



Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) 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 24 November 2022

David Hurley
Governor-General

By His Excellency's Command

Dr Jim Chalmers
Treasurer

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1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) 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	<p>The later of:</p> <p>(a) the day after this instrument is registered; and</p> <p>(b) the day the Australia-India Economic Cooperation and Trade Agreement, done at Melbourne and New Delhi on 2 April 2022, 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Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Foreign Acquisitions and Takeovers Regulation 2015

1 Section 51

Omit “The following”, insert “(1) Subject to subsections (2) and (3), the following”.

2 At the end of section 51

Add:

- (2) The following table prescribes values for the purposes of section 51 of the Act to the extent that that section relates to items 2 to 3 of the table (entities) in that section.

Threshold value for entities		
Item	For action taken by ...	the value (in millions of dollars) is ...
1	an enterprise, or a national, of the Republic of India (other than a foreign government investor) where: <ul style="list-style-type: none"> (a) the action relates to an entity that: <ul style="list-style-type: none"> (i) is not carrying on a sensitive business and does not hold assets of a sensitive business; and (ii) is carrying on a business that supplies a service through a commercial presence in Australia; and (b) no subsidiary, or holding entity, of the entity carries on a sensitive business or holds assets of a sensitive business; and (c) either: <ul style="list-style-type: none"> (i) the entity derives earnings from carrying on the business and the amount of those earnings before interest and tax, derived in the most recent financial year for which the financial accounts of the entity have been audited, exceeds 50% of the amount of the total earnings for the entity; or (ii) the entity uses assets to carry on the business and the value of those assets exceeds 50% of the total asset value for the entity 	500

- (3) The following table prescribes values for the purposes of section 51 of the Act to the extent that that section relates to items 4 and 5 (Australian businesses) of the table in that section.

Threshold value for Australian businesses		
Item	For action taken by ...	the value (in millions of dollars) is ...
1	<p>an enterprise, or a national, of the Republic of India (other than a foreign government investor) where:</p> <p>(a) the action relates to an Australian business that:</p> <p style="padding-left: 20px;">(i) is not a sensitive business; and</p> <p style="padding-left: 20px;">(ii) supplies a service through a commercial presence in Australia; and</p> <p>(b) the Australian business uses assets to supply the service and the value of those assets exceeds 50% of the value of the total assets of the business</p>	500

- (4) For the purposes of subsections (2) and (3), *commercial presence* and *supply of a service* have the same meaning as in the Australia-India Economic Cooperation and Trade Agreement, done at Melbourne and New Delhi on 2 April 2022, as in force from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

3 Subsection 52(5) (after item 3 of the table)

Insert:

3A	<p>land described in paragraph 52(3)(a) of the Act that:</p> <p>(a) is commercial land that is not vacant; and</p> <p>(b) is not covered by item 3 of this table; and</p> <p>(c) is being acquired by an enterprise, or a national, of the Republic of India:</p> <p style="padding-left: 20px;">(i) that is not a foreign government investor; and</p> <p style="padding-left: 20px;">(ii) that a reasonable person would conclude (having regard to all the circumstances) genuinely intends to use the land, as soon as practical after it is acquired and throughout the period that the enterprise or national holds the interest in the land, predominantly for the supply of a service through a commercial presence in Australia</p>	500
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4 At the end of section 52

Insert:

- (8) For the purposes of item 3A of the table in subsection (5), *commercial presence* and *supply of a service* have the same meaning as in the Australia-India Economic Cooperation and Trade Agreement, done at Melbourne and New Delhi on 2 April 2022, as in force from time to time.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

5 In the appropriate position in Part 7

Insert:

78 Application of the *Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) Regulations 2022*

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (India Free Trade Agreement) Regulations 2022* apply in relation to an action taken on or after the commencement of those Regulations.