

# EXPOSURE DRAFT



EXPOSURE DRAFT (02/04/2024)

## Foreign Acquisitions and Takeovers Amendment (Interfunding Exemption) Regulations 2024

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2024

David Hurley  
Governor-General

By His Excellency's Command

Dr Jim Chalmers [**DRAFT ONLY—NOT FOR SIGNATURE**]  
Treasurer

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EXPOSURE DRAFT



# EXPOSURE DRAFT

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## Contents

1	Name.....	1
2	Commencement .....	1
3	Authority.....	1
4	Schedules .....	1
	<b>Schedule 1—Amendments</b>	<b>2</b>
	<i>Foreign Acquisitions and Takeovers Regulation 2015</i>	<i>2</i>



# EXPOSURE DRAFT

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## 1 Name

This instrument is the *Foreign Acquisitions and Takeovers Amendment (Interfunding Exemption) Regulations 2024*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under the *Foreign Acquisitions and Takeovers Act 1975*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

# EXPOSURE DRAFT

## Schedule 1—Amendments

### *Foreign Acquisitions and Takeovers Regulation 2015*

#### 1 Section 5

Insert:

*registered scheme* has the same meaning as in the *Corporations Act 2001*.

*registrable superannuation entity* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

*responsible entity* of a registered scheme has the same meaning as in the *Corporations Act 2001*.

*RSE licensee* has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

#### 2 After section 40

Insert:

#### **40A Acquisitions of interests in registered schemes or registered superannuation entities—interfunding**

- (1) This section applies for the following provisions:
  - (a) section 55B of the Act (meaning of *notifiable national security action*);
  - (b) Division 2 of Part 2 of the Act (meaning of *significant action*);
  - (c) Division 3 of Part 2 of the Act (meaning of *notifiable action*);
  - (d) any other provision of the Act or the regulations to the extent that it relates to any of those provisions.
- (2) The provisions specified in subsection (1) do not apply in relation to a foreign person's acquisition of an interest in securities in an entity if:
  - (a) the foreign person is a corporation; and
  - (b) the foreign person acquires the interest in its capacity as:
    - (i) the responsible entity of a registered scheme; or
    - (ii) the RSE licensee of a registrable superannuation entity; and
  - (c) that registered scheme or registrable superannuation entity (the *acquiring fund*) is passively held under subsection (3); and
  - (d) the acquisition is of an interest in securities in a registered scheme or registrable superannuation entity; and
  - (e) the acquisition occurs in the ordinary course of operation of the acquiring fund, as described in any of the following:
    - (i) if the acquiring fund is a registered scheme—its Product Disclosure Statement (within the meaning of Chapter 7 of the *Corporations Act 2001*) or constitution;
    - (ii) if the acquiring fund is a registrable superannuation entity—its governing rules;

- (iii) a written communication that, before the time of the acquisition, was published and sent to the members; and
- (f) any of the following apply:
  - (i) the foreign person is a subsidiary of the responsible entity or RSE licensee (as the case may be) (the **target**) of the scheme or entity mentioned in paragraph (d);
  - (ii) the target is a subsidiary of the foreign person;
  - (iii) the foreign person and the target are subsidiaries of a holding entity.
- (3) For the purposes of paragraph (2)(c), a registered scheme or registrable superannuation entity is passively held under this subsection if:
  - (a) all of the following apply:
    - (i) persons make contributions, by way of consideration, to acquire rights to benefits produced by the scheme or entity (**rights in the fund**) (whether the rights are actual, prospective or contingent and whether they are enforceable or not);
    - (ii) any of the contributions are to be pooled to produce financial benefits, or benefits consisting of rights or interests (within the ordinary meaning of that word) in property, for the persons (the **members**) who hold rights in the fund;
    - (iii) an individual member is not able to influence any individual investment decisions, or the management of any individual investments, of the person operating the scheme or entity; or
  - (b) all of the securities in the scheme or entity are held on behalf of entities that are passively held under paragraph (a) or a previous operation of this paragraph.

### **3 At the end of subsection 41(1)**

Add:

Note: Part 7A of the Act also does not apply in relation to an acquisition mentioned in subsection (2) of this section: see section 58KA of this instrument.

### **4 At the end of subsection 41A(1)**

Add:

Note: Part 7A of the Act also does not apply in relation to an action taken by a foreign person mentioned in subsection (2) of this section: see section 58KB of this instrument.

### **5 At the end of Division 2 of Part 5B**

Add:

## **Subdivision C—Actions covered by other exemptions**

### **58GA Requirement to give register notice—interfunding acquisitions**

- (1) For the purposes of paragraph 130ZU(1)(a) of the Act, circumstances in which a foreign person must give a register notice to the Registrar are if:
  - (a) the foreign person takes an action that is an acquisition of an interest in securities in a registered scheme or registrable superannuation entity mentioned in paragraph 40A(2)(d) of this instrument; and

# EXPOSURE DRAFT

## Schedule 1 Amendments

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- (b) the action is not a significant action, a notifiable action or a notifiable national security action only because of section 40A of this instrument (about interfunding acquisitions).
- (2) For the purposes of paragraphs 130ZU(1)(c) and (d) of the Act, if a foreign person gives a register notice under this section in relation to an action mentioned in subsection (1) of this section:
  - (a) a registered circumstance under this section exists in relation to the foreign person; and
  - (b) the registered circumstance ceases if the foreign person no longer holds an interest in the target fund.

### *Registrable event day*

- (3) For the purposes of paragraph 130ZU(1)(b) of the Act, the registrable event day for a register notice under this section is the day on which the foreign person takes the action.

### *Change in interest in an entity or business*

- (4) For the purposes of paragraph 130ZN(4)(g) of the Act, section 130ZN of the Act applies to a registered circumstance mentioned in subsection (2) of this section.

## **6 At the end of Division 4 of Part 5B**

Add:

### **58KA Exemption for Register purposes for certain acquisitions**

For the purposes of paragraph 37(1)(a) of the Act, Part 7A of the Act does not apply in relation to an acquisition of an interest in securities in an entity (including securities in a land entity) mentioned in subsection 41(2) of this instrument.

### **58KB Exemption for Register purposes for actions by foreign persons in which foreign custodian corporations have interests**

For the purposes of subsection 37(1) of the Act, Part 7A of the Act does not apply in relation to any action taken by a foreign person mentioned in subsection 41A(2) of this instrument.

## **7 In the appropriate position in Part 7**

Insert:

### **82 Application of the *Foreign Acquisitions and Takeovers Amendment (Interfunding Exemption) Regulations 2024***

The amendments made by the *Foreign Acquisitions and Takeovers Amendment (Interfunding Exemption) Regulations 2024* apply in relation to an action taken on or after the commencement of those Regulations.