



Your compliance obligations under the *Foreign Acquisitions and Takeovers Act 1975*

Last updated: 20 June 2023

Treasurer's message



The Hon Jim Chalmers MP
Treasurer

Maintaining strong compliance with Australia's foreign investment legislation is a priority for the Australian Government. I expect all foreign investors are aware of, understand and comply with their obligations under Australian law, including

Australia's foreign investment laws.

We take a risk-based, proportionate, and professional approach when assessing compliance with Australia's foreign investment laws and when responding to non-compliance. I strongly encourage you to disclose any non-compliance with your obligations.

Failure to comply with these laws is a serious matter, can result in imprisonment and/or significant monetary penalties and can be considered in your future interactions with Government.

Your obligations

As a foreign investor, it is your responsibility to ensure that you understand and comply with your obligations regarding Australia's foreign investment framework.

You must comply with the conditions imposed on a No Objection Notification (NON) or an Exemption Certificate (EC). The *Foreign Acquisitions and Takeovers Act 1975* (the Act) also requires you to report to the Treasurer when certain events occur.

Failure to comply is a serious matter and our response will be proportionate. For a corporation, this may range from administrative action to penalties over \$30 million, 10 years imprisonment, or both.

Compliance with conditions

Any conditions on your NON or EC have been imposed to manage the national interest or national security risks associated with the investment.

Some conditions require you to report to the Treasury on certain matters, including your compliance with conditions. These reports should be submitted by the date and method (for example, email address) specified in the conditions. If the conditions do not specify a method, please email the compliance report to foreigninvestmentcompliance@treasury.gov.au.

Some conditions also require you to make 'best endeavours'. What is reasonable depends on your circumstances. However, it is a high standard, and involves a degree of ongoing activity and effort, and may include you incurring some cost.

Notifying of actions

You are required to notify the Australian Government of actions specified in a NON or EC. However, the process for notification will be changing.

From 1 July 2023, **most** actions must be reported using the Register of Foreign Ownership of Australian Assets (the Register). The Register is administered by the Australia Taxation Office (ATO). If you are required to report to the Register, you must notify by accessing the ATO's new Online services for foreign investors (ato.gov.au/general/online-services/foreign-investors/online-services-for-foreign-investors).

If you are **not required** to report to the Register, you may still have obligations under s 98C, 98D and 98E of the Act. These notifications are made to the Treasurer. You can notify by following these steps on [Notifications of actions](#) on our website. You must still meet all requirements within the Act, including notifying within prescribed timeframes.

Actions not covered in a NON or EC

A NON or EC relates only to the specified action.

All notifiable actions and notifiable national security actions not covered by the NON or EC must be separately notified in accordance with the Act.

Compliance with notices

You may receive a notice that requires you to give information or documents to the Treasurer (for another person). You must comply with the notice.

Record keeping

You have specific record keeping obligations under the Act.

You must make and keep records of every act, transaction, event or circumstance in accordance with the table set out on [Record keeping obligations](#) on our website. The details of the act, transaction, event or circumstance taken should be easily ascertained in the records.

Records must be kept in English, or in a format that can be readily converted into English, and in hard copy or electric form.

You may be asked to produce these records as part of your obligations. It is a strict liability offence to fail to keep records as required.

Our approach to compliance

The [Foreign investment: Compliance framework policy statement](#) provides an overview of the Treasury's approach to compliance and enforcement activities.

Our compliance and enforcement powers allow us to prevent, identify and respond to instances of non-compliance, and include the power to direct investors to take or cease particular actions. We can also give an infringement notice and use monitoring and investigation powers in accordance with the *Regulatory Powers (Standard Provisions) Act 2014* (the RPA).

How we assess your compliance

We may undertake compliance assessments and investigations by:

- seeking information from investors
- using our powers under the Act to require information or documents to be given or
- using the monitoring powers and investigation powers under the RPA.

Decisions on the most appropriate method of assessing compliance or investigating non-compliance are made on a case-by-case basis.

Our powers under the RPA allow authorised officers to enter premises to assess compliance or investigate possible non-compliance. Authorised officers are appointed employees in the Treasury and may:

- search, observe and examine activities on a premises
- inspect, examine, measure or test things
- inspect and take extracts or copies of documents, and make photo, audio or video records
- bring and operate equipment and storage devices

- ask questions and request documents
- secure equipment (to obtain expert assistance) and evidence (of non-compliance) for up to 24 hours
- be accompanied by other persons assisting the authorised officer where necessary and reasonable
- seize evidential material when entering a premises under an investigation warrant.

Tell us about possible non-compliance

The Treasury strongly encourages voluntary disclosure of non-compliance. We may prefer to work with you to achieve compliance in cases where:

- non-compliance is inadvertent and self-reported
- the breach is administrative and
- you are willing to remediate the breach as quickly as possible.

Lower penalties may also apply for non-compliance that is voluntarily disclosed. Details on how to make a voluntary disclosure are available on [Our approach to compliance](#) on our website.

More information

You can find more information on our website about notification and reporting requirements at [Notification of actions](#), and your compliance obligations at [Know your obligations](#).

We encourage you to check these matters on foreigninvestment.gov.au or engage with us by emailing foreigninvestmentcompliance@treasury.gov.au.

You can contact us on 1800 050 377 from Australia or +61 2 6216 1111 from overseas.

This factsheet provides a summary of the relevant law and tries to avoid legal language wherever possible. Some provisions of the law referred to have exceptions or important qualifications. This factsheet is therefore not a substitute for obtaining your own legal advice.