



Foreign Influence Transparency Scheme

Factsheet 4

February 2019

Acting on behalf of a foreign principal and 'registrable arrangements'

The Foreign Influence Transparency Scheme requires a person to register if they are undertaking registrable activities on behalf of a foreign principal or under a registrable arrangement,¹ unless an exemption applies. **Factsheets 3 and 5** provide more information about foreign principals and registerable activities. **Factsheet 7** deals with exemptions.

The scheme applies where the person undertakes registrable activities:

- under an arrangement with the foreign principal
- in the service of the foreign principal
- on the order or at the request of the foreign principal, or
- under the direction of the foreign principal.

Regardless of the nature of the relationship between the person and the foreign principal, both the person and the foreign principal must have intended or expected that the person might or would undertake the registrable activities on behalf of the foreign principal. If a person undertakes an activity without the foreign principal's knowledge or expectation, then there is no obligation to register under the scheme. In this case, the person's activities and the foreign principal's interests are merely coincidental.

Example One

An Australian theatre company is planning to tour America. It is negotiating contracts with a range of American venues, some of which are owned by local governments. While the venues will pay performance fees to the company, it is expected that the venues will still make a profit from the performances.

The company applies for an Australian Government grant to cover some of the costs of the tour – without this money, the tour may not proceed. While the company is seeking to influence a government decision by making this application, it is not doing so on behalf of a foreign principal. Even though the local government-owned venues would ultimately benefit financially if the grant funding allowed the company to tour, the company is applying on its own behalf and for its own benefit. There is no expectation that the 'foreign principal' expects the company to undertake the activity on its behalf.

Note: even if the company had been undertaking the activity on behalf of a foreign principal, it may still be exempt from the requirement to register. **Factsheet 8** provides more details about exemptions, including the exemption for artistic purposes.

¹ Sections 11 and 13A of the *Foreign Influence Transparency Scheme Act 2018* (the Act) deals with acting on behalf of a foreign principal.

Where the person and the foreign principal both expect the person to undertake a registrable activity, even if the activity is in the interests of both the person and the foreign principal, then the person must register unless an exemption applies.

An 'arrangement' between the person and the foreign principal could be formal or informal, written or verbal. It could be a contract, understanding or agreement of any kind. It does not need to have been made in Australia to be registrable. The foreign principal does not need to pay the person to undertake the activity, or provide any other advantage to the person.

Example Two

Company A and a foreign government develop a plan to work together to import and distribute Australian sourced food products within the foreign country. The Australian Parliament makes changes to export arrangements which prohibit Company A from exporting the foods from Australia. The foreign government advises Company A that unless it is able to have the Australian regulations changed, the foreign government will source the food from another company even though this will be more expensive.

Company A lobbies the relevant Australian Government Minister to change the regulations. Although it is in Company A's interests to undertake the lobbying, it is also undertaking the activity on behalf of the foreign government. Company A must register under the scheme.

A connection between the actions of the person and the foreign principal must be established. It is not sufficient for a person to unilaterally decide that they will undertake an activity on behalf of a foreign principal. The foreign principal must be seeking or expecting the activity.