



SIGNIFICANT ACTIONS AND NOTIFIABLE ACTIONS

Under the *Foreign Acquisitions and Takeovers Act 1975* (Act) certain actions to acquire interests in securities, assets or Australian land, and actions taken in relation to entities (being corporations and unit trusts) and businesses, that have a connection to Australia are defined as significant actions. Some significant actions, called notifiable actions, must also be notified to the Treasurer before the actions can be taken.

This Guidance Note explains what is meant by the terms ‘significant action’ and ‘notifiable action’ and the differences between them.

SIGNIFICANT ACTIONS

An action will only be a significant action if all of the conditions specified for the type of action are met. The conditions vary depending on the type of action and in some cases the particular circumstances (such as whether the target is an agribusiness or the acquirer is a foreign person). For significant actions under the Act:

- An action relating to entities or an Australian business will generally require a change in control (however, actions relating to an agribusinesses do not) and a monetary threshold test to be met. The remaining conditions to be met before an action is significant depends on the type of the action and if it relates to an entity or business (sections 40 and 41 of the Act).
 - Section 54 addresses the meaning of control and when there may be a change in control.
 - Sections 51 and 52 of the Act provide the threshold tests applicable to an action and sections 50 to 52 of the Foreign Acquisitions and Takeovers Regulation 2015 (Regulation) prescribe the applicable monetary values.
- An action relating to Australian land has only two conditions that must be met to be a significant action. They are that the action is for a foreign person to acquire an interest in Australian land and the monetary threshold is met (sections 43 and 52 of the Act).

The significant actions and notifiable actions prescribed in the Regulations, which are for investments in an Australian media business and specified actions by foreign government investors, neither include monetary threshold tests nor a requirement for a change in control.

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. However under the Act, the Treasurer has the power to make a range of orders in relation to a significant action that a person is proposing to take or has already taken.

Implications when an action is a significant action

If the Treasurer is notified that a person is proposing to take a significant action, the Treasurer may:

- decide that they do not object to the action and give the person a no objection notification not imposing conditions;
- decide that they do not object to the action provided the person complies with one or more conditions, and provide the person a no objection notification imposing conditions; or
- decide that taking the action would be contrary to the national interest and make an order prohibiting the proposed significant action.

If the significant action has already been taken and the Treasurer was not notified and determines the action is contrary to the national interest, the Treasurer may make a disposal order, which is directed at unwinding the action. For example, the Treasurer could order a person to dispose of their shares by a specified time. The Treasurer may also choose to impose legally enforceable conditions in such circumstances as an alternative to a disposal order.

NOTIFIABLE ACTIONS

If the significant action is also a notifiable action, the Treasurer must be notified before the action can be taken. Offences and civil penalties may apply if a notifiable action is taken without a notice having been given. If a notice has been given stating that a significant action is proposed to be taken, the action must not be taken before the end of a specified period (generally 40 days (including 30 days for the Treasurer to make the decision and a further 10 days to notify the application of the decision), or an additional period of up to 90 days from the publication of an interim order).

Under section 47 of the Act, a notifiable action is a proposed action by a foreign person:

- to acquire a direct interest in an Australian entity or Australian business that is an agribusiness; or
- to acquire a substantial interest in an Australian entity; or
- to acquire an interest in Australian land.

Generally, the action is only notifiable if the entity, business or land meets the threshold test. A different threshold test applies for certain notifiable actions taken in relation to agribusinesses.

Unlike for a significant action, there does not need to be a change in control for actions relating to entities and businesses to be notifiable actions. If a foreign person chooses to notify the Treasurer regarding a proposed significant action it becomes a notifiable action.

Under the Regulation, all significant actions prescribed in the Regulation are also notifiable actions.

EXEMPTION CERTIFICATES

Actions to acquire interests covered by an exemption certificate given under either the Act or the Regulation are generally neither a significant action nor a notifiable action so long as the conditions of the certificate are met.

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.