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Statutory Rules 1989 No. 1

177/

Foreign Acquisitions and Takeovers Regulations

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 4 of the *Acts Interpretation Act 1901*, hereby make the following Regulations under the *Foreign Acquisitions and Takeovers Act 1975*.

Dated 28 JUNE 1989.

BILL HAYDEN

Governor-General

By His Excellency's Command,

PAUL KEATING
Treasurer

Citation

1. These Regulations may be cited as the Foreign Acquisitions and Takeovers Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears:

"charitable institution" means:

- (a) any charitable, religious, scientific or educational institution (including an institution providing residential accommodation wholly or principally for full-time students attending an educational institution);
- (b) any institution being, or carrying on, a hospital; and
- (c) any institution the sole or principal purpose of which is to assist in the saving of life, or the prevention of loss or damage to property, whether at sea or otherwise;

being an institution which is not carried on for the purpose of profit or gain to its individual members and which is not empowered to make any distribution, whether in money, property or otherwise, to its members;

“foreign person” includes a person to whom section 26A of the Act applies;

“the Act” means the *Foreign Acquisitions and Takeovers Act 1975*.

Exempt acquisitions of interests in Australian urban land

3. The Act does not apply in relation to an acquisition of an interest in Australian urban land of each of the following kinds, namely, the acquisition of such an interest by a foreign person:

- (a) that is:
 - (i) a charitable institution operating in Australia primarily for the benefit of persons ordinarily resident in Australia; or
 - (ii) a trustee of a foreign-controlled trust established for charitable or benevolent purposes, where the beneficiaries of the trust are persons ordinarily resident in Australia;
- (b) that is a life insurance company operating in Australia and the acquisition is made by way of investment of its statutory funds within the meaning of the *Life Insurance Act 1945* primarily for the benefit of policy holders ordinarily resident in Australia;
- (c) that is an insurance company (other than a life insurance company) operating in Australia and the acquisition:
 - (i) is made from the reserves of the company; and
 - (ii) is consistent with the company's obligations under the *Insurance Act 1973*;
- (d) that is a corporation operating in Australia that maintains a superannuation fund for its employees, within the meaning of the *Occupational Superannuation Standards Act 1987*, for the benefit of the members of the fund or their dependents, being persons ordinarily resident in Australia, and the acquisition is made as an investment of all or part of the assets of that fund;
- (e) where:
 - (i) the acquisition is of an interest in land on which a dwelling will be or is being constructed;
 - (ii) the Treasurer has certified that the sale of that interest, (whether or not the certificate also refers to other interests) by a specified real estate developer to foreign persons is not contrary to the national interest; and
 - (iii) the real estate developer provides the foreign person with a copy of that certificate;
- (f) where the land is being used, or is able to be used immediately and in its present state, for industrial or non-residential commercial

purposes and the acquisition is wholly incidental to the conduct of the existing or proposed business activities of the foreign person (other than business activities that include acquisitions of land or the development of, or investment in, land or the development or operation of hotels, motels or tourist facilities);

- (g) where the acquisition is of an interest in a time share scheme and the entitlement of the foreign person and any of that person's associates is not in the aggregate greater than 4 weeks in any year;
- (h) where:
 - (i) the Treasurer has certified that a programme of land acquisitions by a foreign person in respect of a year is not contrary to the national interest; and
 - (ii) the acquisition is an acquisition referred to in that certificate;
- (i) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate that the corporation has not developed itself, being an Australian urban land corporation that is:
 - (i) publicly listed on an Australian Stock Exchange; and
 - (ii) primarily involved in the development of land;
- (j) where the acquisition is of shares as a consequence of which the foreign person holds less than a substantial interest in an Australian urban land corporation less than 10 per cent of the real estate assets of which are in the form of developed residential real estate, being an Australian urban land corporation that is publicly listed on an Australian Stock Exchange, or, where 2 or more foreign persons hold interests in the Australian urban land corporation, those foreign persons hold less than an aggregate substantial interest in that corporation;
- (k) who is an Australian citizen not ordinarily resident in Australia;
- (l) that is a corporation in which the government of an overseas country within the meaning of the *Diplomatic Privileges and Immunities Act 1967* holds a substantial interest and the acquisition is of an interest in land where the land is to be used exclusively for the purposes of the diplomatic mission of that country or as a diplomatic residence;
- (m) that is an Australian corporation that is a foreign person only because of direct interests held in it by Australian citizens not ordinarily resident in Australia;
- (n) that is a trustee of a trust estate, where the trustee is a foreign person only because of direct interests held in the trust estate by Australian citizens not ordinarily resident in Australia;
- (o) where the acquisition is of units in a unit trust as a consequence of which:

- (i) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders;
 - (C) that is primarily engaged in the development of land; and
 - (D) that has less than 10 per cent of its real estate assets in the form of developed residential real estate that the trust has not developed itself; or
- (ii) the foreign person holds less than a substantial interest in an Australian urban land trust estate:
 - (A) that is a unit trust that accepts funds from the public on the basis of a prospectus approved by the Corporate Affairs Commission of a State or Territory;
 - (B) that has at least 100 unit holders; and
 - (C) that has less than 10 per cent of its real estate assets in the form of developed residential real estate;or, where 2 or more foreign persons hold interests in the Australian urban land trust estate, those foreign persons hold less than an aggregate substantial interest in that trust estate;
- (p) where the acquisition is of non-residential commercial property valued at less than \$5 million;
- (q) where the acquisition is of an interest in land that is zoned as residential property and the person is:
 - (i) an immigrant who is the holder of an entry permit, other than a temporary entry permit, under the *Migration Act 1958*; or
 - (ii) a person who is otherwise entitled to take up or retain permanent residence in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by law.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 1 1989. 6 July/