



Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 12 December 2019

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
	Schedule 1—Amendments	2
	<i>Foreign Acquisitions and Takeovers Regulation 2015</i>	<i>2</i>

1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	<p>The later of:</p> <p>(a) the day after this instrument is registered; and</p> <p>(b) the day the Free Trade Agreement between Australia and Hong Kong, China, done at Sydney on 26 March 2019, enters into force for Australia.</p> <p>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.</p> <p>The Minister must announce, by notifiable instrument, the day the Agreement enters into force for Australia.</p>	

Note 1: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

Note 2: The Agreement could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Act 1975*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Foreign Acquisitions and Takeovers Regulation 2015

1 Section 5 (definition of agreement country)

Repeal the definition.

2 Section 5 (definition of agreement country investor)

Repeal the definition.

3 Section 5

Insert:

agreement country or region means any of the following countries or regions:

- (a) the United States of America;
- (b) New Zealand;
- (c) Chile;
- (d) Japan;
- (e) the Republic of Korea;
- (f) China;
- (g) Singapore;
- (h) a country (other than Australia) for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, done at Santiago on 8 March 2018, is in force;
- (i) the region of Hong Kong, China.

Note: The Agreement mentioned in paragraph (h) is in Australian Treaty Series [2018] ATS 23 and could in 2019 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

4 Section 5

Insert:

agreement country or region investor means an entity (within the ordinary meaning of the term) that is:

- (a) an enterprise or a national of a country that is an agreement country or region; or
 - (b) an enterprise or a resident of a region that is an agreement country or region;
- (other than a foreign government investor).

5 Section 5 (definition of enterprise)

Repeal the definition, substitute:

enterprise of a country or a region has the meaning given by section 7.

6 Section 5

Insert:

resident of a region has the meaning given by section 8A.

7 Section 7 (heading)

Repeal the heading, substitute:

7 Meaning of *enterprise* of a country or region**8 Before subsection 7(1)**

Insert:

Enterprise of a country

9 After subsection 7(1)

Insert:

Enterprise of a region

(1A) An *enterprise* of a region is:

- (a) an entity (within the ordinary meaning of the term) of a kind mentioned in subsections (2) to (4); or
- (b) a branch of an entity (within the ordinary meaning of the term) mentioned in subsection (5A);

that is not excluded under subsection (8) or (9).

10 Before subsection 7(2)

Insert:

Entity of a country or a region

11 Subsection 7(2)

After “country”, insert “or a law of the region”.

12 Subsection 7(5) (heading)

Repeal the heading, substitute:

Branch of an entity of a country

13 After subsection 7(5)

Insert:

Branch of an entity of a region

(5A) A branch of an entity (within the ordinary meaning of the term) is an *enterprise* of a region if:

- (a) the entity is not described in subsections (2) to (4); and
- (b) the branch is located in the region; and
- (c) the branch is carrying on business activities in the region:
 - (i) in a way other than being solely a representative office; and
 - (ii) in a way other than being engaged solely in agency activities, including the sale of goods or services that cannot reasonably be regarded as undertaken in the region; and
 - (iii) by having its administration in the region.

- (5B) For the purposes of working out under subsection (5A) whether a branch of an entity is an *enterprise* of Hong Kong, China, subsection (5A) applies as if:
- (a) paragraphs (5A)(a) and (c) were omitted; and
 - (b) subsection (5A) also required the entity to be of a kind mentioned in subsections (2) to (4) for Hong Kong, China.

14 Subsection 7(6) (heading)

Repeal the heading, substitute:

When entities or branches are not enterprises of a country

15 At the end of section 7

Add:

When entities or branches are not enterprises of a region—general

- (8) An entity, or a branch of an entity, (within the ordinary meaning of the term) is not an *enterprise* of a particular region of a country if the Treasurer is satisfied that:
- (a) it is owned or controlled by one or more persons of another country; and
 - (b) any one or more of the following applies:
 - (i) Australia does not maintain diplomatic relations with the other country;
 - (ii) Australia adopts or maintains measures relating to the other country or a person of the other country that have the effect of prohibiting transactions with the entity or branch;
 - (iii) the entity or branch has no substantial business activities in the particular region;
- and the particular region is not Hong Kong, China.

When entities or branches are not enterprises of a region—Hong Kong, China

- (9) An entity, or a branch of an entity, (within the ordinary meaning of the term) is not an *enterprise* of Hong Kong, China if the Treasurer is satisfied that:
- (a) subsection (10) applies to it; or
 - (b) the entity or branch has no substantial business activities in Hong Kong, China.
- (10) This subsection applies to an entity or branch if:
- (a) it is owned or controlled by one or more of the following:
 - (i) an individual of a country who is not a resident of Hong Kong, China;
 - (ii) an entity constituted or organised under a law of a country that is not a law applying in Hong Kong, China; and
 - (b) Australia adopts or maintains measures relating to that country, or a person of that country, that have the effect of prohibiting transactions with the entity or branch.

16 After section 8

Insert:

8A Meaning of *resident* of a region

A *resident* of Hong Kong, China is an individual who is a permanent resident of Hong Kong, China.

17 Section 9A

Before “In this instrument”, insert “(1)”.

18 At the end of section 9A

Insert:

- (2) Subsection (1) does not apply to a reference to China used to identify a relevant World Trade Organisation member.

19 Section 51 (table item 1)

Omit “agreement country investor”, substitute “agreement country or region investor”.

20 Subsection 52(5) (table item 1)

Omit “agreement country investor”, substitute “agreement country or region investor”.

21 Subsection 52(5) (paragraph (b) of table item 3)

Omit “agreement country investor”, substitute “agreement country or region investor”.

22 Subsection 52(5) (paragraph (c) of table item 4)

Omit “agreement country investor”, substitute “agreement country or region investor”.

23 In the appropriate position in Part 7

Insert:

73 Application of the *Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019*

The amendments by the *Foreign Acquisitions and Takeovers Amendment (Australia-Hong Kong Free Trade Agreement) Regulations 2019* apply in relation to an action taken on or after the commencement of those Regulations.