**COMMONWEALTH FOREIGN ARRANGEMENTS SCHEME**

**GUIDELINE FOR SOUTH AUSTRALIAN GOVERNMENT**

**Overview**

The Commonwealth’s [Foreign Arrangements Scheme](https://www.foreignarrangements.gov.au/) entered into force on 10 December 2020.

Its purpose is to ensure that arrangements between state or territory governments (and their entities) and foreign entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

This Guideline sets out the application of the Foreign Arrangements Scheme to South Australia.

**Authority and accountability**

Australia’s Minister for Foreign Affairs is provided the authority under the *Australia’s Foreign Relations (State and Territory Arrangements) Act 2020* (the Act) to approve, or not, a proposal by a core South Australian entity to negotiate or enter an arrangement with a core foreign entity.

A core South Australian entity must not commence negotiations with a core foreign entity to establish a foreign arrangement without the Minister’s approval. The entity also must not enter the arrangement without the Minister’s approval.

A core South Australian entity must also notify the Minister about any proposal to enter an arrangement with a non-core foreign entity. The entity must also notify the Minister within 14 days of entering the arrangement.

The Act provides that the Minister may make a declaration that a foreign arrangement between a South Australian entity and a foreign entity is invalid and unenforceable, required to be varied or terminated, or not in operation (depending on the nature of the arrangement), to the extent specified in the declaration.

If the Minister makes such a declaration, the entities will also be prohibited from giving effect to the arrangement and from holding out that they are able to give effect to the arrangement, to the extent specified in the declaration.

**Scope**

*Core foreign arrangements*

Pursuant to the Act, a **core South Australian entity** includes:

* South Australia
* the Government of South Australia, and
* a department or agency (however described) of the Government of South Australia (including certain statutory bodies/state-owned enterprises).

A **core foreign entity** includes:

* a foreign country
* the national government of a foreign country, and
* a department or agency (however described) of the national government of a foreign country.

A **core foreign arrangement** is an arrangement between:

* a **core South Australian entity** and a **core foreign entity**, whether or not other entities are also a party to the arrangement.

*Non-core foreign arrangements*

A **non-core South Australian entity** includes:

* local governments, and
* Australian public universities.

A **non-core foreign entity** includes:

* a province, state, self-governing territory, region, local council, municipality or other political subdivision of a foreign country (including its governments, departments, agencies)
* an authority of a foreign country established for a public purpose, and
* a foreign university that does not have institutional autonomy.

A **non-core foreign arrangement** is an arrangement between:

* a core South Australian entity and a non-core foreign entity
* a non-core South Australian entity and a core foreign entity, or
* a non-core South Australian entity and a non-core foreign entity.

NOTE: The scheme does not cover arrangements by corporations that operate on a commercial basis, including where the corporation is wholly or partly state-owned. Corporations that do not operate on a commercial basis are within the scheme where they are a State/Territory entity or foreign entity.

**Application**

The Department of the Premier and Cabinet holds primary responsibility for ensuring South Australia’s compliance with the Scheme and is the central liaison with the Department of Foreign Affairs and Trade for prospective foreign arrangement applications and notifications.

DPC’s Diplomatic Relations and Protocol must therefore be engaged prior to South Australia commencing negotiations for any new foreign arrangement.

Prospective core foreign arrangements

*Approval to negotiate an arrangement*

1. A core South Australian entity that proposes to negotiate an arrangement with a **core foreign entity** must first seek the approval of the Minister for Foreign Affairs to commence negotiations with the foreign entity. A core South Australian entity must not negotiate an arrangement with a core foreign entity without the Minister’s approval.
2. The *Form for Prospective South Australian Arrangements* must be completed by all core South Australian entities for their reporting of proposals to negotiate prospective core foreign arrangements to the Minister for Foreign Affairs. The Form replicates the questions as set out in the Foreign Arrangements Scheme Online Portal.
3. A core South Australian entity must complete the Form and return it to DPC’s Diplomatic Relations and Protocol. DPC will convey this information to the Minister for Foreign Affairs and make the necessary requests via the Online Portal.
4. If the Minister does not make a decision regarding the proposal to enter negotiations within 30 days of being given the notice, the Minister is taken to have given approval for the negotiation proceeding. In addition, the Minister will no longer be able to make a decision about the negotiation.
5. Once approval is granted or the appropriate time elapsed for a request to enter negotiations, DPC will notify the core South Australian entity.

*Approval to enter an arrangement*

1. Following negotiations, if a core South Australian entity proposes to enter an arrangement with a core foreign entity, then it must give notice to the Minister before entering the arrangement.
2. The core South Australian entity must complete the *Form for Prospective South Australian Arrangements* and submit to DPC’s Diplomatic Relations and Protocol in order to notify the Minister of the entity’s proposal to enter the core foreign arrangement. DPC will convey this information to the Minister for Foreign Affairs and make the necessary requests via the Online Portal.
3. Again, if the Minister does not make a decision regarding the proposal to enter the core foreign arrangement within 30 days of being given the notice, the Minister is taken to have given approval for the core South Australian entity to enter the arrangement. In addition, the Minister will no longer be able to make a decision about the arrangement.
4. Once approval is granted or the appropriate time elapsed for a request to enter the arrangement, DPC will notify core South Australian entity.

*Notification upon entering the arrangement*

1. Once the core South Australian entity enters the arrangement with the core foreign entity, the core South Australian entity must provide a notice to the Minister for Foreign Affairs within 14 calendar days.
2. The core South Australian entity is required to complete the remaining sections of the *Form for Prospective South Australian Arrangements* and submit to DPC’s Diplomatic Relations and Protocol. The signed arrangement must also be provided.
3. DPC will notify the core South Australian entity once this has been submitted.

NOTE: If a core South Australian entity enters an arrangement with a core foreign entity without approval, then the arrangement will be invalid and unenforceable, required to be terminated, or not be in operation (depending on the arrangement).

Prospective non-core foreign arrangements

*Notification of a proposal to enter an arrangement*

1. A South Australian entity (core and non-core) that proposes to enter an arrangement with a **non-core foreign entity** must first notify the Minister for Foreign Affairs of this proposal.
2. The *Form for Prospective South Australian Arrangements* must be completed by all South Australian entities (core and non-core) for their reporting of proposals to enter prospective non-core foreign arrangements to the Minister for Foreign Affairs. The Form replicates the questions as set out in the Foreign Arrangements Scheme Online Portal.
3. The South Australian entity must complete the Form and return it to DPC’s Diplomatic Relations and Protocol. DPC will convey the entity’s proposal to enter a non-core foreign arrangement to the Minister for Foreign Affairs via the Online Portal.
4. Once the notification has been submitted, the South Australian entity may proceed with entering the arrangement with the non-core foreign entity.

However, the Act provides that the Minister may make a declaration prohibiting the South Australian entity from negotiating or entering a non‑core arrangement if the Minister is satisfied that the negotiation or arrangement would adversely affect, or would be likely to adversely affect, Australia’s foreign relations; or would be, or would be likely to be, inconsistent with Australia’s foreign policy.

*Notification upon entering the arrangement*

1. Once the South Australian entity enters the arrangement with the non-core foreign entity, the South Australian entity must provide a notice to the Minister for Foreign Affairs within 14 calendar days.
2. The South Australian entity is required to complete the remaining sections of the *Form for Prospective South Australian Arrangements* and submit to DPC’s Diplomatic Relations and Protocol. The signed arrangement must also be provided.
3. DPC will notify the South Australian entity once this has been submitted.

NOTE: If a South Australian entity enters a non‑core arrangement with a foreign entity in contravention of a declaration by the Minister, then that will be a ground on which the Minister may make a further declaration that the arrangement is invalid and unenforceable, required to be terminated, or not in operation (depending on the nature of the arrangement).

Renewals of arrangements

Please note that renewals of arrangements follow the same procedure as entering into a new arrangement.

A renewal can be specified in the *Form for Prospective South Australian Arrangements*.

**Public Register**

The Foreign Arrangements Scheme [Public Register](https://www.foreignarrangements.gov.au/public-register) includes information about foreign arrangements, including the date the arrangement commenced, the title of the arrangements, and the Australian and foreign partners to the arrangement.

South Australian entities can request that information deemed sensitive is excluded from the Public Register.

**Additional information**

Guidance on Institutional Autonomy

The Foreign Arrangements Scheme also applies to South Australian entities entering arrangements with:

* a foreign university that does not have institutional autonomy, or
* a foreign tertiary education institution that is a part of a foreign government (for example, a government military academy).

A foreign university does not have institutional autonomy if a foreign government is in a position to exercise substantial control over the university.

Guidance on Corporations as Entities

The Foreign Arrangements Scheme is not intended to regulate arrangements with purely commercial corporations, including where the corporation is wholly or partly state-owned.

To reflect this intention, corporations that operate on a commercial basis are excluded from the definition of ‘State/Territory entity’ and ‘foreign entity’ in the Act.

Commercial corporations are therefore not included within the Scheme, except where they are party to a subsidiary arrangement entered into under the auspices of a head arrangement between a State/Territory entity and a foreign entity.

Foreign Arrangements Scheme Fact Sheets

Further guidance on the Commonwealth’s Foreign Arrangements Scheme is available in subject-specific fact sheets, here: [www.foreignarrangements.gov.au/resources/fact-sheets](http://www.foreignarrangements.gov.au/resources/fact-sheets)

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