have more than one class of securities on issue, which may have differing rights or nominal values attached. For example, some classes of securities may have preferential voting rights, preferential rights to distributions, or no voting rights. To ascertain the total issued securities value requires that the class value is worked out for each class.

Meaning of class value for a class of security if securities in that class are being acquired or issued

For securities in a class that is being acquired, the class value is the total consideration for the acquisition of securities in that class divided by the number of securities in the class to be acquired, multiplied by the total number of issued securities in that class immediately before the acquisition. That is:

$$\frac{\text{The consideration for the acquisition or issue of that class of securities}}{\text{The number of securities in that class to be acquired or issued}} \times \text{The total number of issued securities in that class immediately before the acquisition or issue}$$

This is relevant to significant actions where a person proposes to acquire an interest in securities (for example, in an entity). This includes where the securities may be acquired including by participating to acquire securities through a share placement or a non-pro rata securities issue.

The class value for a class of security if securities in that class are being issued is worked out by dividing the total issue price of all the securities in that class to be issued by the number of securities in the class to be issued, multiplied by the total number of issued securities in that class immediately before the issue.

$$\frac{\text{The consideration for the acquisition or issue of that class of securities}}{\text{The number of securities in that class to be acquired or issued}} \times \text{The total number of issued securities in that class immediately before the acquisition or issue}$$

Meaning of class value for a class of security of an entity if securities in that class are not being acquired or issued

Where securities in a class are not being acquired or issued the class value for a class of security is worked out by multiplying the market value of securities in that class with the total number of issued securities in that class immediately before the acquisition or issue.

The market value of securities in that class

x

The total number of issued securities in that class immediately before the acquisition or issue of the other class or classes of securities in that entity

For example, when a corporation has both preferential and ordinary shares on issue, but the acquisition is only in relation to the ordinary shares, then the class value for preferential shares must be worked out.

FEES

The fee is payable at the time of application. Processing commences when the correct fee is paid.

For more information on the fees applying to foreign investment applications, see [Guidance Note 30](#).

PENALTIES

Strict penalties (including civil and criminal penalties) may apply for breaches of Australia's foreign investment rules.

FURTHER INFORMATION

Further information is available on the FIRB website at www.firb.gov.au or by contacting +61 2 6263 3795.

Important notice: This Guidance Note provides a summary of the relevant law. As this Note tries to avoid legal language wherever possible it may include some generalisations about the law. Some provisions of the law referred to have exceptions or important qualifications, not all of which may be described here. The Commonwealth does not guarantee the accuracy, currency or completeness of any information contained in this document and will not accept responsibility for any loss caused by reliance on it. Your particular circumstances must be taken into account when determining how the law applies to you. This Guidance Note is therefore not a substitute for obtaining your own legal advice.