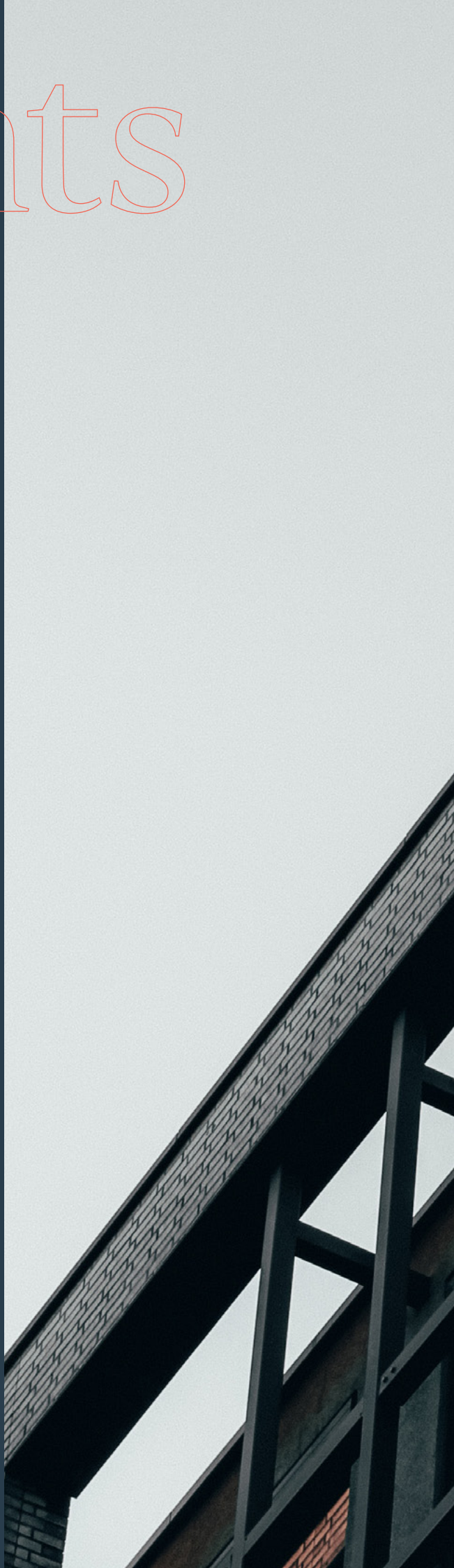
Ashurst

Takeovers in Australia

Outpacing change

contents



Foreword

Ashurst is acknowledged as one of the leading law firms in takeovers, mergers and acquisitions in Australia. We are proud to have been the trusted legal adviser on a number of landmark Australian transactions.

Many of the transactions on which we advise are cross-border. This guide explains and demystifies some of the key legal issues in takeovers, mergers and acquisitions in Australia. It is intended to assist senior executives, in-house counsel and advisers involved in Australian M&A.

We welcome the opportunity to discuss your objectives. Should you have any questions, please call one of the M&A contacts listed on the back cover.

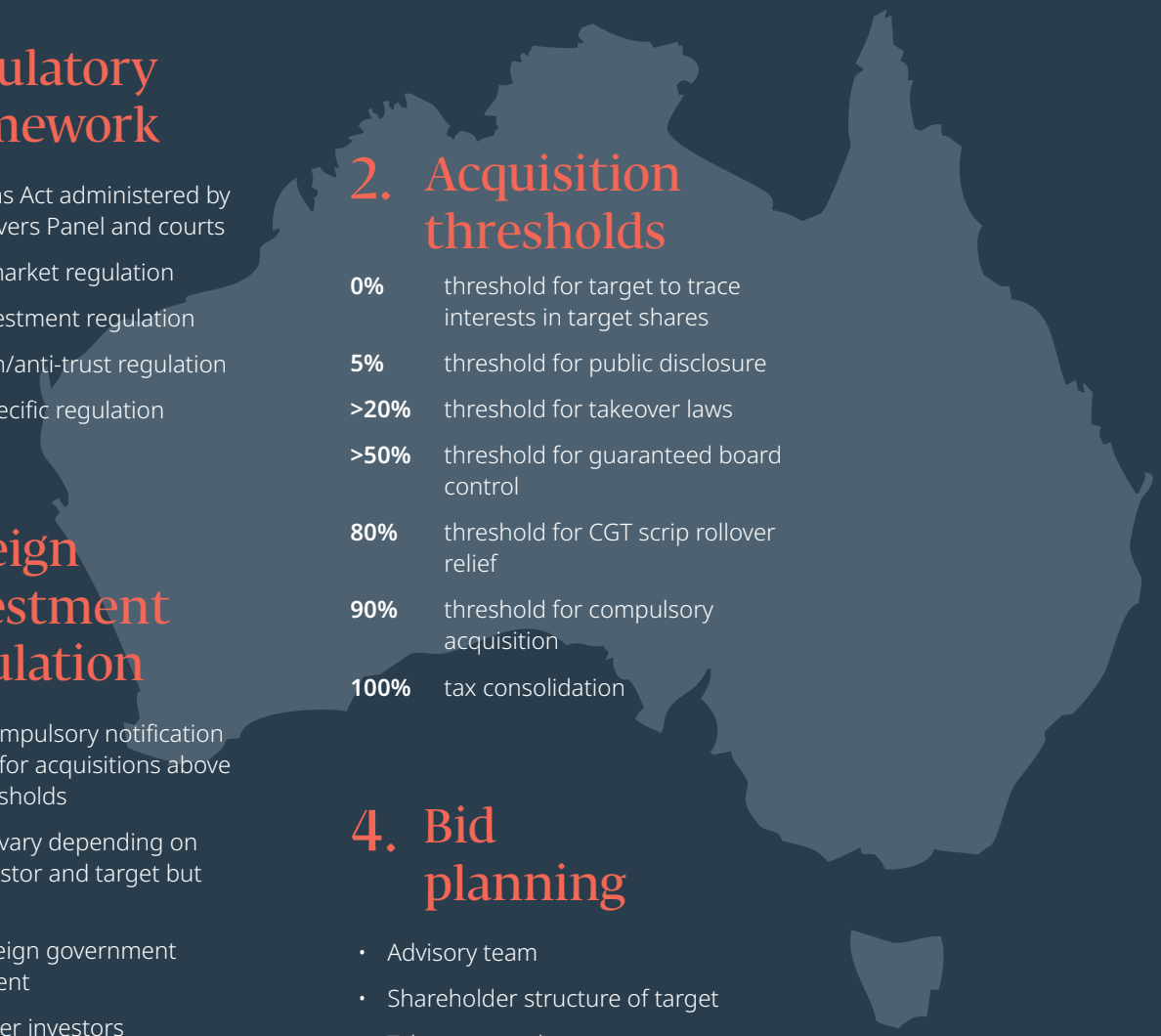
John Brewster
Practice Head
Corporate Transactions
Australia

Neil Pathak and Tony Damian
Co-Heads of M&A
Australia

"Ashurst's Corporate and M&A Practice was pivotal in successfully delivering our project. They worked tirelessly in helping us understand the market/ industry and regulatory landscape in Australia. With the steady hand of Ashurst guiding us along the way, we were assured and confident to successfully close the transaction."

Legal 500 2024 Australia: Corporate and M&A

Takeovers in Australia – at a glance



1. Regulatory framework

- Corporations Act administered by ASIC, Takeovers Panel and courts
- Securities market regulation
- Foreign investment regulation
- Competition/anti-trust regulation
- Industry-specific regulation

2. Acquisition thresholds

0% threshold for target to trace interests in target shares

5% threshold for public disclosure

>20% threshold for takeover laws

>50% threshold for guaranteed board control

80% threshold for CGT scrip rollover relief

90% threshold for compulsory acquisition

100% tax consolidation

3. Foreign investment regulation

- Different compulsory notification obligations for acquisitions above certain thresholds
- Thresholds vary depending on foreign investor and target but generally:
  - 10% foreign government investment
  - 20% other investors

4. Bid planning

- Advisory team
- Shareholder structure of target
- Takeovers v schemes
- Approaching the target
- Pre-bid devices
- Tax structuring
- Due diligence
- Target response to an approach

5. Acquisition structure

- Takeovers v schemes
- Acquisition timetable
- Bid consideration
- Financing
- Other key regulatory requirements
- Bid conditions and strategic devices

Regulatory framework

1

Under Australian takeover laws, acquisitions of more than 20% of listed companies and trusts are regulated

Corporations Act

Basic prohibition – 20% threshold

Australia's takeover laws, set out in Chapter 6 of the *Corporations Act*, regulate the acquisition of direct and indirect interests in:

- Australian listed companies and companies with more than 50 members; and
- listed managed investment schemes (usually unit trusts, like REITs),

(Widely Held Entities).

In particular the laws prohibit the acquisition of an interest which results in any person's voting power in a Widely Held Entity increasing to more than 20% (or any person's voting power increasing between 20% and 90%).

Exceptions

There are a number of exceptions to this rule, including for:

- acquisitions under a formal takeover bid in which all target shareholders can participate
- schemes of arrangement
- acquisitions with the approval of a majority of the shareholders who are not parties to the transaction
- acquisitions of no more than 3% of the voting rights every 6 months (creep rule)
- acquisitions under rights issues and underwriting arrangements
- "downstream" acquisitions of shares in Australian companies that result from "upstream" acquisitions in companies listed on the Australian Securities Exchange (ASX) or on certain foreign stock markets approved by the Australian Securities and Investments Commission (ASIC).

Takeovers

A takeover bid involves a potential acquirer making an offer to all shareholders of a target company or unitholders of a trust to acquire their shares or units on the same terms. The offer must be included in a bidder's statement prepared in accordance with the requirements of the takeover laws.

Schemes of arrangement

Acquisition of control of an Australian company can also be achieved under Chapter 5 of the *Corporations Act* using a scheme of arrangement. Rather than the acquirer making takeover offers directly to target shareholders, the target company proposes a scheme for approval by its members under which 100% of the target shares are transferred to the acquirer or cancelled in return for payment (including, but not limited to, scrip and/or cash) from the acquirer. See page 24.

Acquisition of control of an Australian listed trust can be achieved under trust law by amendment of the trust constitution and member approval. Where the trust consists of stapled units and shares, a scheme of arrangement can be used for the shares and a constitutional amendment for the units.

Voting power, relevant interests and associates

The 20% threshold prohibition is broad because of the breadth of the concepts of "voting power", "relevant interest" and "associate". The prohibition catches, for example, the acquisition of more than 20% of the voting power in a corporation formed in Australia or another jurisdiction (subject to the "downstream" exception noted above) if that corporation, in turn, holds more than 20% of the voting power of a Widely Held Entity.

A person's voting power in a company is equal to the aggregate relevant interests of the person and their associates in the voting shares of the company. The definition of associates is cast widely. Broadly, two or more persons are associates if one controls the other or they are under common control, or there is an agreement, arrangement or understanding between them for controlling or influencing the composition of the target's board or the conduct of the target's affairs, or they are acting or proposing to act in concert in relation to the target's affairs.

A person has a relevant interest in a share if they are the holder or have the power (direct or indirect, formal or informal, and whether or not enforceable) to control disposal or to control the exercise of the right to vote. The concept is broad. By way of example, a person can have a relevant interest in a share as a result of an agreement to purchase the share (even a conditional agreement) or a call option to acquire the share.

Non-compliance

Non-compliance with Chapter 6 of the *Corporations Act* can lead to civil and criminal liability and to the imposition of a wide range of penalties and sanctions.

Other relevant provisions of the Corporations Act

In addition to Chapter 6, the following provisions are important:

- Chapter 6A (compulsory acquisitions)
- Chapter 6C (shareholding disclosure requirements) and Chapter 6CA (continuous disclosure)
- Part 7.10 (insider trading and other conduct relating to securities)
- Part 2D.1, together with case law (duties and powers of directors, especially relevant for the target's directors)
- Chapter 5 (schemes of arrangement)
- Chapter 6D (fundraising, relevant for scrip bids).

Jurisdiction of regulatory bodies and courts

ASIC

ASIC has primary responsibility for the administration of the *Corporations Act*. ASIC is also responsible for market supervision and compliance. It has broad powers not only to enforce the Act, but also to modify provisions of the takeover laws and grant exemptions from strict compliance with them in appropriate circumstances. Modifications and exemptions are widely used by bidders and can be important for the success of a bid. ASIC also issues Regulatory Guides, which give guidance on its approach to administering the Act and when it will grant exemptions and modifications.

Courts

The courts (Federal and State) have primary responsibility under the *Corporations Act* for approving schemes of arrangement.

Under a takeover, only ASIC and certain other Australian State or Commonwealth authorities can commence court proceedings concerning a takeover or proposed takeover before the end of the bid period. Accordingly, disputes in relation to takeovers are generally resolved by the Panel. Although the Panel may refer a question of law to the court, this does not happen very often.

Takeovers Panel

The Takeovers Panel (Panel) is the main forum for resolving takeover disputes until the bid period has ended. The Panel is a peer review body, with part-time members appointed from members of Australia's legal and business communities.

The Panel is established by statute and has broad statutory powers. It can make declarations of "unacceptable circumstances" and wide-ranging consequential orders. The Panel has issued Guidance Notes as to how it will exercise these powers. These powers must be exercised in the light of the basic policy objectives of Australia's takeover laws which include ensuring that:

- the control transaction takes place in an efficient, competitive and informed market; and
- all target shareholders have a reasonable and equal opportunity to participate in any benefits accruing to shareholders under the transaction.

Importantly, the Panel can make a declaration of unacceptable circumstances even where there has been strict compliance with the law. The Panel also decides appeals from ASIC's decisions on modifications and exemptions concerning takeovers.

Securities market

If either the potential acquirer or the target is listed on ASX, additional requirements will apply. ASX is responsible for ensuring that companies listed on ASX comply with the ASX Listing Rules, and ASIC is responsible for market supervision and ensuring compliance with the ASIC Market Integrity Rules for both the ASX and Chi-X markets.

The requirements with which ASX listed entities must comply include obligations under the continuous disclosure regime (Listing Rules 3.1, 3.1A and 3.1B); limits on share issues (Listing Rules 7.1, 7.1A and 7.9); shareholder approval requirements for significant related party transactions (Listing Rule 10.1), disposal of the main undertaking (Listing Rule 11.2) and possibly for a change in nature or scale of activities (Listing Rule 11.1); and restrictions on director termination benefits (Listing Rule 10.18).

Competition/anti-trust

Mergers or acquisitions are prohibited if they are likely to have the effect of substantially lessening competition in a market in Australia (section 50, Competition and Consumer Act (CCA)). Until the new merger clearance regime commences there is no mandatory pre-merger notification requirement in Australia, but acquisitions which contravene the prohibition can result in the Australian Competition and Consumer Commission (ACCC) seeking injunctions to prevent closing, or penalties and divestiture orders for completed transactions.

A new mandatory and suspensory merger notification regime commences on 1 January 2026. Prior to this date, parties can opt-in to the new regime under transitional arrangements. From 1 January 2026, failure to notify the ACCC of notifiable acquisitions, being acquisitions of shares or assets (or any kind of property or legal or equitable right that is not property) that exceed the applicable thresholds, will result in the transaction being void and penalties will apply. Section 50 will also continue to apply, including to transactions which fall below the notification thresholds.

A waiver system will also commence on 1 January 2026, for transactions that do not raise competition concerns or where the application of the thresholds to the transaction is uncertain.

Timing

ACCC decisions under the new regime are subject to the following statutory timeframes:

- Phase 1 assessment: an initial assessment period for a notified acquisition of 30 business days, with the possibility of an early determination after 15 days in simple cases. Before the end of Phase 1, the ACCC may determine that the acquisition may be put into effect (with / without conditions), or may decide that the acquisition will be subject to Phase 2 for an in-depth consideration of the competition issues
- Phase 2 in-depth assessment: a further 90 business days. Before the end of Phase 2, the ACCC may determine that that the acquisition may be put into effect (with / without conditions), or may determine that the acquisition may not be put into effect;
- Public benefit phase: an optional phase (on application of the parties) of 50 further business days, in which the ACCC will review the net public benefits of the proposed acquisition; and
- Australian Competition Tribunal review: upon application by a notifying party or third party (with leave of the Tribunal), a further 90 calendar days for a review by the Tribunal.

Process matters

- Notifications under the new regime must be made in writing, using the prescribed forms and be accompanied by payment of the required fee. In order to notify an acquisition, signed transaction documents or confirmation of the intent of all parties to enter into the arrangement, are required (different requirements exist for takeover bids and schemes of arrangement).
- Short and long versions of the notification form are available. The short form is more likely to be appropriate for straightforward acquisitions that are unlikely to raise competition concerns. The long form is more likely to be appropriate for acquisitions that are complex or may raise greater competition risk. More detailed guidance on which form to use in various circumstances is available from the ACCC.

FIRB and international regulators

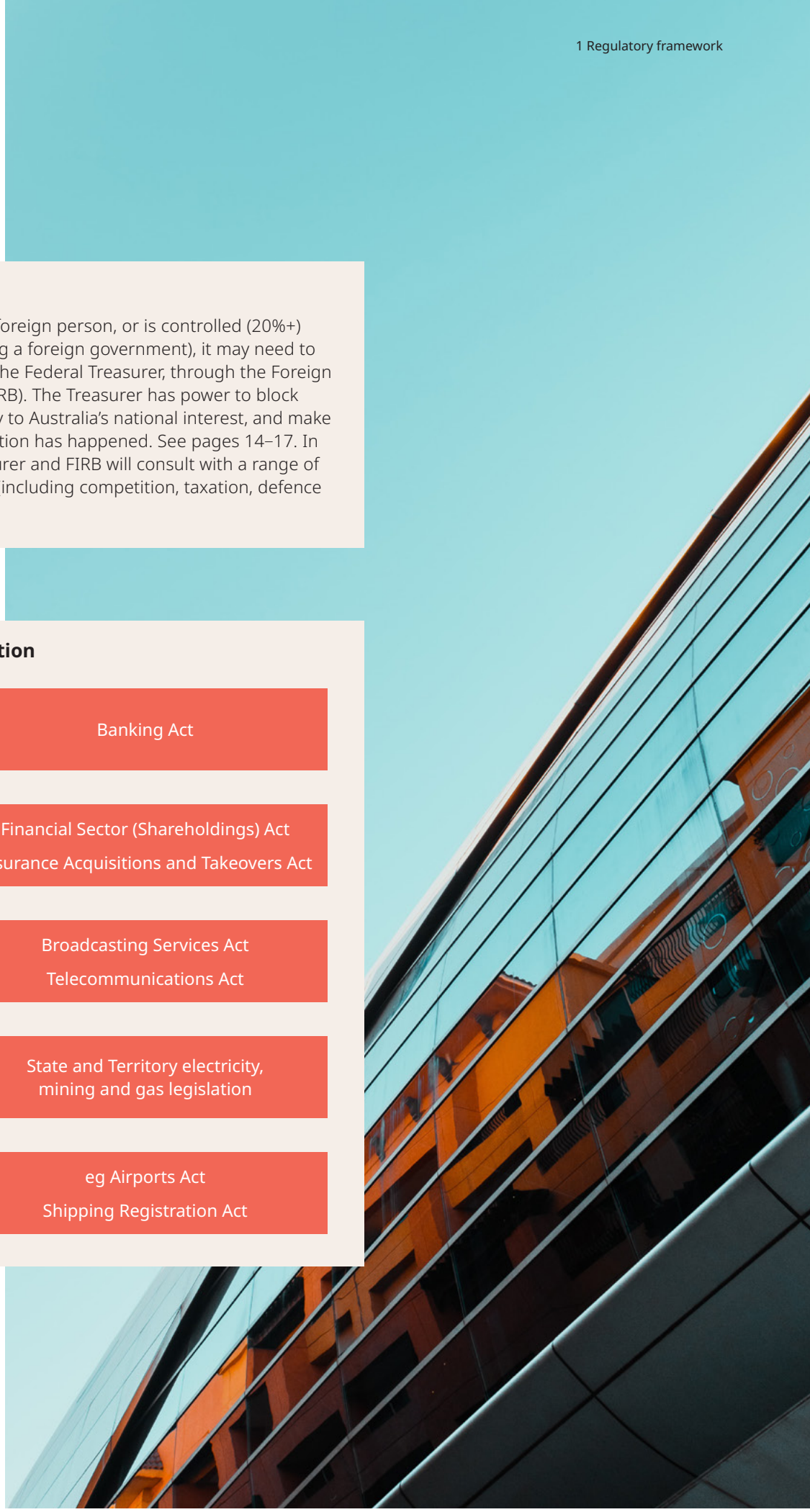
- Where an acquisition is to be notified to FIRB (see pages 11 and 14 – 17), the applicant will be required to answer a series of competition questions in its FIRB application. FIRB consults with the ACCC about the transaction's potential competitive effect in Australia, as part of its process in assessing the national interest. If a FIRB application is required, parties should consider whether to also engage directly with the ACCC.
- Additionally, where a transaction involves substantive review by other international competition regulators, the parties should also consider engaging with the ACCC if there is a connection to Australia.

Foreign investment

If the potential acquirer is a foreign person, or is controlled (20%+) by a foreign person (including a foreign government), it may need to obtain prior clearance from the Federal Treasurer, through the Foreign Investment Review Board (FIRB). The Treasurer has power to block acquisitions that are contrary to Australia's national interest, and make disposal orders if the acquisition has happened. See pages 14–17. In making a decision the Treasurer and FIRB will consult with a range of other government agencies (including competition, taxation, defence and security agencies).

Industry specific legislation

Banking	Banking Act
Financial Sector	Financial Sector (Shareholdings) Act Insurance Acquisitions and Takeovers Act
Media/ Telecommunications	Broadcasting Services Act Telecommunications Act
Energy & Resources	State and Territory electricity, mining and gas legislation
Other	eg Airports Act Shipping Registration Act



Acquisition thresholds

2

In planning a takeover strategy, there are a number of thresholds to consider

0%+	Potential for target to "trace" interests in target shares
5%+	Potential acquirer must publicly disclose level of shareholding
10%	Potential capital gains tax (CGT) trigger (foreign investors)
20%	Takeover laws triggered
>50%	Guaranteed ability to pass ordinary shareholder resolutions/remove directors
75%	Ability to pass special resolutions Shareholder approval threshold for scheme of arrangement
80%	CGT rollover relief for accepting shareholders in scrip bid
90%	Compulsory acquisition of minorities under a takeover Landholder stamp duty may apply
100%	Tax consolidation

Foreign investors also need to consider foreign investment approval thresholds. See page 15.

0%+ Tracing notices

A target company may issue "tracing notices" requiring holders of shares, and any person who is disclosed in response to a notice as having a relevant interest, to disclose anyone else who has a relevant interest in the shares. Some companies regularly issue these notices, particularly if they suspect someone is building up a stake.

5% Substantial shareholdings

A person has a "substantial holding" in an ASX listed company or trust if:

- that person (and associates) have "relevant interests" in voting shares or interests representing 5% or more of the total votes; or
- that person has made a takeover bid for voting shares or interests in the company or trust.

A person who has a substantial holding is required to notify the company or trust and ASX of its interests (in the prescribed form) within 2 business days after it becomes aware of the circumstances which give rise to its substantial holding. This notice must include details about the interest (including consideration paid) and be accompanied by copies of all documents which give rise to the substantial holding. The Panel's policy makes certain economic interests disclosable in a control transaction, eg cash settled equity derivatives.

A substantial shareholder is also obliged to notify the company or trust and ASX (in the prescribed form) of its interests within 2 business days after its voting power increases or decreases by 1% or more, or if the person ceases to have a substantial holding.

If a takeover bid is on foot, the period for giving substantial holding notices is reduced – notices in relation to all interests of the bidder and its associates in the target must be provided by 9.30am on the next trading day.

10% Non-resident CGT

Australia has CGT which applies to Australian residents and non-residents.

For non-residents, the general position is that CGT applies to gains on shares or units disposed of, but only if the company or unit trust is considered "land rich" and the non-resident (together with its "associates") has at least a 10% interest in the company or unit trust. A company or unit trust is land rich if more than 50% of its assets by market value, held directly or indirectly, are attributable to "taxable Australian real property", which includes certain mining rights. Besides CGT, income tax could apply to a gain on shares or units.

20% The takeover prohibition threshold

As noted on page 6, there is a general prohibition on acquiring shares if it would result in a person's voting power exceeding 20% unless the takeover laws are complied with.

>50% Ability to pass ordinary resolutions

A shareholder with more than 50% of the voting power of a company or trust can pass ordinary shareholder resolutions, including resolutions to remove directors (giving control of composition of the board) or to remove the trust manager. If there are no other major shareholders, effective control of a company or trust might be achieved with a lower shareholding.

It is almost invariably the case that once control has passed, a target board will agree to reconstitute itself in accordance with the bidder's wishes. However, if the target board resists, it is possible for the bidder to convene a meeting of shareholders and effect the necessary changes.

75% Ability to pass special resolutions/scheme of arrangement approval

A shareholder holding at least 75% of the voting power of a company or trust can pass special resolutions, including resolutions to amend the constitution.

For a scheme of arrangement to be approved by the court it must have been approved by a majority in number of shareholders present and voting (unless the court orders otherwise), and by 75% of the votes cast at the scheme meeting. The bidder and its associates usually cannot or would not vote.

80% CGT rollover relief

In the case of scrip bids, CGT rollover relief could be available to the selling shareholders if the bidder obtains 80% or more of the voting shares in the target. If the relief applies, a selling shareholder can defer paying tax on their capital gains until they sell the bidder scrip. Proportionate rollover relief is available if the bidder offers a combination of shares and cash as consideration. There are additional requirements which must be met in certain circumstances.

90% Compulsory acquisition

All shares subject to a takeover bid are able to be acquired compulsorily at the bid price if the bidder and its associates have:

- relevant interests in at least 90% by number of the shares in the bid class; and
- acquired 75% by number of the shares that the bidder offered to acquire under the bid (which effectively increases the 90% threshold only where the bidder and associates have more than 60% of the shares in the target before bidding).

It follows that a shareholder with a holding in the target in excess of 10% can block a bidder from acquiring 100% of the target shares.

A shareholder can apply to the court for an order that their securities not be acquired, but the court may only make such an order if it is satisfied that the consideration is not fair value for the securities.

Acquisitions of 90% or greater can trigger a liability to landholder stamp duty where the listed target holds interests in land located in certain Australian States and Territories. A lower threshold applies for acquisitions in unlisted Widely Held Entities.

100% Tax consolidation

If 100% ownership is achieved, the target may join a tax consolidated group. Tax consolidation provides certain benefits, including the pooling of losses, the removal of tax impediments to internal restructures, reduced compliance costs and possible benefits of resetting the tax cost bases of target assets.

Foreign investment regulation

3

The Australian Government's approach to foreign investment policy is to encourage foreign investment consistent with Australia's national interest

The *Foreign Acquisitions and Takeovers Act* (FATA) contains complex provisions regulating the acquisition directly or indirectly by foreign persons of, among other things, shares in Australian companies.

A transaction that is subject to FATA should not be implemented without clearance under FATA. The Treasurer has power under FATA to block foreign investment proposals that are considered contrary to Australia's national interest (see page 17).

An acquisition by a foreign person which results in foreign ownership exceeding the relevant threshold could expose the acquirer to a disposal order if the Treasurer considers that the acquisition is contrary to the national interest. Obtaining foreign investment clearance prior to making such an acquisition protects the acquirer against the possibility of such a disposal or other order. It is an offence, and civil penalties can be imposed, if a foreign person undertakes certain transactions without first obtaining the requisite clearance.

"The Ashurst team is able to handle complex issues and focus on key areas for investors."

Chambers 2024 Australia: Corporate/M&A

Notification of proposals

Notifications are made through FIRB, which will examine the proposed acquisition and make a recommendation to the Treasurer on whether the proposed acquisition should be approved under the Government's foreign investment policy.

A "foreign person" includes a foreign corporation and a foreign government (including a foreign government entity). It includes an Australian company in which a foreign person (and its associates) owns or otherwise controls 20% or more of the voting power or issued shares, or two or more foreign persons (and their associates) own or otherwise control 40% or more of the voting power or issued shares.

Financing arrangements with quasi-equity characteristics that could deliver influence or control over an Australian company (eg convertible notes) are also treated as a direct foreign investment.

The general rule is that a foreign person needs approval to acquire a "substantial interest" (20% or more) in an Australian corporation (or holding company of an Australian corporation) where the target is valued above certain thresholds. Lower thresholds may apply in the case of certain entities that own Australian land, carry on national security businesses or agribusinesses, media companies, and for acquisitions by foreign government investors ("direct interests"). The thresholds differ depending on the nature of the foreign person and the target's business – see table on page 15. The monetary thresholds are met when the total asset value for the entity or the total issued securities value for the entity at the acquisition price (whichever is higher) exceeds the relevant threshold amount.

2025 Monetary Thresholds

Investor	Action	Threshold – More Than[1]
All investors	Acquisition of a direct interest[2] in a national security business[3]	A$0
	Acquisition of 5% or more (on an associate inclusive basis) in an Australian media business	A$0
Private investors (ie excluding foreign government investors) from certain FTA partner countries that have the higher threshold[4]	Acquisition of a substantial interest (20% or more on an associate inclusive basis) in non-sensitive businesses	A$1,464 million
	Acquisition of a substantial interest (20% or more on an associate inclusive basis) in sensitive businesses[5]	A$339 million
	Acquisition of a direct interest in an agribusiness	For Chile, New Zealand and United States: A$1,464 million. Others: A$73 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity)
Private investors (ie excluding foreign government investors) not from the certain FTA partner countries that have the higher threshold	Acquisition of a substantial interest (20% or more on an associate inclusive basis) in businesses (sensitive or non-sensitive)	A$339 million
	Acquisition of a direct interest in an agribusiness	A$73 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person (with associates) in the entity
	Acquisition of a substantial interest (20% or more on an associate inclusive basis) in service businesses (non-sensitive)	For India, A$547 million
Foreign government investors	Acquisition of a direct interest in an Australian entity or business	A$0

Notes

1. The prescribed thresholds are current as at 1 January 2025. They are indexed annually on 1 January. Note also that this table does not set out the thresholds relating to acquisitions of interests in Australian land corporations and agricultural land corporations. Different (lower) thresholds may apply in relation to acquisitions of interests in Australian land corporations and agricultural land corporations. Indeed, an acquisition of any interest in an Australian land corporation may require prior clearance.
2. A "direct interest" is:
   a) an interest of 10% or more;
   b) an interest of 5% or more if the acquirer has a legal arrangement relating to the business of the target entity or business and the acquirer's business; or
   c) an interest of any percentage if the acquirer is in a position to influence or participate in central management or control (for example, a nominee director) or in a position to participate in or determine the policy of the entity or business
3. A business is a national security business if it is a business carried on wholly or partly within Australia, whether or not in anticipation of profit or gain, and it:
   - is a responsible entity (within the meaning of the *Security of Critical Infrastructure Act 2018*) for an asset; or
   - is an entity that is a direct interest holder in relation to a critical infrastructure asset (within the meaning of those terms in the *Security of Critical Infrastructure Act 2018*); or
   - is a carrier or nominated carriage service provider to which the *Telecommunications Act 1997* applies; or
   - develops, manufactures or supplies critical goods or critical technology that are, or are intended to be, for a military use, or an intelligence use, by defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or
   - provides, or intends to provide, critical services to defence and intelligence personnel, the defence force of another country, or a foreign intelligence agency; or
   - stores or has access to information that has a security classification; or
   - stores or maintains personal information of defence and intelligence personnel collected by the Australian Defence Force (ADF), the Department of Defence (Defence) or an agency in the National Intelligence Community (NIC) which, if accessed, could compromise Australia's national security; or
   - collects, as part of an arrangement with the ADF, Defence or an agency in the NIC, personal information on defence and intelligence personnel which, if disclosed, could compromise Australia's national security; or
   - stores, maintains or has access to personal information on defence and intelligence personnel that has been collected as part of an arrangement with the ADF, Defence or an agency within the NIC, which, if disclosed, could compromise Australia's national security.
4. The certain FTA partners are: Chile, China, Hong Kong, Japan, New Zealand, Peru, Singapore, the Republic of Korea, the United States of America, the United Kingdom, and any other countries not otherwise listed (other than Australia) for which the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), done at Santiago on 8 March 2018, is in force (i.e. Canada, Mexico, Malaysia and Vietnam). To be eligible for these thresholds, the immediate acquirer must be an entity formed in one of these countries. An investor acquiring through a subsidiary incorporated in another jurisdiction will be subject to the relevant thresholds of the subsidiary's jurisdiction.
5. Sensitive businesses include: media; telecommunications; transport; defence and military related industries and activities; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium; or the operation of nuclear facilities.

Foreign government investors

As the table on page 15 indicates, lower thresholds apply in relation to investments by foreign government investors.

Foreign government investors include entities in which a foreign government or separate government entity, alone or together with one or more associates, hold a substantial interest (that is, an interest of at least 20%) or foreign governments or separate government entities of more than one foreign country (or parts of more than one foreign country), together with any one or more associates, hold an aggregate substantial interest (that is, an interest of at least 40%). For example, state-owned enterprises and sovereign wealth funds will be foreign government investors.

A "direct interest" is:

- an interest of 10% or more;
- an interest of 5% or more if the acquirer has a legal arrangement relating to the business of the target entity or business and the acquirer's business; or
- an interest of any percentage if the acquirer is in a position to influence or participate in central management or control (for example, a nominee director) or in a position to participate in or determine the policy of the entity or business.

When considering whether a proposed investment by a foreign government investor might be contrary to the national interest, FIRB may look favourably at the existence of external partners or shareholders in the investment, the level of non-associated ownership interests, the governance arrangements for the investment, ongoing arrangements to protect Australian interests from non-commercial dealings and the listing of the target company on ASX or other recognised exchange. Proposals from foreign government investors operating on a fully arms' length and commercial basis are less likely to raise national interest concerns than proposals from those that do not.

Critical Infrastructure Centre

The Government has established a "dedicated centre" to assess critical electricity, gas, water and port assets and maintain an asset register that will take a consolidated view of infrastructure ownership in high risk sectors. The centre will consider both publicly and privately owned assets.

New Investment Engagement Service

Since 1 July 2021, foreign investors making significant new investments in Australia are able to liaise with the New Investment Engagement Services (NIES), which provides investors with the opportunity to seek objective information from the ATO, and obtain confidence in respect of and/or understand potential tax risks arising from their proposed investment structures prior to execution. The NIES is an investor-initiated service which aims to streamline the processes to deliver outcomes that meet transaction timelines, and the ATO will provide requested guidance to investors in a tailored report which will highlight any concerns about the transaction and steps to take to mitigate those concerns.

Review process

Applications are lodged electronically through the FIRB website. FIRB publishes guidelines on what it expects applications to include. FIRB will review the proposed acquisition and make a recommendation to the Treasurer on whether the proposed acquisition should be approved under the Government's foreign investment policy.

On receipt of the application (including payment of the prescribed fee – see below), the Treasurer initially has 30 days to decide whether to prohibit the acquisition on the basis that it would be contrary to the national interest. FIRB has an additional 10 day period to advise the applicant of its decision. The 30 day statutory period may be extended as follows:

a) the Treasurer may seek to extend the 30 day statutory period by up to a further 90 days by providing written notice to the applicant (on a confidential basis). The Treasurer may extend the decision period by written notice more than once;

b) the Treasurer may make an interim order to extend the time for the Treasurer's decision by up to a further 90 days. The existence of an interim order would be public as it is required to be published in the Commonwealth Gazette; or

c) FIRB may also ask the applicant to agree to an extension of time. This would normally occur on a confidential basis.

FIRB will normally consult all relevant government departments and agencies before making a recommendation to the Treasurer in relation to the application. FIRB may also seek the target entity's view on the proposed acquisition but will not ordinarily do so without first obtaining the applicant's permission.

The vast majority of applications are cleared. Clearance may be given on a conditional or unconditional basis. The Treasurer has imposed a range of conditions in controversial applications to ameliorate the perceived risks and allow the Treasurer to provide clearance.

The Treasurer may impose standard tax conditions on foreign investments that pose a risk to Australia's tax revenue which are designed to ensure foreign investors pay the right amount of tax here. Broadly, the conditions will require foreign investors to comply with Australian taxation law, Australian Taxation Office (ATO) requests to provide information in connection with the investment and advise FIRB regarding compliance with the conditions on an annual basis. Additional conditions may also be imposed where a significant tax risk is identified in a particular case. These may include requiring the investor to enter into advance pricing arrangements with or seek rulings from the ATO, or comply with other directions from the ATO that are specific to their circumstances.

The Treasurer may impose conditions additional to these tax related standard conditions where the Treasurer is satisfied that doing so is necessary to ensure that the investment is not contrary to Australia's national interest.

A breach of conditions may result in prosecution, fines and penalties and potentially divestment of the asset.

Fees

A fee is payable for foreign investment applications. Fees are payable at the time of application. Importantly, the timeframe for the Treasurer making a decision will not start until the correct fee has been paid. The fees vary depending on the nature of what is being acquired and, in some cases, its value. For acquisitions of interests in Australian corporations or businesses, fees start at A$14,100 for acquisitions of A$50 million or less, rising to a maximum of A$1,119,100 for acquisition of more than A$2 billion. Fees increase in tiers for every A$50 million of consideration and are capped at A$1,119,100 for a single action.

"We particularly value this team for their commercial acumen and problem-solving abilities, great project management and attention to detail in drafting."

Chambers Asia-Pacific 2025: Corporate / M&A – Australia

National interest considerations

The Government publishes foreign investment policy guidelines which set out certain factors that it considers in relation to applications including:

National security	The extent to which the investment affects Australia's ability to protect its strategic and security interests. The Government relies on advice from relevant national security agencies for assessments as to whether an investment raises national security issues.
Competition	Whether the investment affects diversity of ownership and competition within Australian or global industries.
Other Australian Government policies (including tax)	The extent to which the investment is consistent with the Government's policy objectives in relation to matters such as environmental impacts and critical technology, and the impact that the investment may have on Australian tax revenues.
Impact on the economy and the community	The impact of the investment on the general economy. The Government also considers the nature of the funding for the investment, Australian participation in the target enterprise following the investment, and the interests of employees, creditors and other stakeholders.
Character of the investor	The extent to which the foreign investor operates on a transparent commercial basis and is subject to adequate and transparent regulation and supervision.

The Government has also provided guidance on additional factors that it typically considers when assessing foreign investment applications involving agriculture (including agribusinesses) and, residential land by foreign government investors.

Bid planning

4

Advisory team

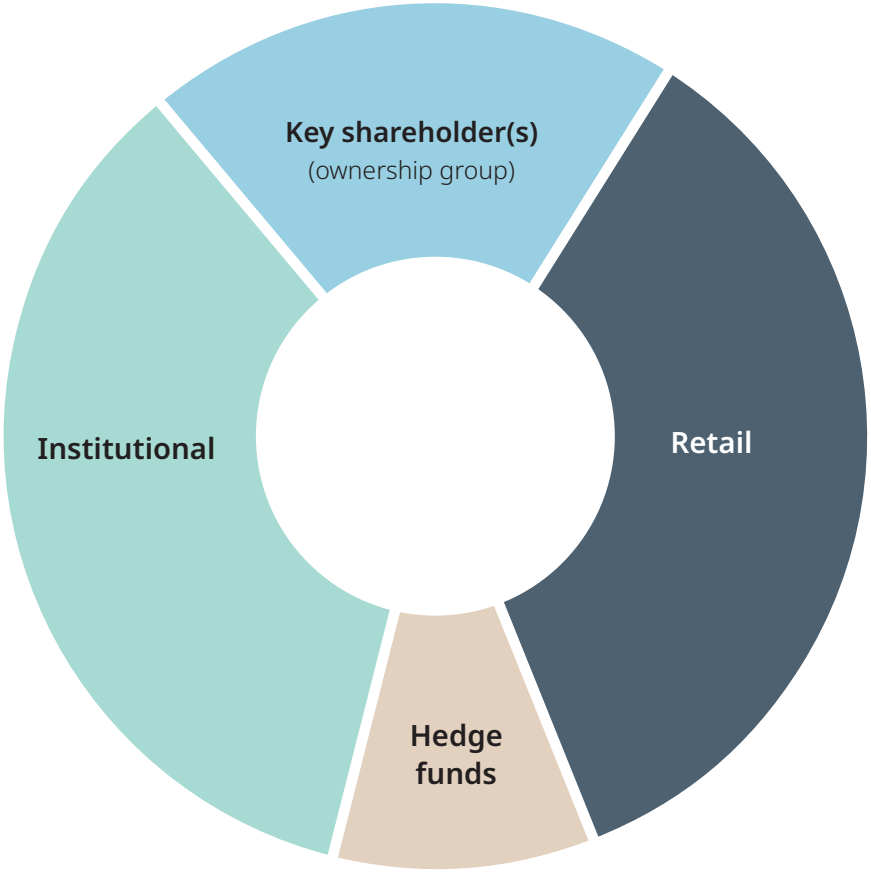
The selection and integration of the bid advisory team is an important factor in a successful bid strategy. Tax advice will generally be required, including in relation to stamp duty if the target has material land holdings.

Shareholder structure of target

The planning of a takeover bid involves careful consideration of the composition of the shareholder base of the target. The shareholder structure of a typical Australian listed company or trust is shown below. The composition of the register, which typically includes a significant level of "retail" ownership, will usually change during the course of the takeover bid as hedge funds and other institutional investors acquire shares in the target according to their assessment of the likelihood of the bid's success.

The different shareholder groups will have different investment objectives which can impact on the form of offer which is most likely to be successful (eg cash v shares – see page 25).

Potential acquirers have the right to inspect or make copies of the shareholder register of the target (provided the copies are for a legitimate purpose), ordinarily upon payment of a nominal fee.



Takeovers v schemes

As noted above, there are two main methods of obtaining control of an Australian listed company or trust – takeover bids and schemes. The decision as to which structure is appropriate will be very important to the outcome of the transaction. See pages 24 and 25 for further information on the relative advantages of takeovers and schemes.

Approaching the target

Formulating a suitable approach strategy generally involves balancing various tactical and legal considerations, including whether:

- the target would make a public announcement of the approach
- the approach would trigger the target company's obligations under the Panel's frustrating action policy (see pages 21 and 22)
- access to due diligence is essential.

A potential acquirer should be prepared with fall-back options if the target refuses to engage or seeks an alternative bidder.

Pre-bid devices

There are a number of strategic pre-bid devices which a bidder can use to assist in achieving its goal of control of the target. These include:

- Lock-up devices including exclusivity, break fees, no shop and no talk provisions (but subject to a fiduciary carveout for target directors). The Panel has indicated that a break fee of up to 1% of the bid value will generally be acceptable.
- Pre-bid stakes or commitments up to the 20% threshold.

The Panel generally does not object to the use of these pre-bid devices. However, care must be taken in drafting the pre-bid agreements so that the restrictions regarding minimum consideration, escalators and collateral benefits are not contravened. See page 30.

Tax structuring

The efficiency of tax outcomes must also be considered in planning a bid as well as legal and commercial considerations. The most efficient bid structure will need to take into account:

- tax efficiency of the acquisition funding structure
- the corporate structure for the acquisition (eg Australian bid vehicle)
- stamp duty and other transaction costs (including Australian goods and services tax (GST))
- tax impact for target shareholders (eg scrip v cash as consideration (CGT rollover relief)).

Ashurst has a specialist tax and stamp duty group which advises clients on all aspects of takeovers and M&A transactions.

Due diligence

Access to due diligence will depend to a large degree on whether the takeover is "hostile" or "friendly". In a friendly bid, the potential acquirer will seek the support of the target's directors including a recommendation to accept. The bidder will also normally seek the right to conduct due diligence on the target company before commencing its bid and have access to certain non-public information. Continuous disclosure rules allow listed entities to keep only limited categories of material information from public disclosure.

If a target allows due diligence access it will normally require a confidentiality deed to be executed which will typically contain a standstill agreement. In a hostile bid, the provision of information by the target company may be made a condition of the bid, although the Panel will generally not compel the target company to comply with the condition. Unlike some jurisdictions, there is no general requirement that multiple bidders have equal right of access to the target company's information.

The extent of due diligence will vary but can provide the bidder with significant additional protection in deciding the structure and terms of its bid. Care needs to be taken that any price sensitive information which is obtained during due diligence is able to be made generally available to all target shareholders in the bid documents.

Possible public sources of due diligence information

Public sources

A range of corporate information concerning the target is publicly available from ASIC, including:

- constitutional documents
- audited financial statements
- annual reports (including information on capital structure and options granted)
- names of the company office holders.

Listed companies/trusts

If the target is a listed company or trust, additional information is available from ASX, including:

- substantial holding notices, giving details of the interests of persons with voting power of 5% or more
- the names of the 20 largest shareholders/unitholders
- target announcements to ASX (listed companies and trusts are required to provide all material price sensitive information known to the company or trust, subject to limited exceptions).

Company or trust registers

The bidder can inspect and take copies (in some cases, on payment of a fee) of registers that the target must maintain, provided this is for a legitimate purpose.

Registers give details of:

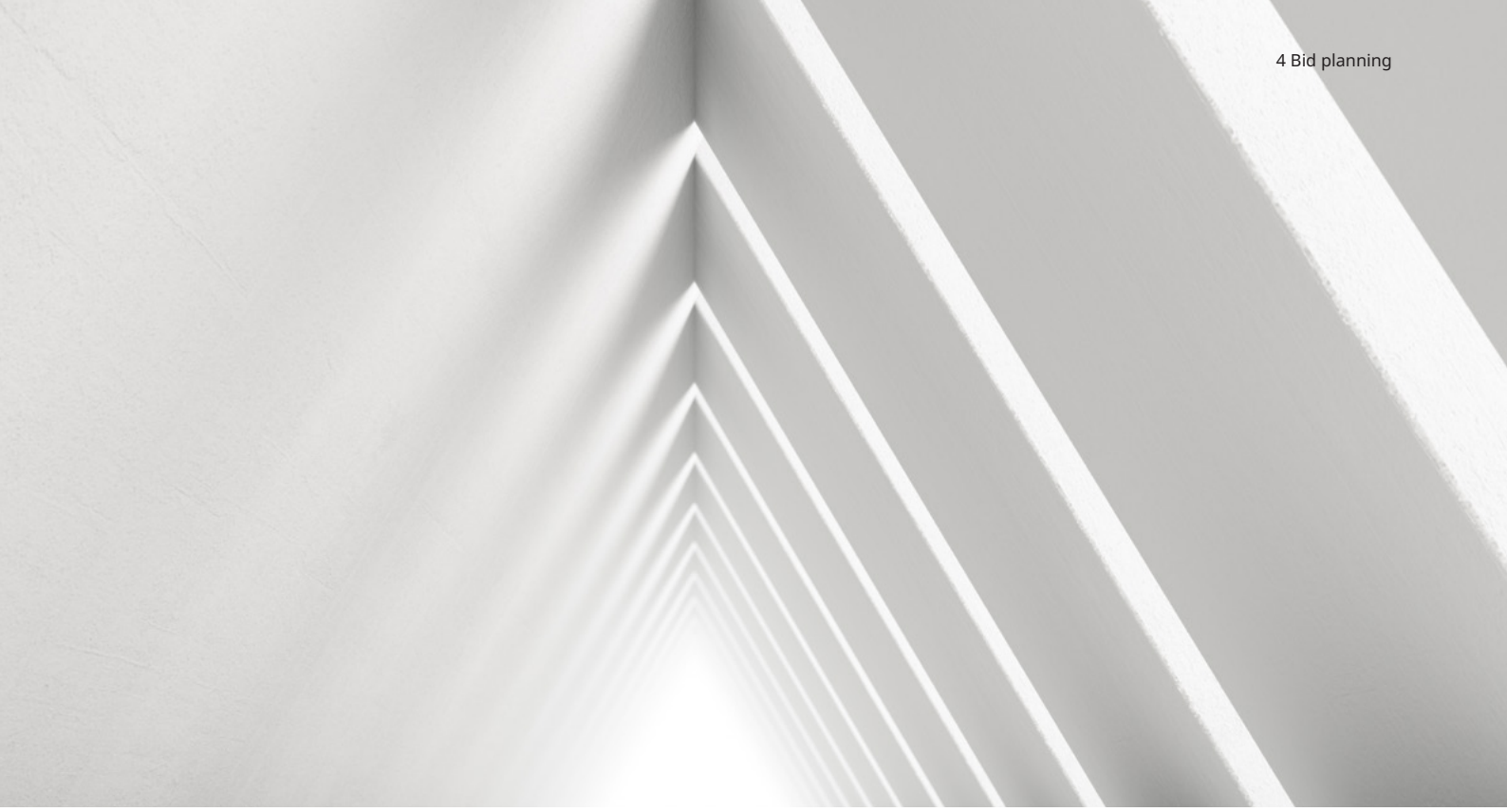
- members (registered holders, rather than beneficial owners)
- holders of options over unissued shares
- debenture holders
- tracing notice information (limited information on beneficial owners).

Regulatory approvals

A potential acquirer should consider whether its offer needs to be conditional on receiving particular regulatory approvals (see pages 9, 10 and 11). A potential acquirer should also consider a pro-active approach to relevant regulators, particularly FIRB.

"The firm has proactive and skillful management of the client and a strong understanding of the key commercial issues and risks for the client."

Chambers Asia-Pacific 2025: Corporate / M&A – Australia



Target response to an approach

Takeover bids – target's statement

For a target company or trust, the primary mode of response to its shareholders is the target's statement which is required to be sent to all shareholders under the takeover laws. There are a number of formal procedures to follow (see page 27 for further information). The key disclosure requirement is that target shareholders must have all information that they would reasonably require to make an informed assessment whether to accept the offer under the bid. It is common practice also to include an independent expert's report that states whether the offer is fair and reasonable. This is legally required where the bidder's voting power in the target is 30% or more, or the bidder and target have a common director.

The target board's response to a bid is subject to the following:

- director's duties under Australian company law
- the Panel's power to make a declaration of "unacceptable circumstances"
- the ASX Listing Rules (in the case of listed targets).

These requirements can preclude a target from using poison pills and other defensive tactics. For example, general company law requirements and the ASX Listing Rules usually preclude the issue of securities for a period after the bid has been announced.

Defensive measures

Nevertheless, there are a range of measures available to a target company or trust in response to a takeover bid.

Typical defensive measures include:

- seek an alternative bidder
- seek support of major institutional shareholders
- release any unannounced positive information
- commission an independent expert's report as to the value of the target company's securities
- approach the regulatory authorities (such as the Panel, ACCC and FIRB).

Rejection by target directors

Where target directors publicly reject a bid on the basis that it does not represent fair value, the reasons for that statement must be disclosed either at the time the statement is made, or as soon as reasonably practical after that time, and certainly in the target's statement.

Frustrating action – takeover bids

Frustrating action by the target such as action (that triggers a bid condition in a commercially significant way) can give rise to "unacceptable circumstances" that can be challenged before the Panel. Whether action likely to frustrate a bid is "unacceptable" depends on the particular facts and the Panel will take into account considerations surrounding the frustrating action, for example:

- an action triggering a condition not commercially critical to the bid is unlikely to give rise to unacceptable circumstances
- an action that triggers a "condition" in a potential bid may not give rise to unacceptable circumstances if the bidder indicated that it would proceed only if the bid was recommended and the directors have rejected the approach
- how long the bid has been open and its likelihood of success (or, if a potential bid, of proceeding)
- an action that was undertaken by the target in the ordinary course of its business generally won't give rise to unacceptable circumstances (relevant factors include the target's business plans and the size and nature of the transaction).

The frustrating action policy does not apply to schemes, but directors of the target (whether a takeover bid or scheme is proposed) will be subject to their general fiduciary duties to act in the best interests of the company, and the company will be subject to any agreement made with the bidder to implement the scheme.

A target company or trust that wishes to take a frustrating action can avoid an unacceptable circumstances declaration by seeking target shareholder approval for the action.

The target may also be able to avoid a declaration in the case of a potential bid if the potential bidder fails to formally proceed with the bid within a reasonable time after the potential bidder becomes aware of the target's intention to take the action.

Schemes

In a scheme the target company provides information to its shareholders in a scheme booklet. The scheme booklet must disclose all information that is material to the making of a decision by shareholders on whether to agree to the proposed scheme.

The acquirer will contribute a section of the scheme booklet relating to its intentions for the merged group and, if it is offering its own shares, provide prospectus type information about the merged group.

Acquisition structure

5

Takeovers v schemes

Under Australian law, there are two main methods of obtaining control of a listed company or trust – takeover bids and schemes.

Takeover bids

The bid may be off-market (involving written offers in the same terms to all shareholders) or on-market (where the bidder's broker stands in the market for a minimum period of one month and offers to buy all securities offered at the bid price). On-market bids are relatively rare, because they must be for cash and be unconditional.

Schemes

A scheme of arrangement is a court approved arrangement between the target company and its shareholders for the transfer or cancellation of their shares in exchange for cash and/or shares from the acquirer. The arrangement must be approved at a meeting of target shareholders. An analogous process can be used for listed trusts.

A scheme of arrangement needs the support and co-operation of the target, and is therefore not normally an appropriate structure for a hostile bid.

Schemes have been frequently used as an alternative to takeovers in Australia, particularly in recent years where they have been the structure chosen for some of the largest and most complex M&A transactions. The courts and ASIC have no objection to this approach provided that target shareholders receive equivalent protection and disclosure to that which they would receive under a takeover bid.

Key differences between takeovers and schemes

In essence, the main advantages of a scheme over a takeover bid include:

- more flexibility in structuring the acquisition or merger
- the certainty of obtaining 100% of shares on a defined date, provided the requisite shareholder approval is obtained and the court approves the scheme.

However, a scheme gives the target control of the process and, unlike a takeover bid, does not allow the potential acquirer to adjust the terms of the offer quickly (for example, by increasing the bid if a competing bid emerges) once the court has approved the scheme booklet for dispatch to shareholders, although it can announce it intends to seek court approval to do so.

An acquirer should carefully consider the choice between a takeover and a scheme when planning its acquisition strategy.

"We have no preference for acquisitions being conducted either as schemes of arrangement or takeovers, as long as shareholders are not deprived of the benefits or protections offered by Ch 6."

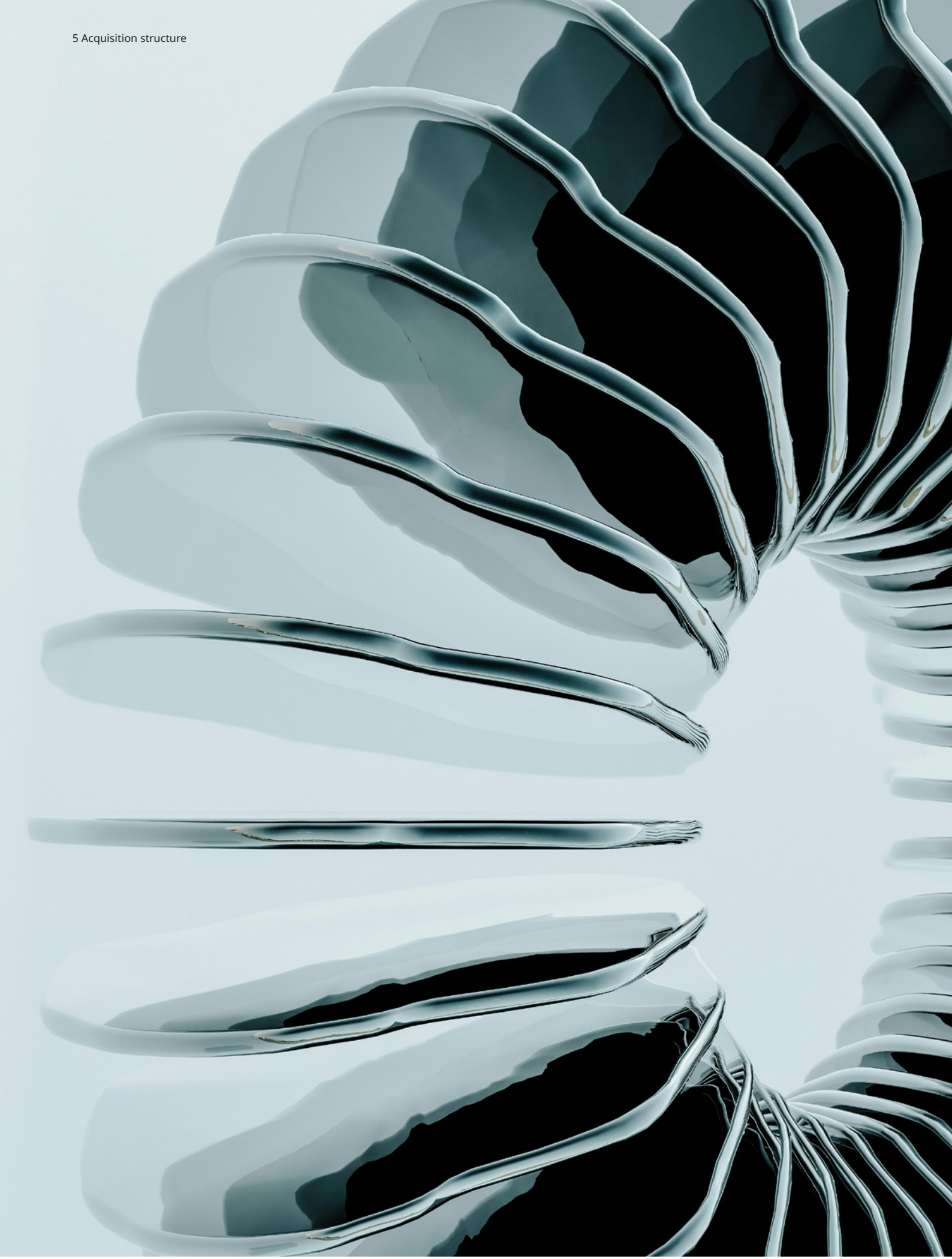
ASIC – Regulatory Guide 60

The following table summarises different features and advantages of the two approaches:

Issue	Scheme[1]	Takeover
Control of process	The target controls the process subject to the terms of an implementation agreement.	The bidder has, and retains, the initiative at all stages.
Target co-operation	Essential.	Not essential.
Court approval	First, to order the scheme meetings. Later, to approve the scheme. Note: Court hearings provide a forum for dissentients.	Not required.
Certainty of outcome	All or nothing.	Depends on level of acceptances.
Shareholder approval threshold	Lower threshold – passed by a majority in number of shareholders present and voting, and by 75% of the votes cast.[2]	Compulsory acquisition if "relevant interest" in 90% of each class of security, having acquired 75% of securities bid for.
Vulnerability to blocking stake	Generally medium (increases as bidder's stake diminishes eligible voting pool).	With 90% condition – high. (A >10% shareholder can block the transaction.) With 50% condition – low.
Flexibility	Flexible – can include reduction/ return of capital, demerger, and asset acquisitions.	Flexibility to increase offer price and waive/"modify" conditions.
Timing	Varies – unlikely to be less than 3 months – but "closing date" more certain.	Varies – unlikely to be less than 3 months.
Mix and match consideration	Yes – flexible.	Difficult – may require issue of a note (for which no rollover relief is available).

Notes

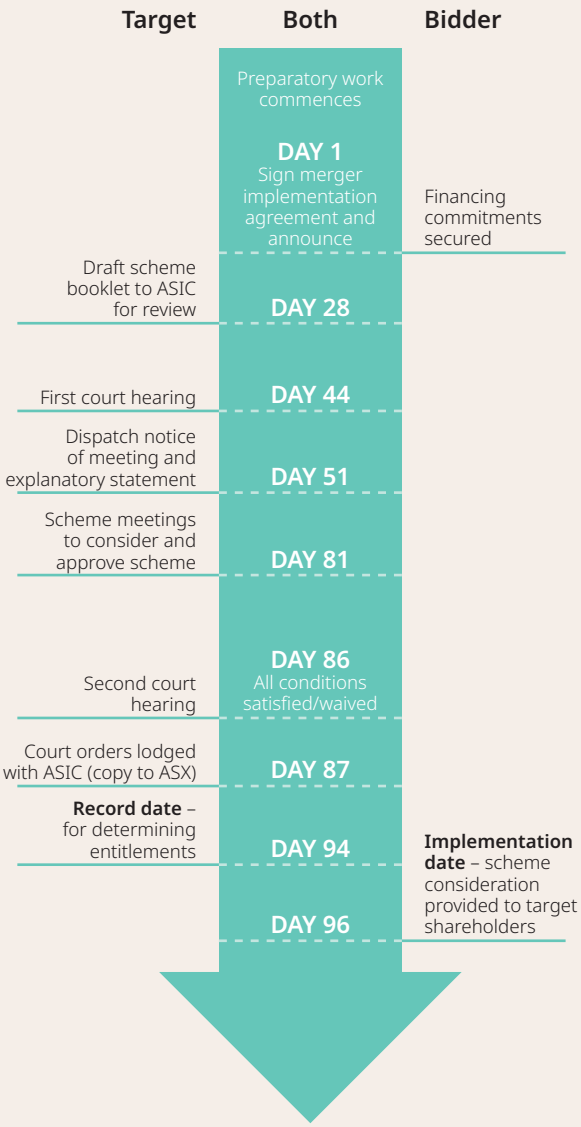
1. An analogous procedure can be used for a listed trust, or for a stapled group comprising a listed company and trust.
2. The "majority in number" requirement may be waived by the court (only likely if there is evidence of share splitting).



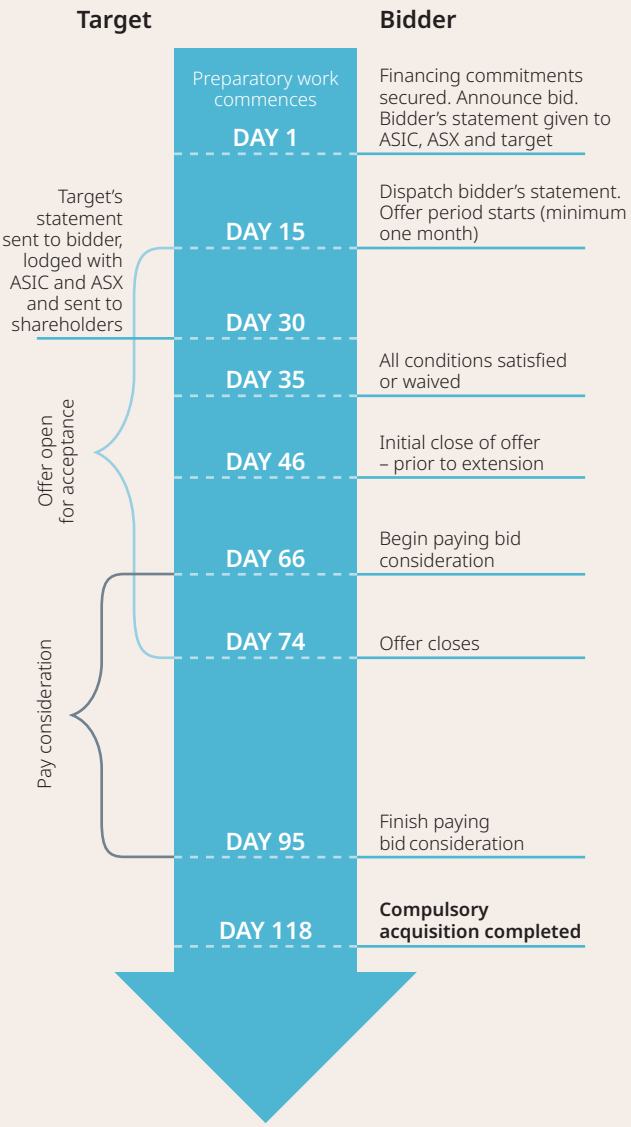
Acquisition timetable

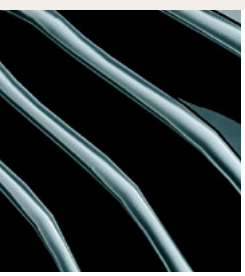
Indicative timetables for an off-market takeover bid and a scheme of arrangement are set out below. These will vary depending on the particular transaction including the time required to obtain any necessary regulatory and FIRB approvals.

Schemes of arrangement [1, 2]



Off-market takeover[2]





Notes

1. An analogous procedure can be used for a listed trust, or for a stapled group comprising a listed company and trust.
2. Actual timing will vary from transaction to transaction. The off-market takeover timetable shown here assumes the initial offer period is required to be extended to secure sufficient acceptances which is commonly the case.

Bid consideration

The consideration offered to target shareholders under an off-market takeover or scheme may be structured to include scrip consideration, cash consideration, or a combination of both

Cash v shares

The consideration for the target's shares can be in the form of cash, shares, other consideration or a combination of these to give shareholders a choice.

Potential acquirers can either fix the cash and share components of the offer or allow variable components subject to maximum or minimum amounts of cash and/or shares provided all shareholders can participate. While this is possible under a scheme, the technical constraints of Australia's takeover laws make mix and match difficult, though not impossible, to implement in takeover bids.

If the potential acquirer offers securities in itself as consideration, the bidder's statement or scheme booklet must include all information that would be required in a prospectus relating to the securities. A separate prospectus is not required to be issued. If the securities offered as consideration have been quoted continuously on ASX for more than 12 months, the disclosure requirements may be less onerous.

If the bid consideration comprises foreign currency, additional disclosure regarding management of any exchange rate risks may also be needed.

Bidder issues

The potential acquirer's funding structure will usually be driven primarily by considerations of cost of capital, debt ratios and gearing and the value at which its shares would be issued under the bid. The acquirer will also be conscious of its existing capital structure, the impact of the form of offer consideration used and tax efficiencies with the structuring.

Shareholder issues

The tax cost to shareholders in accepting a bid needs careful consideration and structuring. Cash consideration could be tax free to certain shareholders (eg non residents) and certain shareholders may benefit from the CGT discount on capital gains (eg, resident individuals and complying superannuation entities).

In the case of scrip bids, CGT rollover relief could be available to the selling shareholders if the bidder acquires 80% or more of the voting shares in the target. If the relief applies, a selling shareholder incurs no CGT on acceptance of the bid and defers paying CGT on any gain until it sells the bidder scrip. Proportionate rollover relief is available if the bidder offers a combination of shares and cash as consideration.

Cash is usually compelling in takeover bids as it allows target shareholders to determine value quickly and simply. If securities are offered, this provides accepting shareholders with exposure to the upside in the share price of the bidder (but also exposure to any downside due to market fluctuations).

In some cases, the bidder may argue share consideration represents greater value than cash only. It also makes it unnecessary for accepting shareholders to seek out reinvestment opportunities. However, a target may wish to undertake due diligence on the bidder if scrip is to be offered.

Financing

A bidder that publicly proposes to make a bid commits an offence (subject to limited defences) if it is reckless as to whether it will be able to perform its obligations on acceptance of a substantial proportion of its offer. There is no explicit requirement to have committed funding.

However, the Panel has issued a Guidance Note confirming the principle that a bidder must at all relevant times have a reasonable basis to expect that it will have sufficient funding arrangements in place to satisfy full acceptances under its bid. Note that the takeover offer must be made to all shareholders in the target company. Timely disclosure of funding arrangements by bidders is required, including, where appropriate, disclosure to establish that its funder has necessary financial resources.

In a scheme, an acquirer is required to place the scheme funds with the target company in a bank account in good time for implementation of the scheme (that is, closing).

Other key regulatory requirements for takeovers

Australia's regulatory framework for takeovers and M&A is designed to ensure that change of control transactions take place in an efficient, competitive and informed market, and as far as practicable target shareholders all have a reasonable and equal opportunity to participate in any benefits accruing to them under the transaction.

Restrictions[1]	
Minimum consideration	Pre-bid stake-building fixes a minimum bid price. On a bid, the consideration offered (whether cash or scrip) must be equal to, or greater than, the highest value paid for securities in the bid class by the bidder or its associates during the 4 months preceding the dispatch of offers.
Variation of offers	During the offer period, a bidder can increase or add a new form of consideration, subject to both of the following: • the bidder must pay any increase in consideration in an off-market bid to all selling shareholders, including those who accepted the offer before the increase • if the bidder offers a new form of consideration, or makes an improvement to one form of consideration and does not make an equal improvement to another, all selling shareholders can choose again which consideration they wish to receive. The bidder must pay the improved consideration immediately.
Truth in takeovers	ASIC will require a bidder (or target or substantial shareholder) to abide by statements which it makes concerning the takeover during the course of a bid. This policy is generally supported by the Panel. A bidder who announces that an offer is "final" or will not be extended, may be held to those statements (ie not permitted to increase or extend its offer) unless the statement contains a clear qualification.
Collateral benefits outside the bid	During the offer period, the bidder and its associates must not give a benefit to a target shareholder (or their associates) which is likely to induce acceptance of the bid or disposal of shares, unless the benefit is offered to all target shareholders.
Escalators	If a bidder buys an initial stake from a target company shareholder in the 6 months before it makes a bid, it cannot do so on terms which require a subsequent upward price adjustment, if it is determined by reference to the bid price. However, it is generally possible to make the benefit of a price increase available through appropriately drafted option arrangements.

Note

1. Technically, these restrictions do not apply to schemes, but ASIC may expect observance of them in principle.

Offer period	
Announcement	Offer must be dispatched within 2 months of announcement.
Minimum and maximum	Offers must be open for a minimum of 1 month and can be extended any number of times, but the total offer period cannot be more than 12 months. (If an offer is extended by more than 1 month while it is conditional, accepting shareholders must be permitted to withdraw their acceptances.)
Voluntary extensions	A conditional bid can be extended, but the bidder must do so no later than a specified date which is 1–2 weeks before the end of the offer period. A bid which is still conditional after that date cannot be extended (apart from statutory extensions – see below), unless a competing bidder emerges or takes certain other steps. An unconditional bid can be extended at any time (provided that the bidder has not made a statement to the effect that the bid will not be extended).
Statutory extensions	If, during the last week of a bid, the bidder improves the consideration, or its voting power in the target increases to more than 50%, the offer period is automatically extended so it ends 14 days after that event occurs.

Bid documentation	
Bidder's statement	In a takeover, the bidder must prepare a bidder's statement which includes prescribed information including, among other things, the bidder's intentions regarding continuation of the target's business and any other material information that is known to the bidder. Bids involving share consideration will need to include "prospectus" level information about the securities being provided. A supplementary bidder's statement is required to update/correct any material changes/omissions.
Target's statement	In a takeover, the target must prepare a target's statement as described on page 21. A supplementary target's statement is required to update/correct any material changes/omissions.

"Diligent, pragmatic, commercial, accessible, responsive."

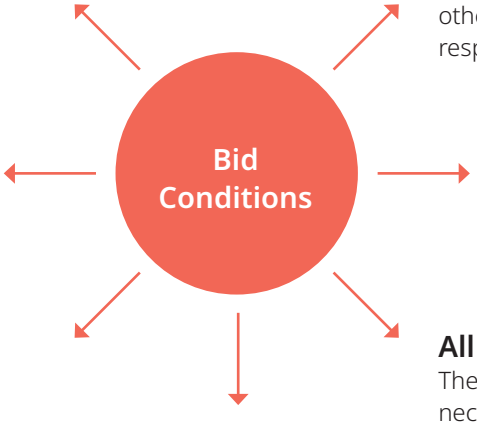
Legal 500 2024 Australia: Corporate and M&A

Bid conditions and strategic devices

Bid conditions

Off-market takeover bids can be made subject to the satisfaction of various preconditions.

Typical conditions include:



Minimum acceptances
The bidder receives acceptances in relation to more than a specified percentage of shares (usually either 50% or 90%).

No material adverse change
No material adverse change occurs, is announced or otherwise becomes public in respect of the target.

No regulatory action
No regulatory action is taken or threatened which might prevent acceptance of the offer or require disposal by the bidder.

FIRB approval
(As a condition precedent) a foreign bidder receives clearance from the Australian Treasurer through FIRB.

No acquisitions or disposals
There are no material acquisitions or disposals by the target or other corporate actions.

All necessary approvals
The bidder receives all other necessary regulatory approvals.

Market movement
The relevant ASX index does not fall more than 10%. This percentage will vary according to prevailing market circumstances.

However, it is not possible to include certain conditions, including maximum acceptance conditions, discriminatory conditions or conditions dependent on the opinion of the bidder or its associates. It is not possible to cap acceptances under a takeover offer to less than 100% without offering to acquire the same proportion from each shareholder (a proportional takeover offer), which may result in less acceptances than the notional cap. The conditions of a takeover offer can be waived by a public notice no later than 1 week before the end of the offer period. For a condition that certain "prescribed occurrences" not occur (eg insolvency of the target) the time for waiving the condition is extended until 3 business days after the close of the offer period. If the conditions are not removed, waived or satisfied at the end of the offer period, all acceptances and contracts resulting from acceptances are void.

Typically shareholders will not accept a conditional offer until the last week of the offer period when the status of the conditions is known. The bidder will normally wish to remove as many conditions as possible before the last week to encourage shareholders to accept. The bidder will normally wish to avoid the possibility of a failure to fulfil a minor condition making all acceptances void.

Accordingly, in most successful takeover offers, the conditions will be waived before the start of the last week of the offer period. This is commonly referred to as "declaring the offer unconditional". If the bidder does this, it must take all acceptances regardless of the original conditions of the offer.

Strategic devices

Potential acquirers may also consider using the following strategic devices to encourage target shareholders to accept the offer:

- **"Virtual variations"** to encourage target shareholders to accept by promising to remove a condition to the bid or to increase the bid price if a certain level of acceptances is achieved.
- **Acceptance facilities** to enable shareholders to indicate their support for a conditional bid by lodging acceptances with an agent before the bid becomes unconditional. Such acceptance facilities are generally directed at institutional investors.
- **No extension statements/closing phase tactics.**

As mentioned on page 30, ASIC applies a "truth in takeovers" policy to any statements by the bidder that the offer price is final or the bid period will not be extended. It will expect the bidder to abide by such statements, unless the statement contains a clear qualification.

Key contacts

John Brewster
Practice Head, Corporate Transactions
Australia
T +61 3 9679 3370
john.brewster@ashurst.com

Neil Pathak
Co-Head of M&A
Australia
T +61 3 9679 3359
neil.pathak@ashurst.com

Tony Damian
Co-Head of M&A
Australia
T +61 2 9258 6775
tony.damian@ashurst.com

Ashurst

ashurst.com

Design Ref: R016046 Nov 25