



TRACING OF INTERESTS

To consider whether a foreign person requires approval for a proposed acquisition of an interest in securities, assets or trusts, it is necessary to determine what interests are held in the relevant entities. One way that an interest is established is by tracing of interests in corporations and trusts.

Where:

- a person holds a substantial interest in a corporation or trust (the **higher entity**); or
- two or more persons hold an aggregate substantial interest in a corporation (the **higher entity**); or
- two or more persons hold an aggregate substantial interest in a trust (the trustee of which is a **higher entity**); and
- the **higher entity**:
 - is in a position to control all or any of the voting power or potential voting power in a corporation (the **lower entity**) — then the person or persons are taken to be in a position to control the lower entity.
 - holds interests in all or any of the shares in a corporation (the **lower entity**) — then the person or persons are taken to hold the interests in the shares in the lower entity.
 - holds an interest in a trust (the **lower entity**) — then the person or persons are taken to hold the interest in the lower entity.

This process can be applied multiple times so that a person's interest can be traced through many entities.

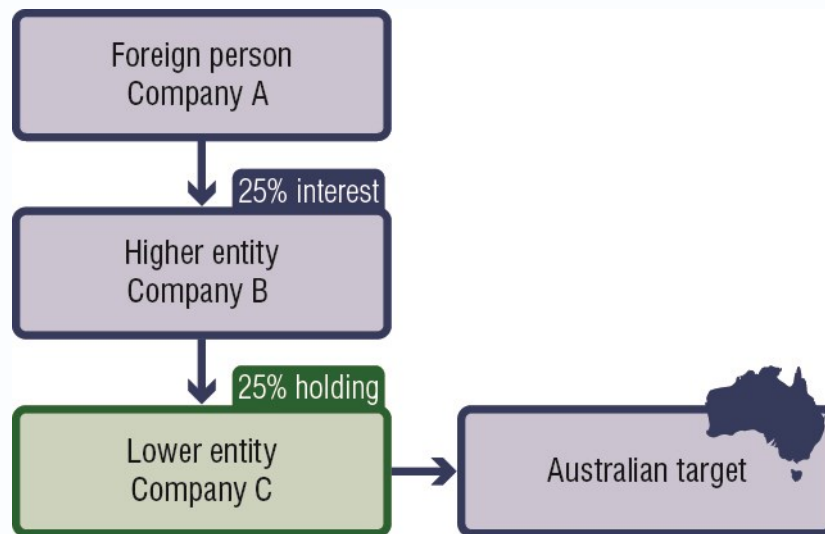
Under subsection 19(3) of the *Foreign Acquisitions and Takeovers Act 1975* (Act) and section 48 of the Foreign Acquisitions and Takeovers Regulation 2015, tracing of interests does not apply to foreign persons (who are not foreign government investors) for the purposes of determining whether:

- a foreign person has a direct interest in an Australian entity or Australian business that is an agribusiness. This ensures that acquisitions of these interests which are offshore and remote from Australia are not notifiable actions or significant actions. However, this does not prevent acquisitions from being regulated by the Act for other reasons. For example, an acquisition of an agribusiness may also be a significant action as an acquisition of securities in an entity; or
- for the purposes of considering whether an acquisition in an Australian entity is a notifiable action, a foreign person acquires a substantial interest in an Australian entity. In many cases an acquiring entity cannot know that the target entity holds Australian assets. This rule ensures that these acquisitions, which are offshore and remote from Australia, are not notifiable actions for foreign persons. They may still be significant and the Treasurer may exercise power.

Example 1

Company A is a foreign person and not a foreign government investor. Company A holds a 25 per cent interest in Company B, which has a 25 per cent holding in Company C. Even if Company B and C were Australian incorporated with no other foreign persons holding interests, both Company B and Company C would be considered to be a foreign person, because they are held by Company A.

Company C would be required to notify its proposed action in relation to the Australian target if the action is a notifiable action. Assuming that the action was acquiring a substantial interest in the Australian target, by virtue of the acquisition being carried out and the tracing rules, Company A and Company B would also be taken to have a substantial interest in Australian target.

**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.