

NOTICE OF FILING

Details of Filing

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File Title:	TREASURER v INDIAN OCEAN INTERNATIONAL SHIPPING AND SERVICE COMPANY LTD & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Concise statement

No. NSD of 2025

Federal Court of Australia
District Registry: New South Wales
Division: General

Treasurer

Applicant

Indian Ocean International Shipping and Service Company Ltd

and another named in the Schedule

Respondents

A. INTRODUCTION

1. The Treasurer contends that the First Respondent (**Indian Ocean**) contravened s 7 of the *Foreign Acquisitions and Takeovers (Disposal of Interests in Northern Minerals Limited) Orders 2024* (Cth) (**Disposal Orders**), and therefore contravened s 89(1) of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FAT Act**).
2. The Treasurer also contends that the Second Respondent (**Ms Tian**) was knowingly concerned in, or party to, Indian Ocean's contraventions of s 89(1) of the FAT Act, including because she authorised or permitted those contraventions, and therefore contravened s 89(1) of the FAT Act (or, alternatively, s 102(2) of the FAT Act).
3. The Treasurer made the Disposal Orders under s 69 of the FAT Act, following a national security review of Indian Ocean's actions of acquiring shares in an Australian company, Northern Minerals Ltd (**Northern Minerals**). The Treasurer made the Disposal Orders on the basis that he was satisfied the result of Indian Ocean's actions of acquiring shares in Northern Minerals was contrary to national security. The Disposal Orders relevantly required Indian Ocean to dispose of its interests in 165,035,368 shares in Northern Minerals to one or more persons who were not associates of Indian Ocean. Indian Ocean contravened the Disposal Orders because it disposed of its interests in those shares to its sole director and shareholder, Ms Tian.

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

B.1 Background

4. Northern Minerals is a company incorporated in Australia. It is a publicly listed company, and owns one of very few deposits outside of China where dysprosium and terbium, two rare earth elements, can be mined.
5. Indian Ocean is a company incorporated in the United Arab Emirates.

Filed on behalf of (name & role of party)	Treasurer, Applicant
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6. Ms Tian is a citizen of China. In the period between 13 December 2023 and 17 August 2024, Ms Tian was the sole director and shareholder of Indian Ocean.
7. Yuxiao Fund Pte Ltd (**Yuxiao Fund**) is a company incorporated in Singapore. Between May 2022 and November 2022, Yuxiao Fund held 485,000,000 shares in Northern Minerals, constituting a 9.98% interest in Northern Minerals.
8. In August 2022, Yuxiao Fund sought the Treasurer's approval to acquire an additional 9.92% interest in Northern Minerals, which would have increased its total interest in Northern Minerals to 19.9%.
9. On 15 February 2023, the Treasurer made the *Foreign Acquisitions and Takeovers (Prohibition of Proposed Action) Order (No 1) 2023* (Cth), which relevantly directed Yuxiao Fund not to increase the proportion of its interests in issued securities in Northern Minerals beyond 9.98%.

B.2 The national security review

10. Between May 2022 and March 2023, Indian Ocean acquired 165,035,368 shares in Northern Minerals, constituting an approximately 2.84% interest in Northern Minerals.
11. Under s 66A of the FAT Act, the Treasurer may review a "reviewable national security action" if the Treasurer considers that the action may pose a national security concern. If, having conducted a review of an action under s 66A, the Treasurer considers that the result of the action is contrary to national security, the Treasurer may make an order under s 69 of the FAT Act in relation to that action.
12. On 22 February 2024, the Treasurer gave Indian Ocean notice under s 66A(4) of the FAT Act that he had decided to start a review of Indian Ocean's actions of acquiring shares in Northern Minerals between April 2022 and March 2023.
13. The Treasurer considered that each of Indian Ocean's actions constituted a "reviewable national security action" on the basis that:
 - 13.1 Indian Ocean was an "associate" of Yuxiao Fund within the meaning of s 6 of the FAT Act;
 - 13.2 because Indian Ocean was an associate of Yuxiao Fund, the effect of its acquisitions of shares in Northern Minerals was that Indian Ocean "acquire[d]" an "interest" of more than 10% in Northern Minerals within the meaning of ss 17(1) and 20(1) of the FAT Act; and
 - 13.3 thus, as a result of Indian Ocean's acquisitions of shares in Northern Minerals, Indian Ocean acquired a "direct interest" in Northern Minerals within the meaning of s 55D(1)(b)(i) of the FAT Act and s 16 of the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

B.3 The Disposal Orders

14. On 2 June 2024, the Treasurer made the Disposal Orders under s 69 of the FAT Act. The Treasurer relevantly made those orders on the basis that he was satisfied the result of Indian Ocean's actions of acquiring shares in Northern Minerals between May 2022 and March 2023 was contrary to national security.
15. Section 7 of the Disposal Orders provided that (emphasis in original):

- (1) Under subsection 69(2) of the Act, [Indian Ocean], being the foreign person mentioned in subsection (2), is directed to dispose of the following interests, within 60 days from the day on which this section commences, to one or more persons who are *not* associates of [Indian Ocean]:
 - (a) interests in 165,035,368 ordinary shares in [Northern Minerals], as acquired by [Indian Ocean] through brokers, agents, custodians or other similar financial intermediaries, between 12 May 2022 and 14 March 2023.
- (2) For the purposes of subsection (1), [Indian Ocean] is the corporation with that name (or a similar name using abbreviations or symbols) and incorporated and registered in the United Arab Emirates.

16. Section 7 of the Disposal Orders commenced on 4 July 2024. The last day for compliance with s 7 of the Disposal Orders was 2 September 2024.

B.4 Disposal of the shares

17. By July 2024, Indian Ocean held 168,046,469 shares in Northern Minerals.
18. On around 22 or 23 July 2024, Indian Ocean transferred all 168,046,469 of its shares in Northern Minerals to Ms Tian. On those dates, Ms Tian remained the sole director and shareholder of Indian Ocean.
19. On 30 July 2024, Ms Tian transferred all 168,046,469 of her shares in Northern Minerals back to Indian Ocean.
20. On 6 August 2024, Indian Ocean again transferred all 168,046,469 of its shares in Northern Minerals to Ms Tian. On that date, Ms Tian again remained the sole director and shareholder of Indian Ocean.
21. As sole director and shareholder of Indian Ocean on 22 and 23 July and 6 August 2024, Ms Tian authorised or permitted the transfer of all 168,046,469 of Indian Ocean's shares in Northern Minerals to herself on both of the occasions referred to in paragraphs 18 and 20 above.
22. Between 17 and 27 August 2024, Ms Tian transferred all 100 of her shares in Indian Ocean to Ning Lyu. On 27 August 2024, the board of Indian Ocean resolved that Ms Tian would transfer all 100 of her shares in Indian Ocean to Ms Lyu and that Ms Lyu would become the new director and secretary of Indian Ocean.
23. On 27 August 2024, Ms Lyu replaced Ms Tian as the sole director of Indian Ocean.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

C.1 Indian Ocean

24. Because Ms Tian was the sole director and shareholder of Indian Ocean on 22 and 23 July and 6 August 2024, she was an “associate” of Indian Ocean within the meaning of s 6 of the FAT Act on those dates.
25. By disposing of all 168,046,469 of its shares in Northern Minerals on 22 or 23 July 2024 to Ms Tian, Indian Ocean contravened s 7 of the Disposal Orders, because it failed to dispose of those shares to “one or more persons who are *not* associates of [Indian Ocean]” (emphasis in original).

26. Further, by disposing of all 168,046,469 of its shares in Northern Minerals on 6 August 2024 to Ms Tian, Indian Ocean contravened s 7 of the Disposal Orders, because it failed to dispose of those shares to “one or more persons who are *not* associates of [Indian Ocean]” (emphasis in original).
27. Section 89(1) of the FAT Act provides that a person must not contravene an order made under Part 3 of that Act. The Disposal Orders were made under s 69 of the FAT Act, which is in Part 3. Accordingly, each time it contravened s 7 of the Disposal Orders, Indian Ocean contravened s 89(1) of the FAT Act.
28. Section 89(2) of the FAT Act provides that a person who contravenes s 89(1) is liable to a civil penalty. Section 99 of the FAT Act provides that each civil penalty provision of the FAT Act is enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (**RP Act**).

C.2 Ms Tian

29. Section 92(1) of the RP Act provides that a person must not be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision. Section 92(2) provides that a person who contravenes s 92(1) in relation to a civil penalty provision is taken to have contravened the provision.
30. By her conduct in paragraphs 18, 20 and 21 above, Ms Tian was knowingly concerned in, or party to, Indian Ocean’s contraventions of s 89(1) of the FAT Act. Accordingly, Ms Tian is taken to have contravened s 89(1) of the FAT Act.
31. Section 102(2) of the FAT Act provides that an officer of a corporation is liable to a civil penalty if: (a) a civil penalty order under the RP Act is made against the corporation in relation to a contravention of a civil penalty provision of the FAT Act; and (b) the officer authorised or permitted the contravention of the civil penalty provision by the corporation.
32. Alternatively to paragraph 30 above, by her conduct in paragraphs 18, 20 and 21 above, Ms Tian authorised or permitted Indian Ocean’s contraventions of s 89(1) of the FAT Act. Accordingly, Ms Tian contravened s 102(2) of the FAT Act.

D. RELIEF SOUGHT FROM THE COURT

33. The Treasurer seeks the relief set out in the accompanying Originating Application.
34. In particular, the Treasurer seeks declarations of the contraventions referred to in paragraphs 27 and 30 (alternatively, 32) above under s 21 of the *Federal Court of Australia Act 1976* (Cth), and civil penalty orders in respect of those contraventions against Indian Ocean and Ms Tian under s 82(3) of the RP Act.

E. ALLEGED HARM

35. Australia’s foreign investment laws are designed to ensure that foreign investment in Australia is consistent with the national interest and national security. In support of that end, where the Treasurer is satisfied that the result of certain actions is contrary to national security, s 69 of the FAT Act empowers the Treasurer to make orders such as the Disposal Orders, requiring a person to dispose of interests in an entity to one or more persons who are not associates of the person.

36. The effectiveness of Australia's foreign investment laws in ensuring that foreign investment in Australia is consistent with the national interest and national security depends on compliance with orders made by the Treasurer under the FAT Act.
37. The Treasurer made the Disposal Orders on the basis that he was satisfied the result of Indian Ocean's actions of acquiring shares in Northern Minerals was contrary to national security. Rather than disposing of its interests in Northern Minerals as required by the Disposal Orders, Indian Ocean transferred those interests to its sole director and shareholder. That conduct had the potential to undermine the effectiveness of Australia's foreign investment framework in ensuring Australia's national security.

F. OTHER

38. The Treasurer does not consider the issues in this Concise Statement are suitable for a report by a referee under section 54A of the *Federal Court of Australia Act 1976* (Cth).

Date: 26 June 2025



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Jane Healy
AGS lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant

This concise statement was prepared by J Healy of AGS and settled by R Yezerski SC and M Hosking of Counsel.

Certificate of lawyer

I Jane Healy certify to the Court that, in relation to the Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 26 June 2025

A handwritten signature in cursive script that reads "Jane Healy".

Signed by Jane Healy
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant

Schedule

No. NSD of 2025

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

Second Respondent Jing Tian

Date: 26 June 2025