



Foreign Acquisitions and Takeovers Amendment Regulations 2022

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 31 March 2022

David Hurley
Governor-General

By His Excellency's Command

Josh Frydenberg
Treasurer

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1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*.

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	The day after this instrument is registered.	1 April 2022

Note: This table relates only to the provisions of this instrument as originally made.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.

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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Part 1—Moneylending agreements

Foreign Acquisitions and Takeovers Regulation 2015

1 Section 5 (definition of *moneylending agreement*)

Repeal the definition, substitute:

moneylending agreement means:

- (a) an agreement entered into:
 - (i) in good faith and on ordinary commercial terms; and
 - (ii) in the ordinary course of carrying on a moneylending business; except an agreement dealing with any matter unrelated to the carrying on of that moneylending business; or
- (b) an agreement entered into:
 - (i) in good faith and on ordinary commercial terms; and
 - (ii) relating to the purpose of lending money or otherwise providing financial accommodation; and
 - (iii) by an entity that was created predominantly for that purpose by a person or entity in the ordinary course of carrying on a moneylending business;

except an agreement if:

- (iv) the agreement deals with any matter unrelated to the purpose of lending money or otherwise providing financial accommodation and unrelated to the carrying on of that moneylending business; or
- (v) the entity, before entering into the agreement, began carrying on a business unrelated to the purpose of lending money or otherwise providing financial accommodation; or
- (c) for a person or entity that:
 - (i) is carrying on a moneylending business; or
 - (ii) was created predominantly for the purpose of lending money or otherwise providing financial accommodation by a person or entity in the ordinary course of carrying on a moneylending business; or
 - (iii) is a subsidiary or holding entity of a person or entity covered by subparagraph (i) or (ii);

an agreement to acquire an interest arising from a moneylending agreement (within the meaning of paragraph (a) or (b)).

2 Section 5

Insert:

moneylending business means a business of lending money or otherwise providing financial accommodation.

3 Subparagraph 27(1)(b)(iii)

Omit “the first entity”, substitute “an entity mentioned in subparagraph (i) or (ii)”.

4 Subparagraph 27(1)(b)(iv)

Omit “the first entity”, substitute “a person or entity mentioned in any of subparagraphs (i) to (iii)”.

5 Subparagraph 27(1)(b)(v)

After “appointed”, insert “by or”.

6 After subparagraph 27(2)(b)(i)

Insert:

(ia) there are at least 100 members of the key entity; or

Part 2—Australian media businesses

Foreign Acquisitions and Takeovers Regulation 2015

7 Subparagraph 13A(3)(a)(iii)

Repeal the subparagraph.

8 Subsection 13A(4)

After “10,000 people”, insert “in Australia”.

9 Section 55

Omit “an interest of at least 5%”, substitute “a direct interest”.

Part 3—Unlisted Australian land entities

Foreign Acquisitions and Takeovers Regulation 2015

10 Paragraph 37(4)(c)

Omit “5%”, substitute “10%”.

Part 4—Acquisitions of interests in securities where proportionate share or unit holding will not increase

Foreign Acquisitions and Takeovers Regulation 2015

11 Subsection 41(2)

Omit “an acquisition”, substitute “a person’s acquisition”.

12 Subparagraph 41(2)(b)(iii)

Before “acquisition”, insert “person’s”.

13 At the end of subsection 41(2)

Add:

; or (c) all of the following apply:

- (i) immediately before the person’s acquisition, the person holds an interest of a particular percentage (the person’s *allowable percentage*) in the entity;
- (ii) the person’s acquisition is of a kind whereby additional interests in the entity are only made available for acquisition by each holder of existing interests in the entity in a proportion equal to the percentage interest that such a holder holds in the entity immediately before the acquisition;
- (iii) the portion acquired by the person, and all of the person’s associates, of those additional interests made available to all holders of existing interests in the entity, expressed as a percentage, is no more than the person’s allowable percentage;
- (iv) at the time of the person’s acquisition, the person has no reasonable grounds to believe that the percentage interest that the person will hold in the entity after the last of the acquisitions of those additional interests will exceed the person’s allowable percentage.

Note 1: Paragraph (c) only applies if the percentage of additional interests that will be acquired by the person and the person’s associates is less than or equal to the person’s percentage interest in the entity immediately before the person’s acquisition.

Note 2: Paragraph (c) can apply, for example, if the person holds a 100% interest in the entity both before and after the person’s acquisition. In that case, the additional interest acquired by the person may be the only additional interest of the kind mentioned in subparagraph (c)(ii).

Note 3: The additional interests mentioned in subparagraphs (c)(iii) and (iv) are the additional interests available for acquisition as described in subparagraph (c)(ii).

Part 5—Meaning of rights issue

Foreign Acquisitions and Takeovers Regulation 2015

14 Paragraph 41(2)(a)

Repeal the paragraph, substitute:

- (a) the person's acquisition of the interest is under, and the interest has not been previously offered for issue under, any of the following:
 - (i) a rights issue (within the meaning of the *Corporations Act 2001*);
 - (ii) a rights issue (within the meaning of a law of a foreign country or a part of a foreign country) if the issue is regulated by a law of that foreign country or that part of a foreign country;
 - (iii) an issue of securities that is similar to a rights issue (within the meaning of the *Corporations Act 2001*) and is an issue of a kind covered by an instrument made by ASIC under that Act; or

Part 6—Foreign custodian corporations

Foreign Acquisitions and Takeovers Regulation 2015

15 Section 30

Before “The”, insert “(1)”.

16 Section 30

After “acquisition of an interest”, insert “(the *subject interest*)”.

17 Paragraphs 30(b) and (c)

Omit “the interest”, substitute “the subject interest”.

18 Paragraphs 30(d) and (e)

Repeal the paragraphs, substitute:

- (d) the equitable interests (other than a right covered by subsection (2)) in the securities, assets, trust, land or tenement are not held by the foreign person; and
- (e) if voting rights are associated with the subject interest—the foreign person exercises those voting rights only at, or in accordance with, the direction of:
 - (i) another person that is providing custodian services to a person in relation to the holding of the subject interest; or
 - (ii) the holder of an equitable interest in the securities, assets, trust, land or tenement that is receiving custodian services that are related to that equitable interest.

19 At the end of section 30

Add:

- (2) For the purposes of paragraph (1)(d), this subsection covers a right to be indemnified for any debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, in the provision or purported provision of the custodian services referred to in paragraph (1)(a) or (e).

20 Paragraphs 41A(2)(b) and (c)

Omit “30(a)”, substitute “30(1)(a)”.

21 Subsection 41A(2) (example)

Omit “30(a)”, substitute “30(1)(a)”.

Part 7—Application of amendments

Foreign Acquisitions and Takeovers Regulation 2015

22 In the appropriate position in Part 7

Insert:

77 Application of the Foreign Acquisitions and Takeovers Amendment Regulations 2022

Application of amendments about moneylending agreements

- (1) The amendments made by Part 1 of Schedule 1 to the amending regulations apply in relation to moneylending agreements entered into on or after 1 April 2022.

Application of other amendments

- (2) The amendments made by Parts 2 to 6 of Schedule 1 to the amending regulations apply in relation to an action taken, or proposed to be taken, on or after 1 April 2022.

Definitions

- (3) In this section:

amending regulations means the *Foreign Acquisitions and Takeovers Amendment Regulations 2022*.