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Doing business in Australia
An introductory guide

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Introducing Australia

1 Introducing Australia

Size and population

Australia is the world's sixth largest country, comprising an area of approximately 7.7 million square kilometres. It is a vast continent covering a distance of approximately 3,700 kilometres from its most northerly point to its most southerly point and is almost 4,000 kilometres wide from east to west.

Australia is comprised of six states and two territories:

- the Australian Capital Territory, which includes Canberra, the political capital of Australia
- New South Wales in which Australia's largest city Sydney, is located
- Northern Territory
- Queensland
- South Australia
- Tasmania
- Victoria, and
- Western Australia.

In 2017, Australia's total population exceeded 24.5 million people.

The Australian lifestyle

Australia provides a high standard of living with life expectancy at 84.5 years for females and 80.4 years for males[1]. Australia has much to offer expatriates and their families with good quality housing and recreational facilities, excellent medical and health services, an excellent education system and a stable political and social environment. While the cost of living and housing in Australian cities has increased over recent years, surveys of world cities still rate Australia's major cities as offering a great lifestyle.[2]

Resources and climate

An industrialised continent, Australia is blessed with an abundance of mineral and agricultural resources. Its climate varies considerably given the large land mass but is generally moderate. Australia is located in the southern hemisphere, therefore summer is in the months of December to February while winter is in the months of June to August. In Australia's north, summer is hot with rain from November to March. Elsewhere, the average temperature is 28°C in January and dry. In the southern states, winter is mild with an average temperature in July of 16°C.

A multicultural community

Inhabited by Indigenous Australians and later settled as a British penal colony in the 18th century, Australia is an increasingly diverse, multicultural nation. Collectively over 200 different languages and dialects are spoken including over 50 indigenous languages. Australia is home to people from more than 200 countries and has an enviable international reputation for diversity.

Australia is a harmonious community which has benefited from an active program of immigration over the last 50 years. As at 30 June 2016, approximately 28.5% of residents were born overseas.

Certainty and security

The Australian legal system is a mixture of common law and statute, similar to the legal systems in the United Kingdom, other Commonwealth countries and some European countries. The common law tradition which applies in Australia expects and values judicial independence. Decisions of the courts conform to due process and are made in the context of prevailing law. Contractual arrangements are therefore protected by the rule of law and the independence of the judiciary. Domestic companies, foreign companies and individuals have the same standing before the law.

Regulatory framework

The Commonwealth of Australia is a federal constitutional monarchy, constituted by the Commonwealth of Australia, six states and two self-governing territories. The Commonwealth and each of the states and territories has its own legislature with law making authority. The Commonwealth has primary authority over matters like foreign affairs, corporations, trade and commerce, corporate and income taxes and defence.

[1] Australian Institute of Health and Welfare, 7 Feb 2017

[2] 2018 Worldwide Quality of Living Survey by Mercer Human Resource Consulting

The major legislation regulating the financial industry is the *Corporations Act 2001*, the *Banking Act* 1959 and the *Insurance Act* 1973.

The Australian economy

Australia has one of the strongest, most competitive, open and flexible economies in the world.

In 2009, the standard of living in Australia surpassed that of France, Germany, Italy, Japan, Russia and the United Kingdom.[3]

Australia's economy has grown (on average) by approximately 3.1 per cent per from 1990 to 2017. In2017, the Gross Domestic Product of Australia was approximately AUD1.422 billion.

Australia's strong economic growth has been coupled with low inflation. Over the 10 years ending in 2017, the inflation rate has varied from a low of 1.3 per cent in 2016 to a high of 4.4 per cent in 2008 with an average over the period of 2.37 per cent.

The unemployment rate in Australia was 5.8 per cent in January 2016 and 5.5 per cent in April 2018.

Australia is one of the largest economies in the Asia Pacific region after Japan, China and Korea. China is Australia's largest trading partner.

Australia's time zone spans the close of business in the USA and the opening of business in Europe.[4]

A good place to do business

Multinational companies view Australia as presenting the best business case for regional headquarters to target the dynamic Asia Pacific region.

Key business centres in Australia include Sydney (New South Wales), Melbourne (Victoria), Brisbane (Queensland) and Perth (Western Australia). Office space costs in Australia's business centres are low relative to major business centres with Sydney being the highest ranked at 16th and Melbourne being ranked 50th.[5]

Australia is a leading financial centre in the Asia Pacific region. The Australian Securities Exchange is among the 16 largest listed exchanges in the world with a market capitalisation of USD1.442 billion at April 2018). Australia's alliance with markets throughout the region is increasingly providing business people with a comprehensive range of financial services in the Asia Pacific region.[6]

Australia offers real cost advantages for every category of business needs from prime central business district office space, metropolitan factory space and industrial land, to transport infrastructure and low-cost utilities.

There is a strong and enduring tradition of democracy in Australia where rule of law and regulatory frameworks prevail.

The work force

Australia continues to offer a multilingual, highly educated and skilled workforce. Australia has a comprehensive education and training system with around 50 per cent of Australia's work force having some form of tertiary qualification. Australians also possess a diversity of language skills with approximately 15 per cent of the population speaking a language other than English. [7]

Education in Australia

Australia offers one of the best education systems in the world. With a 99 per cent literacy rate, Australia is able to provide a highly educated, skilled and computer literate labour force to investors.

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[3] Organisation for Economic Cooperation and Development

[4] Axiss Australia, Australia: The new centre of global finance

[5] DTZ – The Global Office Occupancy Costs Survey 2014

[6] January 2016 Monthly Report, World Federation Exchanges, and www.asx.com.au

[7] Axiss Australia, Australia: The new centre of global finance

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Foreign investment in Australia

2 Foreign investment in Australia

Foreign investment – An introduction

The Government welcomes and encourages foreign investment consistent with the national interest. Australia's screening process for foreign investment is long established, but changes from time to time. The Government has the power to block proposals that are required to be notified or are significant and which are determined to be contrary to the national interest. However, the general presumption is that foreign investment is beneficial, and plays an important role in Australia's economic development.

The Foreign Investment Review Board (**FIRB**) is a non-statutory body that examines proposals by foreign persons to undertake investment in Australia and makes recommendations to the Treasurer as to whether those proposals are suitable for approval under the Government's Foreign Investment Policy and whether they are in compliance with the *Foreign Acquisitions and Takeovers Act 1975 (Cth)* (**FATA**). The FIRB review process is thorough and substantive and is more than a "rubber-stamping" process. As the ultimate decision-maker is the Treasurer, whether a major foreign investment proposal is approved (particularly a proposal involving a foreign government investor or where the acquisition is sensitive) can be influenced by the political landscape at the time.

FIRB also provides information on Australia's Foreign Investment Policy guidelines and, where necessary, provides guidance to foreign investors to ensure compliance with the Government's policy.

Foreign persons

Australia's foreign investment legislation and policy applies to investment proposals by foreign persons. A foreign person is defined as:

- a natural person, not ordinarily resident in Australia
- a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest
- a corporation in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, holds an aggregate substantial interest
- the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest
- the trustee of a trust estate in which two or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest
- a foreign government, and
- a general partner of a limited partnership where an individual not ordinarily resident in Australia, a foreign corporation or a foreign government holds an interest of at least 20 per cent in the limited partnership (or two or such persons hold an aggregate interest of at least 40 per cent in the limited partnership).

If the Treasurer is satisfied that one or more foreign persons together with any one or more associates control an entity then the associate may also be treated as a foreign person (even if that associate is not a foreign person).

Substantial interest

Generally, where the monetary threshold is triggered, an acquisition by a foreign person of a substantial interest in an Australian entity requires FIRB approval. In respect of a company, a substantial interest is where a foreign person holds an interest of at least 20 per cent in the company. In respect of a trust, a substantial interest is where the foreign person, together with any one or more associates, holds a beneficial interest in at least 20 per cent of the income or property of the trust.

FIRB approval may also be required where foreign persons propose to acquire an aggregate substantial interest which involves two or more foreign persons acquiring an aggregate interest of at least 40 per cent in an entity or trust.

Notifiable Actions and Significant Actions

There are two types of actions that require notification to FIRB under the FATA: "notifiable actions" and "significant actions".

A notifiable action requires mandatory prior notification to FIRB. Failure to give notice of a notifiable action can, in some cases, attract serious criminal penalties including personal penalties on individuals knowingly involved in a contravention.

A significant action does not require prior notification to FIRB but a foreign person may voluntarily elect to give notice of a proposed significant action. If a foreign person voluntarily elects to give notice of a proposed significant action, the Treasurer may prohibit the proposal or approve the proposal either with or without conditions. If a foreign person proceeds with a significant action without giving notice to FIRB, the Treasurer, if they determine the action is contrary to the national interest, may still make the same orders (including disposal orders) that the Treasurer could have made had prior notice been given.

There are different criteria that apply in determining whether an action is notifiable or significant or if an action is both notifiable and significant. However, both types of actions only apply if the action exceeds specified monetary thresholds.

Different monetary thresholds (which are indexed on an annual basis) apply depending upon the nature and type of investment and the identity of the foreign person. In particular, different monetary thresholds apply to foreign persons from a country with which Australia has a free trade agreement (**agreement country investor**). Currently, Australia has trade agreements with New Zealand, the US, Chile, Japan, South Korea, Singapore and China.

Foreign government investors are subject to a nil monetary threshold, meaning most investments into Australia by foreign governments or their related entities require prior notification.

Investments requiring prior approval

Types of investment proposals which are subject to the FATA or the Foreign Investment Policy and which require notification to FIRB are:

- the acquisition of shares or rights to issued shares (which includes options, convertible notes and other instruments which may be converted into shares) representing a substantial interest in an Australian corporation valued at more than AUD261 million. For agreement country investors, different exemption thresholds apply, namely AUD261 million for investments in prescribed sensitive sectors, or AUD1.134 billion in any other case[8]
- the acquisition of assets resulting in control of an Australian business valued at more than AUD261 million. The thresholds for agreement country investors are the same as those for the acquisition of shares referred to above
- takeovers of offshore companies the Australian subsidiaries or gross assets of which exceed AUD261 million. For agreement country investors, the AUD1.134 billion threshold referred to above applies, except for offshore takeovers involving prescribed sensitive sectors where the AUD261 million threshold applies. In some cases, offshore takeovers where there is no transfer of shares in an Australian company may only constitute a significant action, meaning notification to FIRB may only be voluntary
- direct investments by foreign governments or their agencies irrespective of size
- direct investments in Australian agribusinesses with gross assets of more than AUD57 million. Investors from Chile, New Zealand and the United States are subject to a higher threshold of AUD1.134 billion
- the acquisition of interests in Australian real estate (including interests that arise via leases, financing and profit sharing arrangements) that involve:
  - developed non-residential commercial real estate which is valued at AUD261 million or more (AUD1.134 billion for agreement country investors)
  - developed non-residential commercial real estate that is sensitive land valued at AUD57 million or more and investors that are not agreement country investors. Sensitive land, also known as “low threshold land”, includes mines and public infrastructure (for example, an airport or port)
  - vacant commercial land (irrespective of value)
  - residential real estate (irrespective of value)
  - shares or units in Australian land entities (being entities whose interests in Australian land exceed 50 per cent of their total assets) (AUD261 million, unless the entity being acquired holds agricultural land in which case the threshold is generally AUD15 million or sensitive land when the threshold is AUD57 million. However, a nil monetary threshold may apply where the total value of interests in residential land and vacant commercial land is

[8] The countries listed and the figures quoted are subject to annual indexing and were current as at 1 January 2018

10 per cent or more of the total assets of the land entity), and

- certain intra-group reorganisations and restructures (even where there may not by any ultimate change in control).

There are a range of other transactions which may be considered significant actions under the FATA. As explained above, while significant actions do not have to be notified, the Treasurer may make orders to prohibit or unwind them unless approval has been sought and obtained.

Sensitive sectors

Restrictions apply in sensitive industry sectors reflecting community concerns and matters which affect the national interest. Specific restrictions on foreign investment apply in sectors such as residential real estate, media, telecommunications, transport, defence related industries and activities, encryption and security technologies and communications systems and extraction of uranium or plutonium or the operation of a nuclear facility.

Agribusiness

Agribusiness is treated as a separate class of investment with its own thresholds. Any acquisition of a direct interest in an agribusiness that is above the monetary threshold is notifiable to FIRB.

Agribusiness includes the following:

- agriculture, forestry and fishing
- food product manufacturing, including:
  - meat processing
  - poultry processing
  - seafood processing
  - milk and cream processing
  - cheese and other dairy product manufacturing
  - fruit and vegetable processing
  - oil and fat manufacturing
  - grain mill product manufacturing, and
  - sugar manufacturing.

Any Australian entity that has more than 25 per cent of its total asset value, or the value of its business or the value of its total earnings in agribusiness activities is considered an agribusiness. In working out the proportions, the assets and businesses of the entity and its subsidiaries are taken into account.

Foreign persons must get approval before acquiring a direct interest (generally at least 10 per cent, or the ability to influence, participate in or control) in an agribusiness where the value of the investment is more than AUD57 million (regardless of the value of the agribusiness). For investors from Chile, New Zealand and the US, the threshold increases to AUD1,134 million.

Foreign government investors

Foreign government investors are treated differently from other foreign persons due to the different view that the Government takes of the national interest when a foreign government is involved in the investment.

A foreign government investor is a foreign government or a separate government entity, or a corporation or trustee of a trust or general partner of a limited partnership in which a foreign government or a separate government entity holds a substantial interest of at least 20 per cent or governments or government entities hold an aggregate substantial interest of at least 40 per cent. Once a particular corporation, trust or limited partnership is considered a “foreign government investor”, it is considered a foreign government for the purpose of applying the test to its invested entities.

A separate government entity means an individual, corporation or corporation sole that:

- is an agency or instrumentality of a foreign country or a part of a foreign country, and
- is not part of the body politic of a foreign country or of a part of a foreign country.

Separate government entities can include government utilities, sovereign wealth funds, state owned enterprises and government pension funds.

Foreign government investors from a particular country are associates of each foreign government investor from that country or any part of that country so that their interests are aggregated.

Due to the breadth of the definitions, listed companies and funds, investment funds and private equity funds can be foreign government investors if they have one or more significant investments by a foreign government investor.

All foreign government investors must notify FIRB before acquiring a direct interest in an Australian entity, business or land or starting a new business. A direct interest is, generally speaking, acquiring at least 10 percent of the entity or business or the ability to influence, participate in or control. A foreign government investor must also notify if it intends to acquire a legal or equitable interest in a mining or production tenement or an interest of at least 10 per cent in securities in a mining, production or exploration entity.

Real estate

The Australian Government has a specific policy in relation to residential real estate, commercial real estate, agricultural real estate and mining and production tenements. Unless a proposed acquisition of real estate falls within an exempt class, the foreign person is required to notify FIRB of any such investment proposal.

Residential real estate

Residential real estate means residential land and housing, excluding commercial and rural properties. Residential land is defined as land where there is at least one dwelling on the land or the number of dwellings that could reasonably be built on the land is less than 10. This means acquisitions of residential real estate requiring notification can include (subject to eligibility requirements):

- single blocks of vacant land
- new dwellings
- established (second hand) dwellings, and
- proposals involving the redevelopment of established (second hand) dwellings.

Foreign persons who purchase residential real estate are subject to an annual vacancy charge where the property is not rented out or occupied for more than six months per year. The fee is designed to encourage foreign owners of real estate to make their investment properties available for rent in order to increase Australia's available rental housing stock. The amount of the fee is generally equivalent to the application fee that was payable to FIRB at the time the application for approval to purchase the residential property was made.

An interest in a dwelling for private use that is located within commercial residential premises and an interest in a dwelling in a retirement village, aged care facility or certain student accommodation can also be treated as a residential land.

Commercial real estate

Commercial real estate includes vacant and developed property which is not for residential purposes. It may include rural property that is not used wholly and exclusively for carrying on a substantial business of primary production. Commercial real estate acquisitions requiring notification include (also subject to eligibility requirements) the acquisition of:

- developed commercial property
- vacant land
- land related to mines
- land related to critical infrastructure, such as airports, and
- an interest in a dwelling that is part of the business operations of commercial residential premises.

Commercial Residential Premises

Generally an acquisition of an interest in commercial residential premises will be treated as an acquisition in developed commercial land. Commercial residential premises generally include:

- hotels, motels, inns, hostels or boarding houses
- premises used to provide accommodation in connection with a school
- marinas with berths occupied by ships used as residences, and
- caravan parks and camping grounds.

An investment by a foreign person in an aged care facility, retirement village and certain student accommodation (that is not for private dwelling use) will be subject to the applicable developed commercial land screening threshold.

A bed and breakfast or guesthouse facility is treated as developed commercial land if the proportion of the land that is residential real estate (and is used for residential purposes) is less than 10 per cent of the total area and total value of the land.

Agricultural land

Agricultural land means land that is used, or could reasonably be used for a primary production purpose. Foreign persons must notify FIRB before any acquisition of an interest in agricultural land where the cumulative value of agricultural land owned by the person (and its associates) is more than AUD15 million. This cumulative calculation includes the proposed purchase.

The threshold for Chile, New Zealand and US investors is AUD1,134 million and for investors from Thailand is AUD50 million. These thresholds are not cumulative and apply on a case by case basis.

Foreign buyers and holders of agricultural land in Australia must register their interest on the Australian Taxation Office's Register of Foreign Ownership. This registration requirement applies regardless of value, and whether or not the acquisition requires FIRB approval.

There are requirements that sales of agricultural land and agribusiness are subject to an open and transparent sale process. This is to ensure that Australians are afforded an opportunity to participate in such investments.

Mining or production tenements

Foreign persons, other than certain agreement country investors, must get approval to acquire an interest in a mining or production tenement regardless of value. Chile, New Zealand and US investors need to notify FIRB where the value of the interest to be acquired is more than AUD1,134 million.

Wind and Solar Farms

Land on which there are developed solar and wind farms is generally treated as developed commercial land rather than possibly being vacant commercial land or agricultural land. A wind or solar power station is defined under the regulations as a wind or solar farm that is recognised as an accredited power station as defined in the Renewable Energy (Electricity) Act 2000.

Exemption Certificates

Australia's foreign investment regime provides for foreign persons to apply for exemption certificates to allow for multiple acquisitions of Australian land or businesses over a period of time without having to re-apply for approval. Common types of exemption certificates are set out below.

- **New (and near-new) dwelling exemption certificate**: Property developers and sellers can apply for an exemption certificate to sell new or near-new dwellings in a development to foreign buyers. With this exemption certificate in place, the individual foreign investors do not need to seek their own foreign investment approval to purchase the new or near-new dwelling.

- **Established dwelling certificate**: A foreign person who is a temporary resident can apply for an established dwelling certificate to allow them to purchase a single established dwelling to use as their principal place of residence. The certificate allows the temporary resident to make multiple attempts to acquire one existing dwelling by any method, such as an auction or private treaty.

- **Residential land (other than established dwelling) exemption certificate**: This certificate provides a foreign person with approval to purchase one unspecified vacant land title or new (or near-new) dwelling up to a specific approved value.

- **Exemption certificates for a program of acquisitions of interests in kinds of land**: Foreign persons can apply for an exemption certificate to make multiple acquisitions over time in commercial land, agricultural land or mining and production tenements. These certificates can be useful for property funds, acquisitive companies, professional investors and high-net worth individuals.

- **Exemption certificates (business)**: This certificate allows for a foreign person to make a program of acquisitions of interests in the assets of an Australian business or securities in an entity, including interests acquired through the business of underwriting.

Exemption certificates are generally issued subject to various conditions including time periods, individual and aggregate investment caps and reporting conditions. Exemption certificates are typically granted subject to a condition that the sale by the vendor was subject to an open and transparent sale process.

Critical Infrastructure

In 2017, the Australian Government established the Critical Infrastructure Centre (**CIC**) which focuses on assessing the risks of sabotage, espionage and coercion in Australia's telecommunications, electricity, gas, water and ports sectors. The CIC works closely with state and territory governments, regulators, private owners and operators.

Foreign persons do not need to apply separately to the CIC for investments in critical infrastructure, however, where FIRB approval is required for such an acquisition, FIRB will consult with the CIC. Accordingly, acquisitions in critical infrastructure in Australia come under further scrutiny under the foreign investment framework. The CIC can undertake risk assessments and consult with both foreign and local owners and operators of critical infrastructure assets to help identify risk areas, develop risk management strategies and support compliance. The CIC's mandate also includes foreign acquisitions that may not have required FIRB approval.

The Security of Critical Infrastructure Act 2018 implemented a critical infrastructure asset register, information gathering powers and a ministerial last resort power. The last resort ministerial directions power gives the Minister for Home Affairs the authority to direct that specific risk mitigation actions are taken if security risks are present and all other avenues of risk management have been exhausted.

Approval process

The Australian Treasurer authorises FIRB to make determinations on foreign investment proposals which are consistent with the Foreign Investment Policy and do not involve any sensitive issues (mostly proposals involving real estate).

Proposals are examined to see whether they conform with the requirements of the Foreign Investment Policy and the FATA. Whilst the majority of proposals are approved, the Treasurer has the power under the FATA to prohibit proposals that are contrary to the national interest or to impose conditions on the approval.

Generally, the Treasurer has 30 days to make a decision and a further 10 days to notify the applicant of its decision. Accordingly, in many cases, approval is granted and notified within 40 days of receiving a statutory notice. FIRB may extend the period by a further 90 days if necessary or agree an extension with an applicant.

The time periods commence once the applicant has paid the relevant filing fee and the payment has been received by FIRB. The filing fees vary depending on the type and value of the acquisition and in certain cases can be as high as AUD103,400. Fees are generally non-refundable.

The national interest

In the majority of industry sectors, smaller investment proposals are exempt from the FATA or notification under the Foreign Investment Policy and larger proposals are approved unless it is determined that they are contrary to Australia's national interest. The screening process undertaken by FIRB allows comments to be gathered from relevant interested parties and other government departments in determining whether larger or more sensitive foreign investment proposals are contrary to the national interest.

FATA does not provide a definition of national interest. Therefore, the government determines what is contrary to Australia's national interest by reference to widely held community concerns.

The Government typically considers the following factors when assessing proposals:

- national security
- competition
- impact on other Government policies (including taxation)
- impact on the economy and the community, and
- character of the investor.[9]

The Government has specific policies for real estate, agriculture and foreign government investors.

Imposition of conditions on approval

FATA allows the Australian Treasurer to approve a proposal subject to conditions to ensure that the proposed action will not be contrary to the national interest.

Taxation

The Australian Taxation Office (**ATO**) is consulted to determine the potential taxation impact of many non-residential foreign investment proposals including group reorganisations. A dedicated branch of the ATO also assists FIRB in reviewing many of the more routine applications whilst FIRB tends to focus on applications that are more likely to raise national interest concerns.

If, following consultation, the Australian Treasurer considers the proposal may involve a risk to taxation revenues, conditions may be imposed in relation to the approval. It is quite common for FIRB approvals to be subject to a standard set of tax conditions requiring the applicant to adhere to Australia's tax laws and to provide regular annual reports on its compliance. Where a particular tax risk has been identified, two additional tax conditions may be imposed requiring the applicant to engage in good faith with the ATO to resolve any tax issues and to provide information as specified by the ATO on a periodic basis including at a minimum a forecast of tax payable.

Further approval

Approval under the Government's Foreign Investment Policy is usually only given for a specific transaction (other than for exemption certificates) and where it is expected that the transaction will be completed in a timely manner (generally within 12 months of the Treasurer's decision). If an approved transaction proceeds on different terms, the parties enter into new agreements at a later date or the transaction is not completed within 12 months further approval would generally be needed from FIRB for the transaction.

The time period for implementation of an approved proposal may be varied in circumstances where it can be shown that an extended period is fundamental to the success of a proposal and that extending the timing of the proposal does not involve an activity (for example, real estate speculation) that would be contrary to the national interest. In such circumstances, the extended period will be stated in the approval.

[9] FIRB Annual Report 2015-2016, p.52

Government incentives to industry

The Government offers a number of incentives to promote foreign investment in Australia. These incentives range from taxable grants and tax relief to the provision of infrastructure services at discounted rates.

The primary government body established to promote and encourage foreign investment in Australia, is the Australian Trade and Investment Commission, also known as Austrade.

Austrade

Austrade is a government agency whose role is to advance Australia's international trade and education, investment and tourism interests by providing information, advice and services. This includes providing coordinated government assistance to promote, attract and facilitate productive foreign direct investment into Australia.

Austrade is dedicated to providing export and investment services to Australian companies engaging in business outside Australia and to international buyers and investors. In relation to international buyers and investors, Austrade can provide:

- initial coordination of all investment enquiries and assistance
- information on the Australian business and regulatory environment
- assistance and introductions for establishing operations in Australia
- market intelligence and investment opportunities;
- identification of suitable investment locations and partners in Australia, and
- advice on Australian government programs and approval processes.

3
Structure of business entities

3 Structure of business entities

Business entities – An introduction

A person can conduct business in Australia as a sole trader, in partnership, through a trust, through a joint venture or as a corporation.

Companies that are incorporated outside of Australia that wish to carry on business in Australia must either incorporate a wholly owned or partly owned subsidiary company in Australia or register as a foreign company conducting business in Australia (commonly known as establishing a branch office in Australia).

Most foreign companies conduct business in Australia through a wholly or partly owned subsidiary or through an Australian branch.

Incorporation

Foreign companies may establish an Australian subsidiary by registering a new company or by acquiring a recently incorporated shelf company which has not yet carried on business.

Companies are incorporated by registration with the Australian Securities and Investments Commission (**ASIC**). Companies incorporated in Australia will be issued with a unique nine-digit Australian Company Number (**ACN**).

The *Corporations Act 2001* (Cth) (**Corporations Act**) provides that a company may be:

- unlimited with share capital
- limited by shares
- limited by guarantee, or
- no liability (although this only applies if the company's sole objects are mining or mining related objects).

The most common form of business entity in Australia is a company limited by shares. Companies limited by shares are either proprietary companies or public companies. Only public companies may engage in public fund raising activities and be listed on the Australian Securities Exchange (**ASX**).[10]

Proprietary companies

Proprietary companies are often used for private ventures or as subsidiaries of public companies. There are no restrictions on the size of a proprietary company, except the restriction on the maximum number of shareholders explained below.

A proprietary company:

- may either be classified as a large proprietary company or a small proprietary company depending on certain criteria (see below for details)
- provides limited liability for its members, so that on a winding up of the company a member's exposure is limited to the paid and unpaid amounts (if any) on their shares
- may not have more than 50 non-employee shareholders
- cannot engage in fundraising activities in Australia that would require the lodgement of a prospectus or other disclosure document, except in limited circumstances (for example, raising funds from existing shareholders or employees may be permissible)
- must have at least one Australian resident director but need not have a secretary. If a secretary is appointed, that secretary must be an Australian resident, and
- must have the words "Proprietary Limited", 'Pty Limited" or "Pty Ltd" in its name if it is a limited proprietary company.

A proprietary company is considered to be a large proprietary company if it satisfies at least two out of the three following criteria:

- the consolidated revenue for the financial year of the company and any entities it controls is AUD25 million, or more
- the value of the consolidated gross assets at the end of the financial year of the company and any entities it controls is AUD12.5 million, or more
- the company and any entities it controls have 50 or more employees at the end of the financial year.

[10] There is currently a proposal being considered to extend the crowd-sourced funding regime to proprietary companies: *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies Bill) 2017*.

If a proprietary company does not satisfy at least two out of the above three criteria it is regarded as a small proprietary company. The significance of being a large proprietary company is that the entity is then subject to annual financial reporting obligations requiring the public disclosure and auditing of accounts, which is discussed further below. A small proprietary company that is controlled by a foreign company may also be required to prepare and lodge audited financial statements, however, certain exemptions are available.

Public companies

Public companies limited by shares:

- are often used for larger ventures requiring investment capital
- may have an unlimited number of members/shareholders
- must have at least three directors, at least two of whom must ordinarily reside in Australia
- must have at least one company secretary that ordinarily resides in Australia
- may issue a prospectus for the offer of securities (subject to applicable laws)
- can list on the ASX, and
- must have the word “Limited” or “Ltd” at the end of their name if they are limited public companies.

As well as being able to undertake public fundraising activities, a public company can take advantage of the equity crowd-funding regime that reduces a number of regulatory disclosure requirements. This regime allows eligible public companies to raise up to AUD5 million per year in funds through equity crowdfunding, with retail investors able to invest up to AUD10,000 per issuing company per year.

Australian branch

The establishment of an Australian branch may be preferable to incorporating a subsidiary if one of the objectives is to consolidate the financial results of the company in the place of residence of the overseas company and to avoid some of the administrative burdens of managing another separate entity. If a foreign company wishes to directly conduct business itself in Australia and not through a subsidiary, it must be registered as a foreign company under the Corporations Act. Registration of a foreign company does not create a separate legal entity; rather it creates a public record and registration of a foreign company’s presence in Australia.

The foreign company must lodge an application form with ASIC, with certified copies of the current certificate of incorporation in its place of origin and its constitution or equivalent constituent documents. In some cases, other documents may be required.

A registered office also needs to be established in Australia and a local agent must also be appointed. The local agent may be an individual or an organisation.

Upon registration, an Australian Registered Body Number (**ARBN**) will be allocated to the foreign company.

The process to register a foreign company with ASIC can generally take up to four weeks. Once registered, the foreign company must lodge its annual accounts (consisting of a balance sheet, profit and loss statement and cash flow statement) with ASIC and comply with other reporting requirements.

Representative offices

Where a foreign company does not intend to carry on business in Australia it may seek to establish a representative office. Such an office must only engage in activities which will not amount to carrying on business (for example, undertaking promotional activities). The Corporations Act provides a list of certain activities which, by themselves, will not constitute carrying on a business. These include, for example, merely maintaining a bank account or conducting certain isolated transactions. However, if a foreign company has a place of business in Australia it will be deemed to carry on business in Australia. Further, if the representative office wishes to engage in any activities that constitute carrying on business, an Australian branch must be registered.

Company and business names

A formal register of company and business names registered in Australia is maintained by ASIC.

A name is available to a company for registration unless the name:

- is identical to a name that is reserved or registered under the Corporations Regulations or included on the national business names register, or
- breaches the legal principles codified in the *Competition and Consumer Act 2010* (Cth) in the areas of “misleading and deceptive conduct”, “misrepresentation” and “passing off”.

There are also restrictions on what can be included in a company name including certain words, names or phrases such as “building society”, “trust”, “university”, “chamber of commerce” and “chartered”.

All companies registered under the Corporations Act are entitled to an Australian Business Number (**ABN**) which a company will need to register for the purposes of the Goods and Services Tax (**GST**). If a company’s annual turnover reaches a prescribed amount (currently AUD75,000), then the company must have a GST registration and therefore also hold an ABN. An ABN is also required to register a business name.

If a company wishes to trade using another name (that is, other than its registered company name) then the trading name must be registered as a business name. Business name registrations are administered at a national level by ASIC. A business name is a type of ‘identifier’ for a business and does not create a legal entity. The registration of a company name or a business name does not grant any proprietary or intellectual property rights in the name itself. To obtain intellectual property protection under statute, it would be necessary to obtain a trade mark registration.

Constitution of a company

The activities of a company are carried out by the persons responsible for the management and control of the activities of the company. Those powers are normally divided between the directors and the shareholders. The way in which the power is shared between these two groups is determined by the terms of the company’s constitution, the Corporations Act and general company law. Generally, the directors have the power to make all decisions on behalf of the company except those matters that are reserved for the approval of shareholders under the Corporations Act or other applicable laws, the constitution or the company’s shareholders agreement (if any).

The constitution of a company is a special type of statutory contract between the company, its members and the directors and secretary. The constitution sets out the various rights of the members and directors, rules relating to the transfer of shares, provisions concerning members’ and directors’ meetings and rules by which the company is to be internally governed.

Process of incorporation

The process involved in incorporating an Australian proprietary limited company is:

Step 1: The applicant must choose a company name for the Australian company and ensure that the name is available and acceptable for registration.

Step 2: The applicant must complete the relevant application form and lodge the form with ASIC. ASIC will only register the company if the name is available.

The form asks for details about the proposed company, including:

- the registered office and principal place of business in Australia
- the share structure
- shareholders, and
- the proposed directors/secretaries of the company (the details required include the names and any former names, residential addresses, date and place of birth).[11]

At least one director must be an Australian resident and companies cannot be directors.

Once the relevant form is lodged with ASIC, a company can typically be incorporated within 24 hours. After the company has been incorporated, the company will need to comply with the following post-incorporation matters which require the company to:

- apply to the Australian Taxation Office for an ABN and Tax File Number (**TFN**)
- keep an up to date company register. This register will contain the register of members and company records and will need to record minutes of all directors and shareholders’ resolutions and meetings. Unless it prepares and lodges annual audited financial statements, the company will also be required to make a separate annual solvency declaration (that is, the directors must resolve that the company can pay its debts as and when they fall due for payment), and
- keep and lodge audited financial statements and reports each year (applicable to large companies or companies controlled by a foreign entity that have not obtained relief from ASIC). There is currently no fee for lodgement of financial statements with ASIC as long as they are lodged within the required time period. Late fees apply if they are lodged out of time.

ASIC must be notified of changes to the following:

- company name, with notifications to be made within 14 days of the change
- company details (for example registered office or principal place of business), with notifications to be made within 28 days of the change
- company constitution, with notifications to be made within 14 days of the change (only public companies need to lodge their constitution with

[11] There is currently a proposal by government to introduce “Director Identification Numbers” as part of an initiative to address illegal phoenix activities.

ASIC and give notice to ASIC regarding any amendments to the constitution)

- directors details (for example name, address, new appointment or resignations), with notifications to be made within 28 days of the change, and
- share structure or shareholder details, with notifications to be made within 28 days of the change.

Share capital

The minimum number of shareholders for both a proprietary and a public company limited by shares is one.

The number of shares which can be issued by a company is unlimited.

The manner in which a company deals with its share capital is strictly regulated by the Corporations Act.

Company officeholders

Under the Corporations Act a company is required to appoint officeholders to act on behalf of the company. These officeholders are responsible for ensuring the company fulfils the legal requirements prescribed by the Corporations Act.

The directors of a company are responsible for the day to day management of its affairs. A public company must have at least three directors and a proprietary company, at least one director. Whilst a company cannot be a director, in certain cases a company can be deemed by a court to be a shadow director and be liable for breaches of directors' duties. For example, this could arise where a corporate shareholder is heavily involved in directing and influencing the board of directors of its subsidiary company.

In the case of a public company at least two of the directors must be Australian residents and a proprietary company must have at least one director who ordinarily resides in Australia.

The secretary of a company is responsible for acting as executive officer to the board of directors and administrative officer of the company. Whilst a proprietary company is not required to have a secretary, a public company must have at least one secretary. A secretary must ordinarily reside in Australia.

Every company carrying on business or deriving property income in Australia must also appoint a Public Officer. The Public Officer appointed must be an Australian resident. The Public Officer is responsible for undertaking or ensuring compliance with all things which are required of a company under Australian income tax legislation.

A company officeholder does not need to be an Australian citizen to qualify as an "Australian resident". Whether the individual is to be regarded as an Australian resident is a question of fact and a number of criteria must be considered and satisfied. Whilst the term is not defined for the purposes of the Corporations Act, it is often applied as meaning the individual must reside in Australia a majority of the time.

Registered office

An Australian company must have a registered office in Australia. The registered office must be a street address situated in Australia. A post office address will not satisfy the requirement that the company maintains a registered office.

Auditors and financial reporting

All public companies must appoint an auditor within one month of the date of their incorporation.

The following entities are required to prepare an annual financial report which must be audited:

- all public companies
- all large proprietary companies, and
- small proprietary companies which are controlled by foreign entities.

A corporate tax entity that is a significant global entity with an Australian presence must also prepare and lodge a general purpose financial statement with the Australian Taxation Office, unless already provided to ASIC. A significant global entity is a global parent entity, or a member of a consolidated group where the global parent entity has an annual global income of AUD1 billion or more.

ASIC will, in certain limited cases, grant relief from the requirement to prepare and audit financial reports for:

- large proprietary companies in which a foreign company has an interest
- small proprietary companies controlled by foreign companies, and
- companies that are subsidiaries in a wholly-owned group and who enter into a prescribed deed of cross guarantee with each other.

Under the Corporations Act, auditors have obligations with respect to independence, disclosure and financial reporting.

Books, accounts, registers and filing requirements

The Corporations Act requires companies to maintain various records and registers of their accounting and administrative transactions. It is usually the company secretary (if one is appointed) who is responsible for such tasks.

The Corporations Act also requires certain documents to be filed with ASIC from time to time so that an updated record of the company's affairs is available for inspection by the public. A public company must prepare and lodge with ASIC annual financial reports.

Every company will receive a company statement from ASIC annually in which a director or secretary of the company must notify ASIC of any changes to the relevant details of the company for the public register, including names and addresses of all officers, registered office, address of principal place of business and details of shareholders and their shareholdings.

Trusts

Trusts are also a common form of business structure and are often used for property investments or pooling funds from investors who do not have day to day control over the fund. Subject to certain requirements, a trust can provide "tax flow-through" benefits meaning that that the investors themselves are taxed, rather than the trust.

In the business context, most trusts take the form of a unit trust where investors' economic interest and control in the vehicle is represented by units. In a private unit trust, investors may have some control over key decisions and other rights, depending upon the terms of the trust deed and any unitholders agreement.

A trust must have a trustee (usually a company) which holds the legal title to the assets of the trust on behalf of the beneficiaries (investors) and generally directs and controls the trust. The trustee must act in the best interests of the beneficiaries. Unlike a company, trust is not itself a separate legal entity and therefore must contract through its trustee acting in that capacity.

A trustee may appoint and engage an investment manager to advise and help it to invest its funds and t manage the trust assets and sometimes appoints a custodian to hold the trust assets.

Private investment trusts that are not "managed investment schemes' (see below) do not need to be registered with ASIC.

Managed Investment Schemes

A managed investment scheme is a type of business structure (usually a trust) where investors are brought together to contribute money or money's worth to obtain an interest in the scheme, the contribution is pooled together with the contributions of other investors or used in a common enterprise and a "responsible entity" operates the scheme. The investors do not have day to day control over the operation of the scheme. Subject to some exceptions (such as small private trusts with wholesale investors only) managed investment schemes must be registered with ASIC and are subject to a range of ongoing legal and regulatory requirements.

A registered managed investment scheme must have a compliant constitution and compliance plan and the responsible entity must be a public company that holds an Australian financial services licence.

Common examples of managed investment schemes include property trusts, equity/share trusts, cash management trusts, agricultural schemes and timeshare schemes.

Asia Region Funds Passport and CCIV Regime

In 2016, a number of countries signed up to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport. The current signatories include Australia, Japan, Korea, Thailand and New Zealand. Once implemented, the Asia Region Funds Passport is intended to provide a multilaterally agreed framework to facilitate the cross-border marketing of passport funds across participating economies in the Asia region. This will support the development of an Asia-wide funds management industry through improved market access and harmonisation of regulations.

One of the requirements for a passport fund will be that the investment structure takes the form of a regulated corporate collective investment scheme (**CCIV**). A CCIV will be a public company that is limited by shares and structured as an umbrella fund with sub-funds, each of which may hold different assets and have different investment strategies. The CCIV will be operated by a corporate director that is an Australian public company and holds an Australian financial services licence authorising it to operate a CCIV. In essence, a CCIV will be a hybrid entity that is a body corporate but operated in a way that is similar to a trust.

It is currently anticipated that this new regime will come into effect in 2019.

4
Australian Securities Exchange (ASX)

4 Australian Securities Exchange (ASX)

Australian Securities Exchange – An introduction

Australia's national stock exchange is the Australian Securities Exchange (**ASX**). The ASX is administered and supervised by ASX Limited which is a public company that is itself also listed on ASX. ASIC also has regulatory oversight over ASX and ASX Limited.

Smaller stock exchanges exist in Australia, however they do not have the depth and breadth of the ASX. The ASX is the 16th largest exchange in the world by market capitalisation and the 8th largest in the Asia region.

The role of ASX is to provide a fair, well-informed market for financial securities and an internationally competitive market. To this end, the ASX issues listing rules which all listed entities must observe. The ASX Listing Rules (**Listing Rules**) govern:

- listing
- quotation
- market information
- reporting
- disclosure
- trading and settlement
- administration
- general supervisory matters, and
- various other aspects of a listed entity's conduct.

The Listing Rules aim to protect the interests of listed entities, maintain investor confidence through disclosure of material information and regulate the operation of the market. The Listing Rules are enforceable against listed entities and their associates under the Corporations Act. Listed entities are also subject to further increased regulation under the Corporations Act including in relation to financial reporting, auditor rotation, meetings of members, appointment and removal of directors, remuneration of directors and related party transactions.

Listing on the ASX can be lengthy, complex and costly process involving numerous professional advisors and requiring careful planning and project management. Often a company needs to restructure its corporate group, its operations and internal governance arrangements as part of the process.

Admission categories

There are three categories under which an entity may apply for listing on the ASX. These are:

- General Admission
- Foreign Exempt, and
- Debt Issuer.

Each listing category has different conditions that the entity must satisfy. Most entities apply for listing under the General Admission category. A summary of each category is set out below.

- *General Admission* – a company seeking admission under this category must satisfy either the "asset test" or the "profit test" and various other conditions, some of which are set out on the following pages. Most entities apply under the General Admission category, which is available for both Australian-incorporated companies as well as foreign companies.
- *Foreign Exempt* – this category is available for foreign companies that are already listed on an overseas exchange which is acceptable to the ASX. Overseas exchanges that are acceptable to ASX include most of the leading exchanges in Europe, the United States and Asia.

  The Foreign Exempt category is only available as a practical matter for very large entities. To list in this category the foreign entity must either have net tangible assets or a market capitalisation of AUD2 billion or operating profit before income tax for each of the past three years of at least AUD200 million.

  An entity applying to list under the Foreign Exempt category is not subject to minimum security holder spread requirements under the Listing Rules, but may still need to comply with any spread requirements of its home exchange. The advantage for a foreign entity qualifying for admission under the Foreign Exempt category, rather than the General Admissions category, is that the entity will not be subject to most of the Listing Rules. This includes exemptions from the continuous disclosure requirements and timetables for corporate actions prescribed by the Listing Rules. The rationale for this is the entity will still be governed by similar requirements in the jurisdiction of its principal listing.

In order to be admitted under this category, an entity must provide the ASX with a copy of its latest annual report and any subsequent interim reports. Following admission, the entity must continue to provide the ASX with copies of its annual reports.

- *Debt Issuer* – an entity seeking admission under this category will only list its debt securities for trading. It is subject to different admission criteria including corporate form and minimum net tangible asset requirements. An ASX debt listing can be applied for in relation to wholesale debt securities or retail debt securities. Once listed under this category, the ongoing Listing Rule requirements that apply to the entity differ from those that apply to entities under the General Admission category.

The rest of this section focuses on the requirements of the General Admission category as it is the most commonly used.

Requirements for General Admission

For an Australian company or foreign company to be admitted to the official list, the following key conditions must be met to the ASX's satisfaction:

- profit/asset test
- satisfactory shareholders spread, and
- prospectus/information memorandum issued.

The ASX has absolute discretion to admit an entity to the official list and determine the category of an entity's admission.

Profit/asset test

An entity seeking admission to the official list must satisfy either the "profit test" or the "asset test".

To seek admission under the "profit test", the entity's:

- aggregated profit from continuing operations (before tax) for the last three full financial years must have been at least AUD1 million, and
- consolidated profit from continuing operations (before tax) for the last 12 months (to a date no more than two months before the entity applies for admission) must be more than AUD500,000.

To seek admission under the "asset test":

- the entity (except for "investment entities" – see below) must have either net tangible assets at the time of admission of at least AUD4 million after deducting the costs of fund raising, or a market capitalisation of at least AUD15 million (based on the offer price under the prospectus). In addition, one of the following conditions must be satisfied:
  - less than half of the entity's total tangible assets (after raising any funds) must be cash or in a form readily convertible to cash, or
  - half or more of the entity's total tangible assets (after raising any funds) are cash or in a form readily convertible to cash, and the company has commitments consistent with its business objectives to spend at least half of its cash and assets in a form readily convertible to cash
- the entity must have working capital of at least AUD1.5 million, or an amount that would be AUD1.5 million if the entity's budgeted revenue for the first full financial year that ends after listing was included in the working capital.

For an "investment entity" (whose principal activities involve investment in securities or futures contracts, rather than management or control of a business or entity) to satisfy the "asset test", the entity must satisfy one of the following:

- have net tangible assets of at least AUD15 million after deducting the costs of fundraising, or
- be a pooled development fund and have net tangible assets of at least AUD2 million after deducting the costs of fund raising.

Free float requirement

The ASX requires an entity to have a minimum 'free float' on listing. The entity will meet this requirement if at least 20 per cent of the entity's main class of securities is not subject to escrow (either voluntary or ASX imposed) and is held by security holders who are not related parties of the entity, or associates of related parties of the entity (referred to as "non-affiliated security holders").

Security holder spread

The ASX requires an entity seeking General Admission to have a satisfactory spread of security holders. This is to ensure there is sufficient liquidity in the market for trading in the entity's securities. The entity is required to have at least 300 non-affiliated security holders who each hold securities with a value of at least AUD2,000.

Restricted securities, being securities that are required to be subject to "escrow" by the ASX and any voluntarily escrowed securities will not count towards satisfying the security holder spread requirements.

Prospectus/information memorandum

Generally, an entity seeking to list on the ASX in conjunction with fundraising will need to issue a prospectus. This will require the entity to prepare and lodge a prospectus with ASIC and issue the prospectus to the public. The preparation of a compliant prospectus under Australian law requires careful attention to detail and professional advice carried out with a formal due diligence and verification process.

The ASX may agree, in very limited circumstances, to accept an information memorandum instead of a prospectus. Generally, ASX will only accept an information memorandum where the entity applying for admission does not need to raise any funds in conjunction with its listing and one of the following applies:

- the entity is listed on another acceptable exchange and it is seeking to move its primary listing to, or to have a secondary listing on, ASX
- the entity is a successor entity to an entity that is listed on ASX or another acceptable exchange and has undergone a reconstruction, or
- the entity has been spun out or demerged from an entity that is listed on ASX or another acceptable exchange where securities have been distributed in specie.

Furthermore, for ASX to agree to accept an information memorandum, the entity must not have raised capital in the past three months or expect to raise capital in the next three months after its listing application.

Restricted securities

The ASX may restrict the transfer of securities (known as escrow) issued before the listing so that they cannot be sold for a period of up to two years after listing. This is more common where the entity gained admission to the ASX official list under the "assets test", or where transactions with related parties are involved. The restriction also prevents the holder from granting any security interest over the securities to another person, such as a lender.

The ASX will also usually seek to restrict securities issued shortly before the listing held by seed capitalists, certain sellers (if the initial public offering (**IPO**) is partially or wholly achieved by a "sell down"), promoters, professionals and consultants advising on the listing and employees receiving securities under an employee incentive scheme. The level of restriction varies depending upon the identity of the holder, the amount paid for the securities, when they were acquired and the IPO price. In some cases for investors related to the entity, the applicable restriction may last for up to 24 months from listing and apply to all of the holder's securities.

The purpose of these rules is to help protect the integrity and confidence in the market where an entity does not have a history of profits or is otherwise a speculative investment. If the entity achieves admission to the official list by way of the "profits test", then there is no escrow for its shares unless the ASX decides otherwise.

If an escrow applies, the relevant security holders are required to enter into restricted securities agreements in a form set by the ASX.

After consulting with the offer's underwriters, founding security holders may also voluntarily escrow their securities in the interests of a more marketable offer.

Foreign companies listing on ASX

As explained above, foreign entities may be eligible to list under the Foreign Exempt category as well as the General Admissions category. However, due to the requirements for the Foreign Exempt category, most foreign companies seek listing under the General Admissions category. A foreign entity does not need to be listed on an overseas exchange to apply under the General Admission category. Sometimes foreign entities may choose to restructure, reorganise or re-domicile to become an Australian entity, although this is not a requirement.

Foreign entities wishing to list on ASX need to register as a foreign company with ASIC and appoint an Australian local agent, which may be a firm or individual.

In order to be admitted under the Foreign Exempt category, an entity must provide the ASX with a copy of its latest annual report and any subsequent interim reports. Following admission, the entity must continue to provide the ASX with copies of its annual reports. Notably, an entity admitted to this category has the considerable advantage of not having to comply with the continuous disclosure requirements and timetables for corporate actions prescribed by the Listing Rules (as the entity will still be governed by similar requirements in the jurisdiction of its principal listing).

In most cases, foreign entities are domiciled in countries whose laws do not recognise "CHESS" (Clearing House Electronic Subregister System). CHESS is Australia's system for the electronic transfer of legal title over quoted securities and uncertificated holdings.

To allow for such foreign entity's securities to be traded on the ASX, a CHESS entity acts as the depositary nominee to be issued with those securities. The depositary nominee creates a reciprocal unit of beneficial ownership over each security that is then traded on the ASX. These are called CHESS Depositary Interests, or CDIs. The legal title to the securities is held by the depositary nominee company, however, the creation of the CDIs allows for trading of the foreign entity's securities on the ASX.

Through this structure the holder of a CDI is effectively put in the same economic position as the legal owner of the underlying securities. A CDI holder typically also has the ability to exercise any voting rights attached to the underlying securities through a proxy instruction given via the depositary nominee.

Continuous Disclosure

The ASX Listing Rules contain continuous disclosure requirements that a listed entity must satisfy. Continuous disclosure is the timely advising of material information to keep the market informed of events and developments as they occur. The ASX Listing Rules are very clear that timing is extremely important and notification must be prompt. Information for release to the market must be given to the ASX's company announcements office. Failing to meet the disclosure obligations may result in civil and criminal penalties for the entity and, in some cases, the entity's officers.

The primary and general rule for continuous disclosure is that once an entity is or becomes aware of any information concerning it that a 'reasonable person' would expect to have a 'material' effect on the price or value of the entity's securities, the entity must immediately inform the ASX of that information. This general rule is subject to limited exceptions.

Corporate Governance

The ASX Corporate Governance Council is responsible for issuing the ASX Corporate Governance Principles and Recommendations which were originally introduced in 2003. ASX listed entities are required to benchmark their corporate governance practices against the Council's recommendations and, where they do not conform, to disclose that fact and the reasons why. These disclosures must be contained in each annual report of a listed entity or accessible online via a link contained in the annual report. Some of the recommendations are mandatory for large listed entities. The recommendations are structured around eight central principles:

- lay solid foundations for management and oversight
- structure the board to add value
- act ethically and responsibly
- safeguard integrity in corporate reporting
- make timely and balanced disclosure
- respect the rights of security holders
- recognise and manage risk, and
- remunerate fairly and responsibly.

There are 29 specific recommendations intended to give effect to these general principles.

Additional Information

Please see our publication entitled "Listing a Company on the Australian Securities Exchange" for additional information which is available on our website http://www.pwc.com.au/legal/publications/index.htm

5
Visa and immigration for business

5 Visa and immigration for business

There are a number of visa categories available to businesses and business people wishing to come to Australia. The migration program allows for the permanent and temporary entry of business people and highly skilled individuals into Australia and visa requirements vary.

Business visitors

Business people planning to enter Australia for a business visit are able to apply for either an Electronic Travel Authority (**ETA**) or eVisitor visa, depending on their country of passport. Once granted, the Business ETA and Business eVisitor visas provide the holder with permission to enter and remain in Australia for a period of up to three months from each entry. Business ETA and e Visitor visa holders are only able to participate in business activities while in Australia, specifically: attendance at business meetings or conferences (unpaid only), entering into or finalising contract negotiations, making general employment enquiries or for the purpose of an exploratory business visit.

Individuals who do not hold an eligible passport to access an ETA or eVisitor visa will need to apply for a Subclass 600 Visa under the Business Visitor Stream. These applications can be lodged online or as paper applications, and will be processed by the Australian High Commission or Embassy with responsibility for their country of residence/origin.

Business visitors who are required to undertake short term (no more than three months), highly specialised work will need to enter Australia as the holder of a subclass 400 visa.

Subclass 400 visa – short term work

The subclass 400 visa was introduced in March 2013 and is available to visitors who may be seeking to enter Australia for short term work purposes. To access this visa, the proposed work must be highly specialised, where the person possesses skills which are not readily available to the Australian business from the local labour market.

This visa can be granted to allow work of up to three months (in limited cases, up to six months) where the work meets the definition of highly specialised and is non-ongoing in nature.

Sponsoring staff to Australia

Companies operating in Australia, or companies operating in other countries wishing to establish an entity in Australia, are able to sponsor individuals to come to Australia on a Subclass 482 Temporary Skills Shortage Visa. Individuals sponsored on these visas are able to work in a specified position within the company or associated company as defined under the Corporations Act for a period of up to two or four years, depending on the occupational classification of the role.

Sponsors of Subclass 482 visa holders must:

- demonstrate that they are lawfully operating a business that is actively engaged in business activities
- demonstrate that they are the direct employer of the sponsored employees (for a group of related and associated companies, the sponsor can be related or associated to the direct employer of the sponsored employee)
- demonstrate that there is no adverse information (e.g. immigration, discrimination, industrial relations, OH&S, taxation) relating to the sponsor or its directors, or an entity associated with it, or if there is adverse information, that it should be reasonably disregarded
- provide an attestation as to their strong record of, or demonstrated commitment to, employing local labour and non-discriminatory employment practices
- provide evidence that the salary being offered to a 482 visa holder meets the minimum threshold for the 482 visa program **as well as** the market rate salary for the occupation in Australia, and
- provide evidence that Labour Market Testing has been undertaken in relation to the nominated position and that this Labour Market Testing confirms there are no suitable qualified, readily available candidates in the local Australian labour market.

An employer operating an overseas business that has no formal operating base or representation in Australia may also sponsor employees on a Subclass 482 visa but the visa holder would need to be nominated to do one of the following:

- establish a branch or other business activity such as a joint venture, agency, distributorship or subsidiary in Australia of the sponsoring entity, or
- fulfil obligations on behalf of the sponsoring entity for a contract or other business activity in Australia. In these cases, copies of third party contracts would be required.

482 visa applicants also need to satisfy the requirements for the grant of their individual visas, including evidencing that they meet health, character and English language requirements. For many applicants, formal English language testing may be required as part of the application process.

Companies operating in Australia may also sponsor staff for permanent residence where the nominated position is eligible and the visa applicant meets eligibility criteria.

Business innovators and investors

Under the Business Skills program, business people can apply to come to Australia to start their own business, manage a new or existing business, or invest in Australia without the need for a sponsor, subject to meeting relevant criteria and the prerequisite business background and assets.

As of 1 July 2015, the Immigration Department issues three types of Business Skills visas, some with different application streams.

Subclass 188 – This provisional visa subclass provides four streams as outlined below.

- *Business Innovator* – this is points tested with points awarded for personal attributes including age, turnover of their business, assets in business, personal assets, employment experience, and English language ability. Applicants must also be under 55 years of age.
- *Business Investment* – this is points tested with points awarded for personal attributes as outlined above, and applicants must also be under 55 years of age.
- *Significant Investor* – this stream does not have any points requirement and has been a suitable option for many overseas business people who have a personal preference to stay outside of Australia for a substantial part of the year to manage their business(es) overseas. Eligibility requirements include the applicant making an investment of AUD5 million into a complying investment in Australia. This investment must be maintained for a minimum four year period. The 55 years of age limit does not apply to this stream.
- *Premium Investor* – this stream also does not have any points requirement and is intended for talented entrepreneurs and innovators with a minimum AUD15 million to invest. Nomination for this stream of visa are by Austrade invitation only.

Subclass 888 – After satisfying the relevant requirements including minimum prescribed qualifying periods, subclass 188 visa holders may progress to the subclass 888 permanent residence visa.

Subclass 132 – Business Talent visa – This subclass of visa provides two streams as outlined below.

- *Significant business history* – this stream requires the applicant to have a significant business history with ownership of a business with an annual turnover of at least AUD3 million per annum. Applicants must also be under 55 years of age.
- *Venture Capital* – visa applicant must be able to *attract* AUD1 million of investment from an Australian Venture Capital Association.

In most cases people will enter Australia on a provisional or temporary visa. After a minimum prescribed period they may be eligible to apply for a permanent Business Skills visa provided that all obligations of their existing provisional/temporary visa and additional requirements of the permanent visa are met. In some circumstances, sponsorship by State/Territory Governments may be obtained to assist business applicants by reducing usual business and investment criteria.

There are also other opportunities for business people to migrate to Australia if they are able to satisfy requirements in one of the General Skilled visa categories, which will look at the applicant's:

- age
- English language ability
- occupation
- qualifications
- work experience (including experience in Australia), and
- where applicable, any relatives who are Australian citizens, permanent residents or eligible New Zealand citizens residing in Australia.

States and Territories may also provide additional sponsorship to an applicant to assist in meeting requirements under the General Skilled visa categories where the applicant proposes to enter a particular State/Territory or rural location where their occupation is in need.

The number of places that are available for skilled permanent migration is set by the Immigration

Department on an annual basis. The current 2017-2018 skilled migration program intake has been set at 128,550 places. Applications lodged under the general skilled migration programs continue to be subject to priority processing in the following order: regional and employer-sponsored permanent migration applications; applicants nominated by State and Territory Governments; applicants nominated by a relative who is an Australian citizen, permanent resident or eligible NZ citizen; and applicants who nominate an occupation identified as in critical shortage.

Other issues

Permanent residents are free to purchase property whereas restrictions are placed upon the ability of temporary residents to purchase property. Employers sponsoring staff to Australia should also examine possible exemptions for the Superannuation Guarantee Charge and obtain relevant taxation advice in this regard.

Compliance with immigration law in general is taken seriously and employers should have regard to ensuring that people they employ have the correct authorisation.

6
Corporate tax

6 Corporate tax

Corporate tax issues

The following summary provides a brief outline of the tax issues that may be applicable to a foreign entity doing business in Australia.

Direct tax

Income tax

A company is a resident of Australia for income tax purposes if it:

- is incorporated in Australia; or
- carries on business in Australia and either:
  - its central management and control are in Australia; or
  - voting power is controlled by shareholders who are residents of Australia.

An Australian resident company is liable to pay Australian tax on all of its worldwide assessable income at the general corporate tax rate of 30 per cent. Small business companies – broadly those with an aggregated turnover of less than AUD25 million for the 2017-18 income year, increasing to AUD50 million for the 2018-19 and later income years - have a tax rate of 27.5 per cent.

An Australian permanent establishment of a foreign company would also be subject to Australian corporate tax.

Capital gains tax

Australian resident companies will generally be liable to pay capital gains tax (**CGT**) on gains on disposal of Australian assets at the corporate tax rate.

Non-resident companies who hold investments on capital account are exempt from Australian CGT in most circumstances except where they dispose of Taxable Australian Property which broadly consists of:

- Australian real property; or
- non-portfolio interests (10 per cent or more) in entities where the value of the interest is wholly or principally attributable to Australian real property.

Subject to some limited exclusions (e.g. real property with a market value of less than AUD750,000), buyers will be obliged to withhold 12.5 per cent of any sale proceeds from the disposal of Taxable Australian Property and remit this to the Australian Tax Office (**ATO**), with the seller needing to file a tax return to claim back any withheld amounts in excess of their final tax liability.

Group taxation

A tax consolidation regime applies for income tax purposes for 100 per cent owned Australian group companies, partnerships and trusts resident in Australia. Australian subsidiaries that are 100 per cent owned by a foreign company and that have no common Australian head company between the non-resident parent and the Australian resident subsidiaries are also allowed to consolidate.

Groups that choose to consolidate must include all 100 per cent owned entities and the choice is irrevocable.

Consolidated groups file a single tax return and calculate their taxable income or loss ignoring all intra-group transactions. There are a number of other benefits of grouping.

Other implications of forming or joining a tax consolidated group can include a resetting of the tax cost base of certain assets.

Dividends paid by an Australian company

If fully franked dividends (that is, dividends which have been subject to Australian corporate tax) are paid by an Australian subsidiary to its foreign parent, no dividend withholding tax is payable. To the extent that dividends are unfranked, dividend withholding tax of 30 per cent (or as reduced under the relevant double tax treaty) is payable on the unfranked amount.

Debt funding of an Australian company

Interest withholding tax of 10 per cent is imposed on interest paid by an Australian company to a foreign non-resident lending entity unless an exemption applies. If, however, the beneficial owner of the non-resident lender has a permanent establishment in Australia and the interest is effectively connected with the permanent establishment, interest withholding tax should not be applied.

Under debt and equity classification rules there may be situations where interest payable is treated as if it were a dividend. Interest paid on instruments that are classified as equity interests will not be deductible for the entity paying the return, but may be frankable. Similarly, dividends paid on interests that are classified as debt interests may be deductible to the entity making the payment and not frankable.

Thin capitalisation measures apply to the total debt of the Australian operations of multinational groups (including branches of those groups). The rules aim to prevent excessive gearing of an Australian entity. Interest deductions are denied to the extent that borrowing exceeds the safe-harbour ratio. The safe harbour threshold is (broadly) 60 per cent of the entity's Australian net assets, and applies to the Australian group on an associate-inclusive basis.

Where borrowing exceeds the safe-harbour ratio, multinational groups are not affected by the rules if they can satisfy the arm's length debt test or the worldwide gearing test described below.

- The arm's length debt test permits taxpayers to identify the maximum level of debt that an arm's length lender would loan to the Australian group on a stand-alone basis. Supporting documentation must be prepared to evidence the arm's length analysis.
- The worldwide gearing test permits the taxpayer to gear to a similar gearing level to the global gearing level, even if this exceeds the safe harbour threshold.

Taxation of Financial Arrangements (TOFA)

Special rules apply to the taxation of financial arrangements (**TOFA**). These measures provide six tax-timing (and limited character matching) methods for determining gains or losses in respect of financial arrangements. The default methods are the accruals method and the realisation method. In broad terms, the accruals method will apply to spread an overall gain or loss over the life of the financial arrangement where there is sufficient certainty that the expected gain or loss will actually occur. A gain or loss that is not sufficiently certain is dealt with under the realisation method.

Royalties payable to a foreign company

If an Australian company pays royalties to a foreign resident, the royalties will be subject to royalty withholding tax at the rate of 30 per cent (or as reduced under the relevant double tax treaty) and may give rise to transfer pricing issues.

Base erosion and profit shifting

Australia is committed to combatting multinational tax avoidance and actively participated in the negotiation and drafting of the Organisation for Economic Co-operation and Development (**OECD**) Action Plan on Base Erosion and Profit Shifting (**BEPS**). The final version of the Action Plan was published in October 2015 and is intended to address perceived flaws in international tax rules. The Action Plan contains 15 separate action points or work streams, some of which are further split into specific actions or outputs.

The following actions have been taken by the Australian Government to implement BEPS and to combat tax avoidance.

- Country by country reporting (Action Point 13) has been introduced requiring "significant global entities" - broadly those entities which are part of a global consolidated group with annual global income of AUD1 billion or more - to provide a statement to the Commissioner of Taxation with relevant and reliable information to assist the ATO to carry out transfer pricing risk assessments (see below).
- Revised transfer pricing legislation which refers to Action Points 8 – 10 has been introduced.
- Draft legislation has recently been released for consultation to combat hybrid mismatches (Action Point 2) which allow companies to issue financial instruments and claim a deduction in one jurisdiction but not pay tax in another.
- Significant global entities will pay increased penalties. Penalties in relation to breaches of transfer pricing and profit shifting schemes are double. In addition, penalties for the late lodgement of all documents with the ATO are increased by a multiplier of 500.
- The Multinational Anti-Avoidance Law, which applies to significant global entities, has been passed (see below).
- The Diverted Profits Tax, which applies to significant global entities, has been passed (see below).
- The Government has committed to implementing a mandatory disclosure regime for tax schemes (Action Point 12). To date a discussion paper has been released by Treasury for comment.
- A new integrity measure applies Australia's goods and services tax (**GST**) to digital products and services imported by Australian consumers (Action Point 1).
- The Australian Government has signed the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (Action Point 15), and has introduced legislation to give it effect in Australia.

Tax transparency

In Australia, tax transparency has increased exponentially in the last few years. There are currently a range of transparency measures in effect which deal with both public disclosure of tax information and increased regulatory transparency between taxpayers and tax authorities. These transparency measures include the following matters.

- Public reporting by the Commissioner of Taxation of tax information (including name, total income, taxable income and income tax payable) for companies with total income of at least AUD100 million (as disclosed in its income tax return), except Australian-owned private companies with total income of less than AUD200 million.
- Requirement that significant global entities that are corporate tax entities file general purpose financial reports with the ATO if not already lodged with the Australian Securities and Investment Commission.
- Voluntary tax disclosure code.
- From 1 July 2017, Australian Financial Institutions are required to apply the Common Reporting Standard in Australia.

Transfer pricing

Australian transfer pricing rules adopt the arm's length concept as promulgated by the OECD. The transfer pricing rules apply to companies, branches, partnerships and trusts. Transfer pricing is seen as a major issue by the ATO, which is actively pursuing multinationals in Australia.

Where a taxpayer has cross border related party dealings totalling more than AUD2 million, the nature and quantum of these transactions are required to be disclosed to the ATO in the International Dealings Schedule (**IDS**) of the tax return. The data disclosed in the IDS is used by the ATO to select cases for transfer pricing reviews and audits.

The IDS requires the taxpayer to disclose the extent to which its related party transactions are covered by transfer pricing documentation. While transfer pricing documentation is not mandatory, preparing documentation can reduce the penalties that may arise if the ATO conducts and audit and makes a transfer pricing adjustment. To be eligible for penalty reductions, transfer pricing documentation meeting specific requirements set out in the Australian law must be prepared prior to lodging the income tax return.

In addition, as set out above, Australia has introduced legislation giving effect to the OECD's Country-by-Country reporting requirements for years beginning on or after 1 January 2016. These requirements generally apply to significant global entities.

The implementation of the Australian CbC reporting requirements mean that affected companies will have to prepare the following within 12 months of the end of the relevant financial year:

- **CbC Report** - containing financial, tax, and headcount information for each territory the group operates in. The required format of the CbC Report is in line with OECD guidance. To the extent the taxpayer's global group is filing the CbC Report overseas in a country that has a CbC automatic exchange agreement in place with Australia, it will only be necessary to provide the ATO with these offshore filing details (via the Local File), rather than directly lodging the CbC Report with the ATO;
- **Master File** - containing an overview of the group's global business, its organisational structure and its transfer pricing policies. The required format of the Master File is in line with OECD guidance. A copy of the Master File must be lodged with the ATO as an attachment to the Local File; and
- **Local File** – containing detailed quantitative and qualitative information in respect of the Australian taxpayer's business and dealings with overseas related parties. The required format and content of the Australian Local File differs significantly from the OECD standard, and involves an electronic filing of the information in XML format using the specific software and lodgement platform approved by the ATO.

Taxpayers which fail to comply with the Australian CbC reporting requirements on time face significant administrative penalties, beginning at AUD105,000 per item for one day late, up to AUD525,000 for more than 112 days late.

The CbC reporting requirements apply in addition to the existing transfer pricing documentation requirements. Transfer pricing documentation is not mandatory; however, it is a requirement to prepare transfer pricing documentation which addresses the Australian rules prior to filing the income tax return to be eligible to establish a 'reasonably arguable position' (**RAP**) in respect of a transfer pricing issue. Establishing a RAP can reduce penalty exposures if the ATO makes a transfer pricing adjustment in an audit.

Controlled foreign companies (CFCs)

Non-active income of foreign companies controlled by Australian residents may be attributed to those Australian residents under rules that distinguish between companies resident in "listed" countries (such as the UK and the US) and in other "unlisted" countries. In general, if the CFC is resident in an unlisted country and it fails the active income test (typically because it earns 5 per cent or more of its income from passive or tainted sources), the CFC's tainted income (very broadly, passive income and gains, and sales and services income that has a connection with Australia) is attributable to the Australian parent. If a CFC is resident in a listed country, a narrower range of tainted income is attributed.

Anti-avoidance rules

The Australian law includes a general anti-avoidance law that can apply where a taxpayer is found to have entered into a scheme with a sole or dominant purpose of obtaining a tax benefit.

A specific multinational anti-avoidance law (**MAAL**) was introduced from 1 January 2016. This rule can apply where a foreign entity makes supplies to an Australian customer and the revenue is not taxed in Australia. Business models where Australian customers enter contracts directly with foreign entities therefore need to be considered carefully in light of the MAAL. These rules apply to significant global entities.

The Australian anti-avoidance law now includes the recently enacted diverted profits tax law (**DPT**) that can broadly apply to arrangements of an Australian taxpayer dealing with foreign related entities that generate an Australian tax benefit where it 'would be concluded' that the arrangement was entered into for a principal purpose to obtain an Australian tax benefit. The DPT imposes a penalty tax rate of 40 per cent to Australian tax benefits obtained in income years commencing on or after 1 July 2017. These requirements will apply to significant global entities.

Tax incentives

Inward investment

Depending on the nature and size of the investment project, the relevant Australian State Governments may give rebates from payroll, stamp and land taxes on an ad hoc basis and for limited periods.

Early Stage Venture Capital Limited Partnership (ESVCLP)

The ESVCLP program is aimed at stimulating Australia's early stage venture capital sector by allowing generous tax concessions for funds meeting the registration and investment criteria.

An ESVCLP is a venture capital fund, legally structured as a limited partnership and registered with Innovation and Science Australia (**ISA**) in accordance with the *Venture Capital Act 2002* (Cth) Act. An ESVCLP is a tax flow-through vehicle – that is, the ESVCLP will not be taxed at the partnership level.

In addition, income and capital gains earned as a result of investment in an ESVCLP will be exempt from tax in Australia in the hands of the partners. Tax losses by ESVCLPs, however, will not flow through to nor be deductible by partners.

ESVCLPs must have their investment plan and partnership deed approved by ISA before they commence their investment activities. There are also a number of legislative requirements which restrict both the financial structure of ESVCLP investments and the nature of the investee entities.

Among those requirements are:

- ESVCLPs must not invest in entities whose value exceeds AUD50 million;
- ESVCLPs may only invest in entities whose predominant activities are eligible activities. Activities which are not eligible include property development, land ownership, banking, providing capital to others, leasing, factoring, securitisation, insurance, construction or acquisition of infrastructure or related facilities and making investments directed at deriving income in the nature of interest, rents, dividends, royalties or lease payments;
- the size of the ESVCLP fund must be at least AUD10 million (and not greater than AUD200 million); and
- no single partner's interest in an ESVCLP may exceed 30 per cent of the total committed capital.

In addition, ESVCLPs are required to lodge quarterly and annual reports with ISA. The total amount a partnership invests in interests (including debt & equity interests) of a company/unit trust and any associate or other member of the same wholly owned group of that company/unit trust must not exceed 30 per cent of its committed capital. There are exceptions to this rule, which include superannuation funds, authorised deposit taking institutions and life insurance companies.

A non-refundable carry-forward tax offset for limited partners of ESVCLPs, equal to up to 10 per cent of contributions made by the partner to the ESVCLP during an income year, now applies.

Offshore banking units

The taxable income derived from pure offshore banking transactions by an authorised offshore banking unit in Australia is taxed at the rate of 10 per cent.

Investment Manager Regime

An Investment Manager Regime (**IMR**) applies in Australia in order to attract foreign investment and reduce tax uncertainty for certain foreign funds.

The IMR, to the extent it applies, provides that any gains on the disposal of a portfolio interest (i.e. interests of less than 10 per cent) in an Australian investment should be free of Australian tax where its value is not predominantly attributable to land.

The IMR is of particular benefit to investors in non-tax treaty jurisdictions which hold portfolio investments on revenue account.

Depreciating assets

Taxpayers may claim a deduction for the decline in value of capital assets such as buildings, motor vehicles, furniture and machinery and equipment.

Small business entities with a turnover of less than AUD10 million a year may use simplified depreciation rules under which:

- an immediate deduction may be claimed for depreciating assets that cost less than AUD20,000 that were acquired and installed ready for use on 12 May 2015 until the end of 30 June 2019;
- other depreciating assets should be pooled into a general small business asset pool and a 15 per cent deduction may be claimed in the first year, with a diminishing value rate of 30 per cent on the opening pool balance claimed each year after that; and
- if the balance of the pool at the end of an income year is less than AUD20,000, the balance is deductible in that income year.

Other business entities must depreciate a depreciating asset over its useful life using either the straight line or diminishing value method. The straight line method assumes that the value of a depreciating asset decreases uniformly over its effective life, while the diminishing value method assumes that the value of a depreciating asset decreases more in the early years of its effective life.

Managed Investment Trust regime

A taxation regime for eligible Managed Investment Trusts (**MITs**), which make an irrevocable election to enter the regime (commonly referred to as the **AMIT regime)** applies from 1 July 2015 (for early adopters).

The benefits of the AMIT regime include deemed fixed trust treatment, an attribution model of trust taxation, the segregation of assets through multiple classes of assets, statutory mechanism to address errors in distributions and new cost base adjustment rules.

If the recipient of distributions from an AMIT is resident in an "information exchange country" the rate of withholding on distributions from the AMIT is limited to a 15 per cent final withholding tax.

A corporate collective investment vehicle (**CCIV**) regime is being considered which will operate in a similar manner to an AMIT (although will be treated as a company from a legal perspective). This regime is currently subject to consultation and is intended to make Australia more attractive to foreign investors that are not familiar with trust structures.

R&D Tax Incentive

Under Australian tax law, the Research and Development (**R&D**) tax incentive is an ongoing broad-based program designed to encourage more companies to get engaged in R&D benefiting Australia by providing a tax offset for eligible R&D activities.

The R&D Tax Incentive replaced the R&D Tax Concession from 1 July 2011 and provides benefits for eligible R&D activities. The incentive has two core components for entities undertaking eligible R&D activities:

- a refundable tax offset for eligible entities with an aggregated turnover of less than AUD20 million per annum, so long as they are not controlled by income tax exempt entities; and
- a non-refundable tax offset for all other eligible entities (entities may be able to carry forward unused offset amounts to future income years).

Companies must register their R&D activities with the Department of Innovation and Science (**AusIndustry**) annually within 10 months of the company's year-end to access the program.

To be eligible to claim the R&D Tax Incentive, companies should be incorporated in Australia and must meet certain eligibility criteria. For example, the activities must be undertaken on behalf of the registered claimant company, namely the claimant company must:

- have R&D activities in a year of income that meet the technical eligibility threshold tests;
- bear the financial risk of the R&D activities;
- have effective control of the conduct and direction of the R&D;
- be entitled to effective ownership of the results of the R&D; and

the R&D results must be exploited on normal commercial terms and to the benefit of the Australian economy.

Entities may also qualify for the R&D Tax Incentive where the R&D activities are conducted in Australia for an associated foreign corporate, that is resident of a country with which Australia has a double tax agreement. The intellectual property generated from these activities may also be held outside Australia (providing it is held within the same Multinational Group as the Australian entity).

A company can also claim activities that are undertaken outside of Australia if certain eligibility criteria are met and over 50 per cent of the costs are incurred in Australia. You should seek professional advice if you are looking to access the program in Australia as there are many threshold eligibility requirements to consider.

Indirect tax

Stamp duty

The States and Territories of Australia impose stamp duty at various rates on transactions including direct and indirect transfers of land related assets, other business assets and insurance policies. In certain States and Territories, some of the above transactions are stamp duty exempt.

Stamp duty laws are constantly evolving. A recent trend is the introduction of surcharge rates for foreign buyers of residential property in most states. These surcharge rates are in addition to the usual duty rate and can be as high as 8 per cent. Residential property is defined broadly and can include development sites and forms of "commercial residential property" such as retirement villages and student accommodation, although much depends on the state and particular facts of the project.

Land tax

The Government of each State of Australia and the Australian Capital Territory levies land tax (which is a tax levied on the owners of land, excluding a person's principal place of residence) based generally on the unimproved capital value of land. Varying rates of land tax apply across Australia and the rate payable generally increases according to the value of the property. Usually the land tax liability arises for land owned at a particular date, which in New South Wales, is at midnight on 31 December in each year.

Victoria and New South Wales have introduced surcharges applying to foreign owners. The surcharge in Victoria applies to all types of property at an additional rate of 1.5 per cent. In New South Wales it only applies to residential property at an additional rate of 2 per cent.

In Queensland, a 1.5 per cent surcharge applies to individuals only. This surcharge applies to all land with a taxable value of AUD350,000 and above and held by an absentee person. In South Australia no surcharge currently applies.

Queensland has also implemented a 0.5 per cent increase in the land tax rate for aggregated holdings above AUD10 million from 1 July 2018.

Payroll tax

Payroll tax is levied on employers on payments made to employees. It may also be levied on payments made to contractors.

Payroll tax is a state based tax. The rules regarding exactly what income is liable to payroll tax are mostly consistent between states, however, the rates of payroll tax vary in each state. Payroll tax is levied as a flat rate between 4.75 per cent and 6.85 per cent, once an employer's national payroll exceeds each state's agreed tax-free threshold. These thresholds range from AUD600,000 to AUD2 million.

The threshold is shared between 'grouped' employers. 'Grouped employers' include companies that have a common ultimate controller (Australia or overseas). The definition can also be applied more broadly to include employers that share employees, finance support functions, or even premises.

Payroll tax is levied regardless of whether an employee is paid from a foreign or local payroll.

In some states (currently, NSW and Tasmania), there are concessions offered in the form of payroll tax rebates where an employer increases its overall employee headcount in that state. The current rebates can be as high as AUD5,000 per new employee.

Customs duty

Customs duty is generally levied on the sum of the "customs value" of goods, based on the Free On Board (**FOB**) value at the foreign port of export (i.e. in a majority of cases includes foreign inland freight). The customs value is determined in accordance with Australian customs law and may not necessarily be the same as the sale price of the goods. Customs duty is payable at the time the goods enter into Australia for home consumption. This can be the date the goods clear through the border or the date they are withdrawn from a customs bonded warehouse.

The *Customs Act 1901* (**Customs Act**) regulates the import of goods into Australia and their export. Part VIII of the Customs Act provides for the payment and computation of the duty payable on those goods. Some relevant factors in assessing the amount of duty payable include the country from which they originated, the tariff classification of the goods and their value. Generally, the rate of duty payable on most goods is 5 per cent, including automotive vehicles and parts. Tobacco, alcohol and fuels are subject to far higher rates of excise – equivalent customs duty. The amount of customs duty payable on imported goods may be reduced through the application of various Tariff Concession Orders (**TCOs**), By-Laws, or Free Trade Agreements (**FTAs**). Application of these concessions depends on a variety of factors such as the nature or origin of the goods and in some cases the purpose for which the goods are imported.

Importers should enquire as to whether or not an existing TCO is available to allow for the duty free import of their goods. Generally speaking, where a TCO does not exist for the goods, importers can apply for a new TCO if it can be shown that there are no substitutable goods produced in Australia in the ordinary course of business in accordance with the requirements of the relevant section of the Customs Act.

Australia currently has numerous FTAs in force and under negotiation. Most recently, Australian concluded the FTA negotiations with the Republic of Korea, Japan and China with FTAs coming into force in December 2014, January 2015 and December 2015 respectively. Other FTAs in force include the Malaysia-Australia FTA and the ASEAN – Australia – New Zealand FTA (**AANZFTA**).

The AANZFTA is a comprehensive FTA covering all areas of economic activity between member countries, specifically, trade in goods and services, investment, intellectual property, e-commerce, temporary movement of business people, and economic cooperation. It offers significant benefits to Australian businesses trading in South East Asia by progressively eliminating all barriers to trade in goods, services and investment in all their forms. Below is a listing of Australia's existing FTAs and TFAs under negotiation. More information is available on Australia's Department of Foreign Affairs and Trade website.

Australia's existing FTAs include:

- ASEAN-Australia-New Zealand FTA;
- Singapore-Australia FTA;
- Thailand-Australia FTA;
- Australia-United States FTA;
- Australia-New Zealand Closer Economic Relations;
- Australia-Chile FTA;
- Australia-Malaysia FTA;
- Korea-Australia FTA;
- Australia-Japan Economic Partnership Agreement; and
- China-Australia FTA.

FTAs concluded but not yet in force include the Trans-Pacific Partnership Agreement.

FTAs under negotiation include:

- Australia-Gulf Cooperation Council FTA;
- Australia-India Comprehensive Economic Cooperation Agreement;
- Indonesia-Australia Comprehensive Economic Partnership Agreement;
- Pacific Agreement on Closer Economic Relations;
- Regional Comprehensive Economic Partnership; and
- Trade in Services Agreement.

In addition to the administrative processes involved with importing goods, importers should take care to ensure that they meet their customs compliance requirements.

There has been increased focus by the Department of Home Affairs, through the Australian Border Force (**ABF**) on the treatment of transfer pricing adjustments for customs valuation purposes. Companies importing into Australia from related parties should review their transfer pricing adjustments for Customs implications, and determine whether there are any overpaid or underpaid duties. Regardless of the financial impact of the adjustments, related entities importing goods from foreign related party suppliers are encouraged to obtain a valuation advice from the ABF to confirm that the appropriate customs valuation methodology is applied to the imported goods.

The ABF has also commenced a targeted compliance program to ensure its legislative and policy requirements for cargo reporting are being met, especially in relation to assembly orders (i.e. shipments made up of consignments from multiple suppliers). Under customs legislation, separate cargo reports must be issued for each consignor/consignee combination within a consolidated shipment. This is particularly relevant for importers that utilise offshore consolidation hubs as part of their global supply chain network.

To ensure that the ABF can effectively meet its compliance and enforcement priorities as Australia's international trade environment evolves, international supply chains become more complex and two-way trade increases, the Australian Government has recently committed to the implementation of fundamental structural reforms to Australia's trade compliance environment.

The ABF, in consultation with industry stakeholders, has designed a program, referred to as the Australian Trusted Trader (**ATT**) Program, based on partnership and shared responsibility between Australian Customs and international traders that can demonstrate supply chain security, a history of compliant behaviour and business sustainability.

The ATT opened to application from 1 July 2016. A trader accredited as a 'Trusted Trader' under the auspices of the ATT will receive a range of trade facilitation benefits from ABF, including enhanced border clearance privileges, reduced interventions, streamlined and periodic reporting, import duty deferral, 'front of queue' processing and priority service and international recognition under mutual recognition agreements with other jurisdictions.

7
Goods and Services Tax (GST)

7 Goods and Services Tax (GST)

An overview of GST

A broad based goods and services tax (**GST**) has applied in Australia since 1 July 2000. The GST is based on the value added tax (VAT) model adopted in most countries around the world. GST is levied at a rate of 10 per cent of the taxable value of most goods, services, rights and property in Australia (including imports). Generally GST does not apply to exports of goods or services consumed outside Australia. From 1 July 2012, Australia moved to a self-assessment system for GST. Under the self-assessment system, the relevant GST liabilities and credits only crystallise for the taxpayer upon lodgement of a GST return or import declaration.

Some key points in relation to GST are listed below.

- If an entity is carrying on an enterprise, and its GST turnover equals or exceeds the annual GST registration turnover threshold, then it must register for GST. This threshold is currently AUD75,000 (AUD150,000 for non-profit bodies). Entities who do not breach this threshold can register for GST voluntarily if they are carrying on an enterprise anywhere in the world.
- GST is payable at the rate of 10 per cent on the supply by a GST registered entity of most goods, services or intangibles, except to the extent that the supply is "input taxed", "GST-free" or "outside the scope" of GST (see below). The supplier is legally liable for any GST payable. Typically the GST is recovered by the supplier from the recipient of the supply as part of the contract price.
- Subject to certain exemptions, GST is also payable on the importation of goods at the rate of 10 per cent of the value of the taxable importation. The Department of Immigration and Border Protection will collect GST from importers of goods at the time of importation, unless the entity is registered for the deferred GST scheme (in which case the relevant GST amount will be remitted to the Australian Taxation Office in the importer's next monthly GST return).
- Some importations of services may also be taxable, under a "reverse charge" rule.
- Registered entities are generally entitled to claim an input tax credit for GST paid on things acquired in carrying on their enterprise. A four-year time limit is in place to limit retrospective input tax credit claims. No input tax credits are available for acquisitions that relate to making input-taxed supplies, or for anything acquired or imported for private consumption.
- GST returns must be lodged on a quarterly basis by suppliers with a GST turnover of less than AUD20 million, unless they elect to lodge returns on a monthly basis. Suppliers with a GST turnover of AUD20 million or more must lodge their GST returns on a monthly basis. Taxpayers can elect to lodge annual GST returns if they are not required to be registered for GST.

Different types of supply for GST purposes

- Some supplies will be "GST-free" (usually referred to as "zero-rated" in other GST or VAT regimes). Where supplies are GST-free, the supplier is not liable to remit GST on the supply, however there is no restriction on claiming input tax credits for the GST paid on costs relating to making the GST-free supply.
- The following supplies may be GST-free (subject to certain conditions):
  - exports of goods;
  - international air and sea travel;
  - domestic air travel if part of an international trip;
  - most health, education and child care services;
  - most food; and
  - water, sewerage and drainage.
- Other GST-free supplies include, but are not limited to:
  - the sale of an existing business (what is called in the legislation "the supply of a going concern");
  - the first supply of precious metals;
  - supplies through inwards duty-free shops;
  - grants of freehold and similar interests by government;
  - certain cross-border supplies with an ultimate recipient in Australia who is registered for GST;
  - certain supplies of services for consumption outside Australia; and
  - certain supplies of farm land.
- Some supplies are "input taxed" (usually referred to as "exempt" in other GST or VAT regimes). This means the supplier does not pay GST on the

supply, but is not generally entitled to claim input tax credits on the things acquired to make the supply (except in certain circumstances where a partial input tax credit may be available for acquisitions of a specified kind that relate to making financial supplies).

- The following are some examples of input-taxed supplies:
  - certain types of financial services;
  - residential rents and the supply of residential premises other than the sale of new residential premises (which is taxable); and
  - the subsequent supply of precious metals after the first GST-free supply of the precious metal.
- Supplies that are not for consideration, not made through an enterprise or not connected with Australia are generally outside the scope of GST. Some examples of supplies that are out of scope for GST purposes include the following:
  - the receipt of dividends;
  - supplies between members of a GST group or between non GST registered entities; and
  - gifts or donations.

Real property

- The sale of a freehold or other interest in land by a GST registered entity will be subject to GST under the general rules. The parties can choose to apply the margin scheme provisions to calculate a reduced amount of GST on the supply, provided the supply is eligible and the supplier and recipient agree in writing that the margin scheme is to apply.
- Where the general GST rules apply, GST is calculated on the full selling price of the property. Where the margin scheme is applied, the amount of GST payable is 1/11th of the margin for the supply. Normally, the margin is the amount by which the consideration for the supply (the registered person's sale price) exceeds the consideration for the acquisition of the interest. Under a margin scheme transaction, the buyer cannot claim an input tax credit for the GST paid on the margin.
- A sale of residential premises by an unregistered private individual(s) to another unregistered private individual(s) is outside the scope of the GST.

Resident agents acting for non-residents

- The GST on any taxable supplies made by a non-resident through a resident agent may be payable by the resident agent and not the non-resident. This rule equally applies for claiming GST on acquisitions and paying/claiming import GST.
- The GST rules have recently changed so that more inbound supplies which are connected with Australia are caught by a "reverse charge" obligation on the Australian recipient as opposed to the Australian resident agent.

Supplies of insurance

- The supply of an insurance policy by an insurer is generally taxable. The GST is calculated on the insurance premium excluding any stamp duty payable on the premium. Life insurance is input taxed. Insurance supplies that qualify as exports and/or private health insurance policies are GST-free.

Imported digital products, services and goods

- From 1 July 2017, the supplies of services and intangibles (e.g. streaming of content, games, digital media etc.) made to 'Australian consumers' by non-residents became included within the scope of Australian GST. This means that offshore intangible supplies made to private individuals in Australia will be taxable for GST purposes.
- Where these supplies are made via an 'Electronic Distribution Platform' (**EDP**), the GST obligations will fall on the EDP rather than the non-resident supplier. Limited registrations are available to EDP operators to enable compliance without significant administration.
- From 1 July 2018, inbound supplies of goods from non-residents may be subject to GST even if they are valued at less than AUD1,000 (which was the previous threshold for determining GST liability on importation). This means that offshore supplies of goods made to individuals in Australia will be taxable for GST purposes.

8
Personal tax

8 Personal tax

Australian tax implications of resident status

For individuals, the tax implications of resident status may be summarised as set out below.

- Residents who are not temporary residents (see further below) are subject to tax on worldwide income and taxable capital gains (although a foreign tax credit is generally available within limits).
- The top marginal tax rate is 45 per cent and this currently applies to income over AUD180,000 (tax on the first AUD180,000 is AUD54,097 for the year ended 30 June 2019). From 1 July 2024 the top marginal tax rate will apply to incomes exceeding AUD200,000 and the 32.5 per cent tax rate will apply to taxable incomes from AUD41,001 to AUD200,000. From 1 July 2018 the top threshold for the 32.5 per cent tax rate is AUD90,000 and from 1 July 2022, AUD120,000. The Government has stated that 94 per cent of taxpayers are projected to face a marginal tax rate of 32.5 per cent or less in 2024-25.
- Medicare is Australia's universal health insurance scheme. Contributions to the health care system are generally made through the tax return via the Medicare Levy. The levy is 2 per cent of taxable income and reportable fringe benefits.
- A Medicare levy surcharge of an additional 1 to 1.5 per cent of taxable income and reportable fringe benefits is payable for higher income earners who do not have appropriate private hospital insurance.
- An exemption from the Medicare levy is available to expatriates from certain countries, low income earners, and some other taxpayers meeting certain requirements.
- Inbound expatriates who are temporary residents will be exempt from tax in Australia on any foreign sourced investment income. They are also subject to capital gains tax on a narrower range of assets.
- An individual will be a temporary resident if they hold a temporary resident visa, and do not have a spouse (either married or de facto) who is an Australian citizen or Australian permanent resident.
- Residents may be subject to an accruals taxation system where they have transferred property or services to foreign trusts, or where they hold a substantial interest in controlled offshore companies. Temporary residents are exempt from these rules.
- There is a requirement for each employer to make a compulsory contribution into an Australian approved retirement fund (a complying Australian superannuation fund) on behalf of each employee. The amount is currently 9.5 per cent of salary up to a specified salary cap, AUD54,030 per quarter for the year ended 30 June 2019. The rate will increase to 12 percent on and from 1 July 2025. However, certain exemptions may apply for inbound expatriates, including where they have transferred from countries with which Australia has signed a bilateral social security agreement and certain senior executives holding temporary resident visas. In addition, temporary residents who have made superannuation contributions may withdraw superannuation benefits upon permanent departure from Australia, subject to a final "departing Australia superannuation payment" tax of 35 percent (special rules apply to New Zealand citizens).

Taxation of employment income

A resident individual's worldwide employment income will generally be subject to Australian tax, regardless of whether or not the income is remitted to Australia. Where the income is subject to tax, the employer is obliged to withhold and remit a portion of the employee's income to the Australian Taxation Office.

Employment income subject to tax includes base salary, wages, allowances (other than living-away-from-home allowances), commissions, director's fees and other cash remuneration such as bonuses and profit sharing payments including employee share/option schemes.

Any contract of employment should be reviewed by a taxation adviser prior to finalisation. This is important for purposes of identifying possible questions of residency and putting in place tax effective remuneration packages.

Fringe benefit tax

Fringe benefit tax (**FBT**) applies to most non-cash benefits provided by an employer to an employee or an associate of an employee, previous employee or future employee.

The main areas generally affected by fringe benefits tax are motor vehicles provided to employees, allowances paid to employees to cover food and accommodation costs while working in Australia, low or no interest loans, and payment or reimbursement of private expenses, such as medical insurance.

Fringe benefits are not taxable in the employee's hands. Instead, a separate tax collection procedure applies to fringe benefits, which is levied on the employer at the highest marginal tax rate. However, it is not uncommon for the employer to pass on the FBT costs as part of a total remuneration package for the employee.

FBT is levied on the employer and is payable with respect to benefits paid by both an Australian company and an overseas company where the employee is working in Australia. There are numerous FBT exemptions and concessions for benefits which relate to employment assignments and re-locations. However, most of the exemptions relating to living away from home (accommodation and food for inbound expatriates) have been curtailed since 1 October 2012.

Net capital gains

Capital gains that have been derived on the disposal by sale, or otherwise, of assets acquired after 19 September 1985 are generally included in assessable income. Effective 21 September 1999, where the asset is held for more than 12 months (subject to certain exemptions) only 50 per cent of the net capital gain is assessable. This discount is generally not available for foreign residents and temporary residents in respect of capital gains which accrue after 8 May 2012. Foreign residents and temporary residents are, however, only subject to capital gains tax on a limited range of assets. There are also special rules that apply to valuation of assets for capital gains tax, where an individual becomes a tax resident for the first time. The disposal of a main residence is generally not subject to capital gains tax. Legislation is currently before the Senate, however, that would disallow the main residence exemption for foreign residents. A foreign resident includes an Australian who has ceased tax residence in Australia.

Planning for investments

As previously indicated, residents of Australia who are not considered temporary residents are subject to Australian tax on their worldwide income, less a foreign tax credit where applicable. It is essential therefore to review personal investments and other related matters prior to becoming a resident of Australia to determine tax exposure and planning opportunities.

Taxation of Financial Arrangements (TOFA)

These measures prescribe the way in which foreign exchange gains and losses are identified and calculated and provide strict timing rules for ascertaining when foreign exchange (forex) gains and losses are recognised for tax purposes.

The TOFA legislation may apply to bank accounts and loans denominated in foreign currency if the accounts and loans were established, entered into, re-financed or varied on or after 1 July 2003. Certain exemptions may apply where specific conditions are met. Individuals who are considered temporary residents are only subject to these rules in specific circumstances.

Before becoming a resident

Anyone contemplating becoming a resident of Australia should seek specific advice regarding the application of Australia's tax rules and planning opportunities.

9
Overview of Australian employment law

9 Overview of Australian employment law

Australian employment law – An introduction

Broadly speaking, Australian employment law is derived from the following sources:

- the common law; and
- the statutory and regulatory framework comprising the National Employment Standards and industrial instruments, such as modern awards and enterprise agreements.

The common law

The common law is a primary source of obligations in employment in Australia. The most obvious source of common law obligations is the contract of employment. A contract of employment (whether written or oral) governs every employment relationship in Australia. However, any terms and conditions of an employment contract which breach the minimum conditions prescribed by the statutory and legislative framework will be invalid.

An employment contract need not be in writing, although it is highly recommended. A written employment contract ought to address a range of issues which will vary depending on a range of factors, including but not limited to:

- commencement and duration of the employment;
- remuneration;
- the employee's role and seniority;
- the manner which the relationship can be terminated; and
- any specific requirements, including confidentiality, intellectual property and post-termination restraints.

If used effectively, a written employment contract provides a mechanism by which the parties' relationship may be effectively described, governed and measured.

The importance of having a written and up-to-date employment contract has become more significant over the past few years, following several recent developments in the way courts approach cases concerning disputes over parties' obligations, rights and entitlements in an employment context.

Written workplace policies may be issued by the employer which set out procedures to be followed by employees when performing work or accessing entitlements. Subject to their terms, typically, policies do not contain binding obligations on the employer.

The statutory and regulatory framework

Workers employed in the private sector and the Federal public sector are subject to federal workplace legislation, principally the *Fair Work Act* 2009 (**FW Act**).

Employees working in the State public sector are still, in most cases, regulated by State workplace legislation.

The Federal statutory framework

Fair Work Act

Some of the key features of the system under the FW Act are:

- the introduction of a National Minimum Wage (AUD18.29 per hour for the 2018 financial year, plus 25% for casuals)
- 10 National Employment Standards (**NES**) which are statutory minimum terms and conditions of employment (effective from 1 January 2010);
- modern awards which provide additional minimum terms and conditions for those employees covered by the modern awards;
- a new institutional framework for the administration of the national workplace relations system and new bodies to administer the system – the Fair Work Commission (**FWC**) and the Fair Work Ombudsman;
- a new system for the making of collective employment agreements, now called *enterprise agreements*. Employers, employees and unions must follow good faith bargaining rules when negotiating new enterprise agreements and there are new requirements for enterprise agreement content and approval. For an enterprise agreement to be made, it must pass a test which requires that each employee covered by the enterprise agreement is to be "better off overall" in

comparison to the minimum entitlement provided under an applicable modern award (the **BOOT** test);

- broader rights for unions to enter workplaces, and access information pertaining to employees, including the right to enter a workplace and hold discussions with employees and rights to apply to the FWC for access to non-union member employee records;
- new transfer of business rules, which cover a broader scope of activities than previously applied including outsourcing, in-sourcing and transfers of employment between associated entities or employers where there has also been a transfer of assets. Enterprise agreements applicable to transferring employees will transmit to the new employer and will apply until they are replaced by another enterprise agreement. Additionally, transferred enterprise agreements will apply to the new employer's employees who are hired after the transfer of business and performing the same work alongside the transferring employees;
- a category of rights called *general protections* covering not only the right to freedom of association but also the right not to be treated adversely because an individual has a workplace right, the right not to be subjected to discriminatory or wrongful treatment, coercion, misrepresentation, and the rights not to be subject to unlawful termination or sham contracting arrangements; and
- a small business fair dismissal code for Small Business employers, being employers and their associated entities who employ fewer than 15 employees (excluding casuals not employed on a regular and systematic basis).

National Employment Standards

The 10 NES prescribe:

1. maximum weekly hours of work – 38 ordinary hours for full-time employees plus reasonable additional hours;
2. the right to request flexible working arrangements for employees who:
   - are parents or carers of children of school age or younger, or of an individuals with a disability or a medical condition;
   - have a disability;
   - are 55 or older;
   - are experiencing family or domestic violence; or
   - are caring for or supporting an immediate family or household member who requires care or support because of family or domestic violence;
3. a right to unpaid parental leave of up 12 months for qualifying employees, with right to request an extension of up to a total of 24 months (approval subject to the employer's reasonable business requirements).
4. four weeks' paid annual leave (5 weeks for shift workers), with the ability for annual leave to be cashed out for a non-award/enterprise agreement employees provided a minimum accrual of 4 weeks is retained (excluding casual employees);
5. a right to personal/carer's leave and compassionate leave. Employees are entitled to 10 days paid personal/carer's leave per year of service (excluding casual employees). Employees are also entitled to 2 days unpaid carer's leave and 2 days paid compassionate leave (unpaid for casual employees) for each "permissible occasion";
6. community service leave – this includes up to 10 days paid jury service leave (excluding casual employees) and unpaid community service activities, including certain emergency management activities;
7. pending the development of a new national standard, existing long service leave entitlements provided under a relevant award, an enterprise agreement or State and Territory legislation continue to apply see Other Legislation, below);
8. entitlement to paid public holidays and rules around work on public holidays;
9. minimum notice of termination and redundancy pay – all employees are entitled to receive a minimum period of notice of termination (or payment in lieu of notice) of up to 5 weeks depending on length of service and age (excluding casual employees). Additionally, certain employees who are retrenched are entitled to a minimum severance/redundancy payment calculated with reference to the employee's period of service with the employer. Small Business employers are generally excluded from the obligation to make severance/redundancy payments; and
10. Fair Work Information Statement requirement – this statement must be given to new employee as soon as practicable after they commence employment. The statement contains information about the NES, modern awards, agreement making, the right to freedom of association and the role of FWC.

Industrial Instruments

The terms and conditions of employment of a large percentage of Australian employees are governed by industrial instruments, including modern awards and enterprise agreements.

Modern awards

There are approximately 120 modern awards, covering a wider range of industries and occupations.

Certain occupations are generally (but not always) not covered by a modern award such as senior management, qualified lawyers, accountants and human resources specialists. Even employees who are award-covered may be exempt if they have received and accepted a written guarantee of their annual earnings, which is above the high income threshold (AUD142,000 a year for the 2018 financial year, indexed annually).

Modern awards provide minimum rates of pay and minimum entitlements that are in addition to the NES entitlements, including overtime and penalty rates, allowances, leave loading, superannuation, procedures for consultation, representation and dispute settlement, and redundancy/severance pay.

Additionally, modern awards must contain a flexibility clause, which allows employers and employees in certain prescribed circumstances to negotiate an individual flexibility arrangement varying the application of certain allowed parts of the modern award to meet their individual needs.

Enterprise agreements

As mentioned above, the FW Act sets out a number of requirements in relation to enterprise agreement bargaining, content and approval including:

- that the parties to the enterprise agreement engage in good faith bargaining;
- the passing of the BOOT test in comparing the relevant provisions of a modern award with the terms of a proposed enterprise agreements;
- enterprise agreements must contain “mandatory terms”, including flexibility and consultation terms. A “flexibility term” allows certain arrangements to be made with individual employees (such as an arrangement to work flexible hours or part-time). Consultation terms impose on employers the duty to consult with employees in the presence of the employees’ representatives (if the employees choose to) about major workplace changes that are likely to have a significant effect on them; and
- enterprise agreements must not contain any “unlawful terms” including discriminatory terms and objectionable terms. An objectionable term is one that allows conduct that could contravene the general protections requirements or requires payment of a bargaining services fee.

Similar to modern awards, enterprise agreements provide minimum entitlements that are in addition to statutory entitlements provided under the NES such as overtime and penalty rates, allowances, leave loading, superannuation, procedures for consultation, representation and dispute settlement, and redundancy/severance pay.

If an enterprise agreement applies to an employee, the enterprise agreement will supersede any modern award that would otherwise apply to the employee.

Claims against employers

Entitlements

If an employer fails to meet any of the requirements under the NES or an industrial instrument, the employee (or the Fair Work Ombudsman) can initiate court proceedings against the employer for contravening the FW Act. A court may order the employer to pay the entitlements and may require the employer (as well as any person involved in the contravention such as a director of a corporate employer) to pay penalties.

When terminating employment, an employer must dismiss an employee in accordance with the FW Act which requires employer to:

- provide a minimum notice period for termination (of employment except where the employee is guilty of serious misconduct);
- recognise certain entitlements and industrial instruments if there is a transfer of business; and
- make redundancy payments in the event of a genuine redundancy

In addition to the FW Act, there may be termination entitlements which the employer is obliged to recognise under the contract of employment or industrial instrument.

Unfair Dismissal

Under the FW Act certain employees have statutory rights to claim relief for unfair dismissal (in circumstances where termination is considered to be “harsh, unjust or unreasonable”) subject to certain conditions and exemptions contained in the FW Act.

An employee (including a casual employee employed on a regular and systematic basis for a period of 12 months or longer) will generally be eligible to apply for unfair dismissal provided that:

- the employee has completed the **minimum employment period** of 6 months, or 12 months if the employer is a **small business employer** under the FW Act at the time of dismissal; and
- the employee is either covered by an industrial instrument or has annual earnings below the high income threshold (being AUD142,000 in FY18, indexed annually).

The *Small Business Fair Dismissal Code* applies to small business employers and a small business employer will be protected from unfair dismissal claims if it acts in accordance with process specified in this code.

If FWC finds that an employee has been unfairly dismissed it may order reinstatement to employment of the employee and/or compensation to the employee. The maximum compensation an employee can be awarded must not exceed the lesser of:

- AUD71,000 (i.e. 26 weeks' wages at the 2018 financial year high income threshold amount, indexed annually); and
- the total amount of remuneration the employee is entitled to receive or have received (whichever is higher) during the 26 weeks immediately prior to the dismissal.

Unlawful termination

The FW Act also provides redress for an employee who is terminated unlawfully (as opposed to unfairly). In other words, the termination occurred for a prohibited reason which is prescribed by the FW Act including trade union membership or participation in trade union activities, temporary absence from work due to illness or injury, or on the basis of unlawful discrimination (for example, race, colour, sex, age, family responsibilities, pregnancy and religion).

The FW Act now extends the coverage of unlawful termination provisions to all employees and employers (including those who fall outside the Federal system).

General protections

The general protection provisions in the FW Act aim to protect workplace rights and freedom of association and to provide protection from workplace discrimination. An employer must not take any adverse action against another person (such as an employee) because the other person has a workplace right, has exercised a workplace right, or proposes to exercise such a right.

"Workplace rights" has a very broad meaning. For example, a person has a workplace right if he or she has an entitlement under a modern award, enterprise agreement, or a workplace law, is able to initiate a proceeding under a workplace law, or is able to make a complaint or inquiry in relation to their employment. "Adverse action" includes dismissing or refusing to employ someone, and also includes discriminating against them or otherwise injuring them in their employment (by, for example, demoting them).

An employer must not take adverse action against another person (such as an employee) because he or she has engaged in lawful industrial activity (such as belonging to or participating in a union) and must not dismiss an employee because the employee is temporarily absent from work because of illness or injury. An employer must also not take any adverse action against an employee (or prospective employee) because of his or her race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction, or social origin.

Breach of contract/wrongful dismissal claims

There are other causes of action for dismissal (such as under the common law for breach of contract) which may provide an employee with redress if the employment contract is terminated other than in accordance with its terms.

Commonly, they are limited in practice to senior executives, managers or highly remunerated employees.

Discrimination/equal opportunity claims

Employees who believe they have suffered discrimination may, irrespective of whether they are covered by the Federal or State industrial relations system, make a complaint to the Australian Human Rights Commission or the employee's respective State or Territory tribunal, such as the New South Wales Anti-Discrimination Board, under the respective Federal, State or Territory discrimination legislation.

Bullying

Workers who believe that they have been bullied at work can apply to the FWC for an order to stop the bullying.

Bullying is defined as repeated unreasonable behaviour by an individual or group that creates a risk to another worker's health and safety. Bullying does not include reasonable management action that is carried out in a reasonable manner.

If the FWC finds that bullying has occurred it can make any orders that it considers appropriate (other than an order for compensation) to prevent the worker being bullied at work. These orders can be directed to the applicant worker, the other individual(s) involved and management of the employer/principal.

Other Legislation

Paid Parental Leave

The Federal *Paid Parental Leave Scheme* gives eligible employees up to 18 weeks' pay at the **National Minimum Wage**. This applies to eligible primary carers of newborn or adopted children. The payments are made by the Government to the employer, who then pays it to the employee. The payments can be paid before, after, or at the same time as existing entitlements such as annual leave, long service leave and employer-funded paid parental leave.

Superannuation

Superannuation is a form of compulsory savings which a person may only access when retiring from the workforce and subject to other restrictions, such as age.

The *Superannuation Guarantee (Administration) Act 1992* (Cth) effectively requires employers throughout Australia to make certain superannuation contributions for their employees at the applicable superannuation rate. Failure to do so means the employer will be liable for a superannuation guarantee charge (made up of the superannuation guarantee shortfall amount, interest on that amount, and an administration fee), which is payable to the ATO.

The current rate of superannuation is 9.5 per cent of an employee's ordinary time earnings, subject to the superannuation guarantee maximum contribution base (currently AUD54,030 per quarter for the financial year ended 30 June 2019). Employees generally have the right to choose which superannuation fund or retirement savings account will receive their superannuation guarantee contributions.

Long Service Leave

Many employees in Australia are entitled to long service leave, which is intended to reward employees for having provided a long period of service to one employer. Historically, the entitlement has been governed by a pre FW Act industrial instrument or State or Territory legislation. Although the exact entitlement varies, it is typically 8.6 weeks for each completed 10 years continuous service and 4.3 weeks for each completed 5 years after that.

The NES, preserves existing entitlements to long service leave derived from one or more of the following sources:

- an enterprise agreement; or
- applicable State or Territory long service leave legislation.

Work Health and Safety

Australian occupational health and safety legislation is generally State and Territory-based. There is no unitary, national work health and safety statute, although the Commonwealth and all States and Territories except Western Australia and Victoria have adopted similar “harmonised” occupational safety laws.

These laws impose significant obligations upon employers in respect of their employees and other persons entering the workplace. These obligations include providing:

- safe premises, machinery and substances
- safe systems of work, appropriate information, training, instruction and supervision; and
- a suitable working environment and facilities.

In addition, employers have obligations to implement and maintain systems for assessing and controlling health and safety risks, mechanisms for consultation with employees in relation to health and safety issues, and appropriate documentation and records.

Directors and senior managers also have a personal “due diligence” obligation, namely to acquire and keep up to date knowledge on health and safety matters, to understand the hazards and risks associated with the employer's business, to ensure that appropriate resources and processes are in place to respond to eliminate or minimise risks and to implement processes for complying with the employer's health and safety duties.

Failure to comply with these obligations may lead to prosecution and the imposition of significant penalties. Penalties may be imposed on employers (including directors and managers of an employer) for breaches.

Obligations are not confined to employers. Occupiers of premises, manufacturers, suppliers of plant, employees, self-employed persons and the Crown also have specific and separate obligations under occupational health and safety legislation.

Specific legal obligations will vary according to which State or Territory the employer or other person or entity is located.

Workers Compensation

All Australian employees (including certain Australian employees based overseas and overseas employees based in Australia) are covered by workers compensation legislation. Each State and Territory has enacted workers compensation legislation, which imposes significant obligations on employers including:

- providing workers compensation insurance coverage;
- informing the relevant authorities about work injury and diseases;
- ongoing employer compliance responsibilities;
- workers compensation payments to injured employees;
- helping injured employees return to work; and
- establishing a rehabilitation policy and program.

Privacy and Surveillance laws

The Privacy Act 1998 (Cth) establishes Australian Privacy Principles (**APPs**) which set out various requirements in relation to personal data. The APPs do not, however, apply to "employee records" subject to certain conditions being met. An employee record is a record of personal information that concerns a past or current employment relationship and can include medical information.

For the employee records exemption to apply, various conditions must be met such as an employer's use of an employee record must be directly related to the employment relationship. The exemption does not apply to contractors or unsuccessful job applicants.

There are no comprehensive Federal laws dealing with workplace privacy or surveillance. Workplace surveillance is, however, specifically dealt with in New South Wales, Victoria, Western Australian, Australian Capital Territory and Northern Territory legislation. The *New South Wales Workplace Surveillance Act 2005* (NSW) is the most comprehensive workplace relations legislation. This prohibits all forms of camera surveillance, computer surveillance and tracking surveillance at work unless certain notice and other requirements are met.

In addition, there are restrictions on blocking emails and internet access in New South Wales workplaces (particularly in relation to emails from union websites).

Anti-Discrimination

There are various Federal, State and Territory statutes prohibiting direct or indirect discrimination in specified areas. Relevant Federal legislation includes the:

- *Racial Discrimination Act 1975* (Cth);
- *Sex Discrimination Act 1984* (Cth);
- *Disability Discrimination Act 1992* (Cth);
- *Australian Human Rights Commission Act 1986* (Cth); and
- *Age Discrimination Act 2004* (Cth).

Each State and Territory also has comprehensive antidiscrimination and equal opportunity legislation.

Direct and indirect discrimination may be defined as follows:

direct discrimination is treating one person less favourably than another because of particular attributes, such as age, race, colour, descent, national or ethnic origin, immigrant status, sex, marital status, pregnancy or potential pregnancy, family responsibilities, breastfeeding, gender identity, sexual orientation, intersex status, disability, religious belief or activity, political belief or activity, industrial activity or association (whether as a relative or otherwise) with a person identified by reference to any of the above attributes;

indirect discrimination is applying a standard, condition or practice to all employees equally, but in a way that ends up being unfair to a specific group of people because of a particular attribute of that group (as listed above), and the standard, condition or practice is unreasonable.

Discrimination and equal opportunity legislation affects all stages of the employment relationship, including job selection and recruitment of prospective employees, which employees receive training in the workplace and what sort of training is offered, conditions and benefits of employment, which employees are considered and selected for transfer, promotion, retrenchment and termination of employment. The discrimination laws do not only apply to the employment relationship, but also apply in other areas including the provision of goods and services, education, accommodation, clubs and associations, and superannuation.

All discrimination laws are complaint-based. An applicant may complain to an administrative agency which is required to provide a process of inquiry and conciliation at first instance. Where there is a continuing disagreement, a tribunal or court may hear and determine the issues and may apply penalties against the employer and/or award compensation to the applicant. Significant monetary compensation has been required to be paid by employers as a result of such claims.

In addition to the anti-discrimination and equal opportunity legislation outlined above, the *Workplace Gender Equality Act 2012* (Cth) requires all non-public sector employers with 100 or more employees to report to the Workplace Gender Equality Agency.

The relevant employers will be required to report against a set of standardised gender equality indicators (**GEIs**), which encompass issues such as the gender composition of the workforce and the governing bodies of relevant employers, the equal remuneration of women and men, the flexibility of working arrangements, and consultation procedures with employees on gender equality issues.

10
Intellectual property

10 Intellectual property

Intellectual property – An introduction

Australia's legislation protects intellectual property such as trademarks, copyright, patents and designs. Remedies are also available under Australia's common law for goods or services that are "passed off" as those of another and under the *Competition and Consumer Act 2010* (Cth) for conduct of a person in trade or commerce which is misleading or deceptive or likely to mislead or deceive. Australian common law will also protect confidential information and trade secrets in certain circumstances.

Trade marks

The *Trade Marks Act 1995* (Cth) provides for the registration of a trade mark which is capable of distinguishing the designated good or service from the goods or services of other persons. The initial registration of a trade mark is for 10 years. Registration may be renewed for additional periods of 10 years upon payment of renewal fees.

Registration of a trade mark gives the owner the exclusive right to use the trade mark in relation to the goods or services covered by the registration and the right to take action for trade mark infringement.

It is not essential that a trade mark is registered in order for the owner to be able to enforce rights in it. However, it is much easier for the owner to do so if registration of the trade mark is held. An application for registration of a trade mark in Australia may be based either on use of the trade mark or on an intention to use the trade mark. In the latter case, it is not necessary that the intention has matured into actual use by the date of registration.

Australia is a signatory to the Paris Convention for the Protection of Industrial Property. Therefore, a first application for registration of a trade mark in any other convention country may be used as a basis for an identical application in Australia claiming the priority date of the original application, provided that the Australian application is filed within 6 months of the original application.

Copyright

Copyright in Australia is protected under the *Copyright Act 1968* (Cth) (**Copyright Act**). There is no registration system for copyright in Australia. Copyright protection is granted in respect of original literary, artistic, musical and dramatic works. There have been many changes to the rules on the duration of copyright and different rules will apply to different types of copyright material. However, the general rule is that copyright lasts for the life of the author plus 70 years. There is no requirement that a "work" within the meaning of the Copyright Act is of artistic or literary quality, it is sufficient that it is original.

Apart from protection in works, the Copyright Act also recognises copyright in other types of subject matter such as photographs, sound recordings, cinematographic films and performers' rights.

Australia is a signatory to the Berne Convention for the Protection of Literary and Artistic Works and therefore works created in other countries which are also signatories to the Berne Convention will be entitled to the same protection in Australia as Australia gives to copyright claimed by its own nationals.

Australian copyright law also recognises moral rights and digital rights such as Electronic Rights Management information (**ERM**) and technological protection measures. Computer programs are generally protected as literary works.

Australia's copyright law deems that, in the majority of cases, a work created by an employee during the course of his or her employment will be owned by the employer whereas copyright created by an independent contractor will be owned by that independent contractor.

Patents

In Australia, patents are granted under the *Patents Act 1990* (Cth) and give the successful applicant the exclusive right to exploit the patented invention and to authorise another to exploit the patented invention. There are two different types of patents granted in Australia, the standard patent and the innovative patent. A standard patent lasts for up to 20 years (or up to 25 years for a pharmaceutical substance). An innovative patent lasts for up to 8 years.

Generally a standard patent will be granted if, when compared with the prior art base, the invention is novel, involves an inventive step, is useful and has not been previously used in the patent area by the patentee or their nominee for the purpose of trade or commerce.

An innovation patent is granted after the applicant has satisfied the formalities check. The standard required of an innovation patent is lower than that of a standard patent. The requirement for an inventive step is replaced with the requirement for an innovative step. This simply requires that there be one difference from the prior art base that contributes substantially to how the invention works. An innovation patent is granted without being examined. However, the registrant must request examination if they want to take action for infringement of the innovation patent.

Australia is a party to the Patent Co-Operation Treaty for the international registration of patents.

Designs

A registered design gives the owner protection for the visual appearance of a product. The initial registration is for a period of 5 years with an option to renew the registration for an additional period of 5 years.

The *Design Act 2003* (Cth) has raised the level of distinctiveness required for a design registration. The new threshold is a two-step test. A design is not a registrable design unless it is both new and distinctive when compared with the prior art base. Generally a design will not be registrable if it has been published prior to the lodgement of the design application, for example, if it has been published on the internet.

Domain names

The ".au" domain is divided into a number of second level domain names such as ".com.au", ".edu.au" ", ".net.au", ".asn.au", ".id.au" and ".org.au".

Registration of a domain name means that the registrant is granted a licence to use the domain name for the duration of the registration. The initial registration of a domain name is for 2 years. It may be renewed for additional periods of 2 years upon payment of a further registration fee. If the registration is not renewed the domain name becomes available for use by another trader.

ICANN

To reach another person on the Internet you have to type an address into your computer – a name or a number. That address has to be unique so computers know where to find each other. ICANN coordinates these unique identifiers across the world.

ICANN was formed in 1998. It is a not-for-profit public benefit corporation with participants from all over the world dedicated to keeping the Internet secure, stable and interoperable. It promotes competition and develops policy for the internationalisation of the Internet's unique identifiers.

Confidential information

Under Australia's common law, where information is communicated to another person in confidence or where those parties are in a particular relationship of confidence, the common law may imply an obligation on the receiver of that information not to utilise or disclose that information without the discloser's consent.

It is often prudent for parties to a contractual arrangement to enter into a separate confidentiality agreement or deed or make it a term of that contract that any information disclosed for the purposes of the contract will remain confidential. There are some general exceptions to these obligations of confidentiality including where the information is otherwise publicly available or disclosure is required by law.

There are also statutory rules for the use, disclosure and storage of an individual's personal information under Australia's privacy laws.

11
Consumer law

11 Australian Consumer Law

Australian Consumer Law

The Australian Consumer Law (**ACL**) (contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) regulates a range of unfair trading practices, principally as described below.

- **Misleading or deceptive conduct** and specific false or misleading representations engaged in by a person (including a corporation) in trade or commerce or in connection with the supply of goods or services is prohibited.
- **Unconscionable conduct** in business-to-business dealings and in transactions with consumers involving the supply or acquisition of goods or services (except where one of the parties is a listed entity) is prohibited. In deciding whether conduct is unconscionable, the courts examine a number of factors, including the relative bargaining strengths of the parties involved and whether the conduct is inconsistent with good conscience.
- **Consumer guarantees** apply in relation to the supply of goods or services to consumers, which require, for example, that:
  - the supplier has proper title to the goods being sold;
  - the goods conform to their description;
  - the goods are of acceptable quality;
  - the goods and services are reasonably fit for the purpose which the consumer makes known (either implicitly or expressly) to the supplier; and
  - the goods comply with any sample given.

  Any attempt to exclude, restrict or modify a consumer guarantee is void.

  However, where the goods or services supplied are not of a kind ordinarily acquired for personal, domestic or household use or consumption, liability may be limited by the supplier in the manner specified by the ACL.

  In certain circumstances, the supplier and the consumer may have recourse against the manufacturer and importer of a defective product.

  The UN Convention on Contracts for the International Sale of Goods adopted at Vienna, Austria on 10 April 1980 prevails over the consumer guarantee provisions of the ACL.
- **Unfair contract terms** contained in standard form (i.e. non-negotiable) consumer contracts or small business contracts are void.
- **Product safety** - The ACL has established a regime of strict liability for personal injury or property damage suffered as a result of defective goods that are ordinarily acquired for personal, domestic or household use or consumption.

  The ACL also prescribes certain product safety and information standards which suppliers of products need to comply with. Government agencies have certain powers to safeguard the public against unsafe products including warning the public and recalling unsafe products.

The maximum pecuniary penalty payable in respect of a contravention of the Australian Consumer Law is AUD1.1 million for a corporation and AUD220,000 for an individual.

Different limitation periods apply in respect of actions commenced under the ACL, depending on the cause of action.

12
Anti-trust and competition law

12 Anti-trust and competition law

The *Competition and Consumer Act 2010* (Cth) (**CCA**) prohibits anti-competitive conduct in Australia.

Penalties for breach of competition law are severe, with fines:

- for corporations, up to the higher of AUD10 million, 3 times the gain from the contravention or 10 per cent of the Australian corporate group's annual turnover in the preceding 12 months; and
- for individuals, up to AUD500,000.

Other sanctions for contraventions include disqualification of directors and for serious cartel conduct, jail terms of up to 10 years.

The CCA is regulated by the Australian Competition and Consumer Commission (**ACCC**), a governmental agency with a wide range of powers to obtain information, documents and evidence when investigating possible breaches of the CCA.

Certain trading practices are strictly prohibited under the CCA, including the following:

- cartel conduct (i.e., contracts, arrangements or understandings between competitors which have the purpose, effect or likely effect of price fixing, or the purpose of market sharing, bid rigging or restricting output); and
- minimum resale price maintenance.

A limited exception to cartel conduct applies in respect of certain joint venture arrangements, however businesses should obtain specific legal advice before seeking to rely on this exception.

Certain other practices are only prohibited under the CCA if they have the purpose, effect or likely effect of substantially lessening competition in the relevant market.

These practices include:

- anti-competitive contracts, arrangements or understandings;
- concerted practices (i.e. cooperation between two organisations which substitutes the uncertainty of competition with more predictable outcomes);
- exclusive dealing conduct, such as supplying or acquiring goods or services with trading restrictions which:
  - restrict the places where or the persons to whom or from whom those goods or services are to be supplied or acquired; or
  - make the supply or acquisition of goods or services conditional upon the acquisition or supply of a third party's goods or services; and
- misuse of market power (i.e. where a corporation with substantial market power engages in conduct which has the purpose, effect or likely effect of substantially lessening competition).

The CCA also prohibits acquisitions of shares or assets which would have the effect, or would be likely to have the effect, of substantially lessening competition.

Conduct which may be in breach of competition law may nevertheless be permitted in certain circumstances where there exists overriding public benefits provided the party undertakes a notification or authorisation process with the ACCC.

13
About PwC

13 About PwC

PwC – An introduction

PwC Australia is a regulated Multi-Disciplinary Partnership in certain States of Australia.

PwC represents a new approach to the provision of consulting services, developed in direct response to the needs of our clients and an increasingly competitive corporate environment.

We are dedicated to providing the services that a modern business needs. We are particularly well placed to meet the needs of our international clients, providing assistance on local or cross-border tax and legal issues.

What differentiates us from other professional service providers in Australia is our multi-disciplinary approach to and involvement in the delivery of both legal and non-legal professional services to clients with practice groups within PwC. This context of service delivery gives us a unique perspective into our clients' wider business issues and enables us to deliver legal advice in the context of what works for our clients and their businesses. The PwC legal team will work in tandem with the other practice groups to provide all encompassing advice and solutions to your business issues – no matter how complex they are.

We work with you

We believe that best practice legal solutions are developed within a wider business context. Our lawyers speak the language of business, working with you to develop an understanding of your commercial objectives and express advice in commercial terms. We bring together teams of specialists to work alongside clients as trusted business advisers. We structure and project manage transactions from start to finish. Our ultimate aim is to help clients transform their businesses and increase their value.

Our clients come to us from every industry including financial services, information technology, pharmaceutical, communications, entertainment, energy, mining and consumer and industrial. We offer every client industry-focused legal solutions, tailored to their business requirements.

Managing relationships

Relationships with our clients are managed through a Client Relationship Partner. This partner has sole responsibility for ensuring that high quality, commercial legal solutions are provided to meet client needs on a local and international level. The Client Relationship Partner is supported by a team of lawyers who have an in-depth knowledge of the client and the industry in which the client operates. Our relationships with clients are built on trust, communication and dedicated client service.

The best legal solutions developed in a wider context

We bring together the best of our specialists in legal services and other disciplines such as tax, consulting, assurance and deals to work alongside you as trusted business advisers.

We work with you to understand your commercial objectives. We express our advice in commercial terms, and offer you seamless end-to-end service across the life cycle of your project.

We structure and manage transactions from start to finish. Our aim? To help you navigate today's complex legal requirements with a forward-looking edge within your broader business needs.

While technical excellence is at the core of what we do, the breadth of our business and market insight differentiates us from traditional law firms to deliver clients an unparalleled focused, integrated service.

Our legal practice has five pillars: corporate advisory, regulatory, projects and finance, employment and workplace relations and legal tax services.

For more information about our legal services and our team visit: www.pwc.com.au/legal

Outsourced CFO – your complete finance function

As a foreign investor in Australia, you need to ensure you comply with the local financial reporting, GST and taxation regime. You will also want accurate and timely financial information to manage your business.

We can provide you with access to an all-encompassing finance function.

Our Outsourced CFO group has a dedicated team of professionals, all with a long-standing history of providing a high quality service to clients with no finance function in Australia. Working with us means knowing your finance function in Australia is being managed expertly and safely.

For more information about our Outsourced CFO services visit: www.pwc.com.au/cfo-advisory www.pwc.com.au

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