



On 29 March 2020, the Treasurer announced that due to the impacts of the coronavirus outbreak, all monetary thresholds will be temporarily reduced to \$0, and that the FIRB will work with applicants to extend the timeframes for decision making to up to six months. Further information on these temporary changes can be found in 'Guidance Note 53: Temporary measures in response to the coronavirus', available on the FIRB website at www.firb.gov.au.

All other guidance material, including this note on orders, should be read in light of those temporary changes. Within this note, the temporary changes may have particular impact on matters related to, but not exclusively including:

- the timeframes for decision making, noting that the FIRB will be working with some applicants to extend the timeframe to up to six months.

Where there is any inconsistency between this note and Guidance Note 53, the information in Guidance Note 53 takes precedence.

ORDERS

Last update: 22 August 2016

Under the *Foreign Acquisitions and Takeovers Act 1975* (Act), foreign persons who are planning to acquire certain interests are required to notify the Treasurer (such actions are known as notifiable actions). The Treasurer normally has 30 days to consider the notice and make a decision. However the Treasurer may extend this period by up to a further 90 days by registering an interim order.

- Applicants can also voluntarily extend the period in writing.

The Treasurer will consider whether a proposal is contrary to the national interest and whether to object or prohibit the proposal. However, the Act enables the Treasurer to make a broad range of orders in relation to a significant action that a person is proposing to take or has already taken.

This Guidance Note details circumstances where the Treasurer may prohibit a proposed significant action, make an interim order or a disposal order.

INTERIM ORDERS

Under section 77 of the Act, the Treasurer has 30 days to consider a significant action notice and make a decision. However, the Treasurer may extend this period by up to a further 90 days by publishing an interim order.

An interim order is generally issued if a proposal is very complicated or where further information is required.

The period specified in an interim order does not start until the interim order is registered on the *Federal Register of Legislation*.

ORDERS PROHIBITING PROPOSED SIGNIFICANT ACTIONS

Under section 67 of the Act, the Treasurer may make an order which prohibits a significant action which is proposed to be taken if the Treasurer is satisfied that taking the significant action would be contrary to the national interest.

The kind of significant action that is being proposed will determine the conduct that the Treasurer can prohibit (for example, in some circumstances the Treasurer may make an order prohibiting the entering into a proposed agreement, while in other circumstances the Treasurer may make an order prohibiting the issue of securities). The Treasurer can make an order prohibiting the whole or part of the proposal if it would be contrary to the national interest.

If the Treasurer makes an order prohibiting a proposed significant action the Treasurer may also make certain additional orders. For example, if a foreign person proposes to acquire an interest in Australian land, the Treasurer may make an order directing a specified foreign person not to acquire any interests in the land or other thing concerned, or to acquire any such interests only to a specified extent.

DISPOSAL ORDERS

Under section 69 of the Act, if a significant action has already been taken and the Treasurer is satisfied the result of the significant action is contrary to the national interest, the Treasurer may make an order, known as a disposal order, which is directed at unwinding the action by requiring disposal of the interest held.

A foreign person is not obliged to inform the Treasurer that they are proposing to take a significant action unless the action is also a notifiable action (that is, only certain significant actions are also notifiable actions). However, some foreign persons will choose to notify the Treasurer of proposed significant actions which are not notifiable actions because the foreign person will want the certainty offered by a no objection notification. If a foreign person is given a no objection notification in relation to the significant action, provided the person does not contravene a condition specified in the notification, the Treasurer is not able to make a disposal order.

VARIATION AND REVOCATION OF ORDERS

Under section 71 of the Act, the Treasurer may vary or revoke an order if the Treasurer is satisfied that the variation or revocation is not contrary to the national interest. For a variation, the person has to consent to the variation or the Treasurer has to be satisfied that the variation does not disadvantage the person.

REGISTRATION OF ORDERS

Under section 72 of the Act, when the Treasurer makes an order (for example, an interim, prohibition or disposal order), this must be in writing and registered on the Federal Register of Legislation within 10 days after it is made.

FEES

Under section 113, a fee may be payable in relation to disposal orders (and related orders) made by the Treasurer where the person did not submit a notice to the Treasurer relating to the significant action specified in the order. The fee amount is the amount that would have been payable under the *Foreign Acquisitions and Takeovers Fees Imposition Act 2015* for the action if the person had given the Treasurer an application relating to the action.

For more information, see [Guidance Note 30](#).

PENALTIES

Strict penalties (including criminal and civil penalties) can apply where a person fails to comply with an order. Failure to comply with an order may also result in the Treasurer initiating action in court to seek enforcement of the Treasurer's order.

FURTHER INFORMATION

Further information is available on the [FIRB website](#) 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.