

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 245

Issued by authority of the Treasurer

Foreign Acquisitions and Takeovers Act 1975

Foreign Acquisitions and Takeovers Amendment Regulations 2009 (No. 1)

Section 39 of the *Foreign Acquisitions and Takeovers Act 1975* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act provides the legislative underpinning for the Australian Government's foreign investment screening regime to ensure that foreign investment in Australia is not contrary to the national interest. It provides that the Treasurer may prohibit certain acquisitions of Australian corporations, businesses and/or other assets by foreign persons, where such acquisitions would be contrary to the national interest (sections 18, 19, 20 and 21). Section 26 provides that some acquisitions must be compulsorily notified to the Treasurer. However, section 13A provides that these provisions do not apply to acquisitions involving exempt corporations and exempt businesses – that is, corporations and businesses valued below certain monetary thresholds. This section also provides that these monetary thresholds may be prescribed.

The *Foreign Acquisitions and Takeovers Regulations 1989* (the Principal Regulations) provide the monetary thresholds. Different thresholds apply, depending on the location of the target (for example, Australian corporation or foreign corporation which has Australian subsidiaries/assets), the nationality of the investor (for example, prescribed foreign investors such as United States (US) corporations), and the industry sector of the target (for example, the prescribed sensitive sectors identified under the Australia-US Free Trade Agreement).

The purpose of the Regulations is to amend the Principal Regulations to increase the monetary thresholds, and thus exempt from the screening process, certain foreign investment proposals which are not considered contrary to the national interest and are currently routinely approved.

The amendments reflect the policy reforms announced by the Treasurer on 4 August 2009.

The Regulations specify that:

- the general monetary threshold for investments in Australian corporations/businesses/assets, or investments in foreign corporations with substantial Australian subsidiaries/assets (where the Australian assets represent 50 per cent or more of global assets), has increased from \$100 million to \$219 million;

- the monetary threshold for ‘offshore takeovers’, that is, investments in foreign corporations where the Australian subsidiaries/assets represent less than 50 per cent of global assets, has increased from \$200 million to \$219 million;
- the monetary threshold for investments in prescribed sensitive sectors by prescribed foreign investors (currently, US investors) has increased from \$110 million to \$219 million; and
- all these monetary thresholds are indexed in subsequent years.

Details of the Regulations are set out in the Attachment.

The proposed Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

ATTACHMENT

Details of the *Foreign Acquisitions and Takeovers Amendment Regulations 2009 (No. 1)***Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Foreign Acquisitions and Takeovers Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the day after registration.

Regulation 3 – Amendment of *Foreign Acquisitions and Takeovers Regulations 1989*

This regulation provides that the *Foreign Acquisitions and Takeovers Regulations 1989* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Application of amendments

This regulation provides that the amendments made by Schedule 1 (in particular, the increased monetary thresholds ‘for the calendar year 2009’) apply on and after the day on which these Regulations commence.

Schedule 1 – Amendment of *Foreign Acquisitions and Takeovers Regulations 1989***Item [1] – regulations 4 and 5**

Regulation 4 provides the monetary threshold for ‘offshore takeovers’, that is, investments in foreign corporations where the Australian subsidiaries/assets represent less than 50 per cent of global assets. Regulation 5 provides the monetary threshold for investments in Australian corporations/businesses/assets, and/or investments in foreign corporations with substantial Australian subsidiaries or assets (where the Australian assets represent 50 per cent or more of global assets). This item amends the current \$200 million and \$100 million thresholds under regulations 4 and 5 respectively, to \$219 million (effective from the date of commencement of the Regulations). It also provides for indexation of these thresholds in subsequent years.

Item [2] – regulation 6, table, item 1, column 3, paragraphs (a) and (aa)

Regulation 6 provides the monetary thresholds for investments by prescribed foreign investors (currently, US investors). Item 1 in the table provides the threshold for investments in Australian *corporations*, and/or investments in foreign *corporations* with substantial Australian subsidiaries or assets (where the Australian assets represent 50 per cent or more of global assets), where such investments are in prescribed sensitive sectors. This item amends the 2009 calendar year (indexed) \$110 million threshold to \$219 million (effective from the date of commencement of the Regulations).

Item [3] – regulation 6, table, item 5, column 3, paragraphs (a) and (aa)

This item amends the 2009 calendar year (indexed) \$110 million threshold applicable to investments in Australian *businesses* in prescribed sensitive sectors by prescribed foreign investors (currently, US investors) to \$219 million (effective from the date of commencement of the Regulations).

Item [4] – subregulation 13(1)

Regulation 13 provides the formula for calculating indexed amounts under regulations 3, 6 and 7. This item provides that this formula also applies to amounts indexed under regulations 4 and 5 (as amended at item [1]).