



VARIATIONS – GENERAL

The *Foreign Acquisitions and Takeovers Act 1975* (Act) allows foreign persons to apply for variations to no objection notifications (section 76), to conditions that are imposed in no objection notifications (section 74) and to exemption certificates (section 62). Information on no objection notifications is in Guidance Note 38.

VARIATION TO A NO OBJECTION NOTIFICATION OR EXEMPTION CERTIFICATE

The Treasurer may vary the content of a no objection notification or exemption certificate if the Treasurer is satisfied that it is not contrary to the national interest (section 62 and 76).

- For conditions on a no objection notification or exemption certificates, variations may be requested by the foreign person or done at the Treasurer's own initiative (see below variation to conditions).
- An application by a foreign person for an extension of a period specified in the no objection notification must be made two months before the end of the period.

VARIATION TO CONDITIONS

The Treasurer may vary a no objection notification by revoking a condition, imposing a new condition, varying an existing condition, or varying certain information provided in the no objection notification. However, the variation may only be made if the person consents, or if the Treasurer is satisfied that the variation does not disadvantage the person (where the conditions were imposed prior to 1 December 2015, the variation may only be done with the foreign person's consent).

FACTORS THAT WILL BE CONSIDERED FOR VARIATION APPLICATIONS

Variation applications will be considered on a case-by-case basis. The Treasurer will consider all factors relevant to the national interest, including the following four factors.

1. The nature of the variation

Variations that are minor in nature and do not substantively change the original no objection notification or certificate would generally be considered as a proposal for a variation.

Example 1a

A foreign person was issued a no objection notification for acquiring an interest in vacant land for development, on condition that the land is developed within a specified timeframe. Due to circumstances beyond the foreign person's control, the foreign person wants to extend the timeframe for another six months. The foreign person submits a proposal for a variation. This is likely to be considered as a variation as it does not substantively change the original no objection notification, rather it provides further time to meet a condition.

Example 1b

A foreign person was issued with an exemption certificate to cover a program of acquisitions of interests in Australian land. The foreign person wants to add another foreign person to the exemption certificate and applies for a variation to the existing certificate. As this would likely substantively change the scope of the foreign persons originally covered, to the extent it may include a foreign person not originally envisaged by the decision maker (for example, a foreign person incorporated offshore) and may impact the national interest, this would generally not be considered a variation and would require a new application.

2. Control over circumstances

A factor which will generally be considered is whether there are unforeseeable factors beyond the foreign person's control.

3. Fees

The integrity of the fee system will be considered as part of a proposal for a variation of a no objection notification or exemption certificate.

Example 2

A foreign person was issued a no objection notification for acquiring an interest in agricultural land valued under \$1 million. The foreign person wants to vary the no objection notification to cover the same interest in agricultural land but valued over \$2 million. The Treasurer would consider whether the variation would result in an unexpected fee outcome that favours the person seeking a variation over other persons that would submit a new application. Where there is a fee discrepancy, it is likely that the Treasurer would not issue a variation, and a new application would be required.

4. Change in circumstances

The Treasurer may consider intervening changes in circumstances since the initial assessment that may be applicable to the assessment of the national interest, such as target sector make-up, market conditions, underlying ownership of the person, and changes in legal frameworks.

HOW TO APPLY

Applications for variations to non-residential FIRB approvals can be made by emailing the variation request to firbcompliance@treasury.gov.au. Applicants should ensure this email includes their original application number and a detailed description of what they would like varied.

For information on variations to residential real estate approvals, see Guidance Note 10.

FEES

The fee is payable at the time of application. Processing commences when the correct fee is paid.

For more information on the fees applying to foreign investment applications, see Guidance Note 29 and 30.

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.