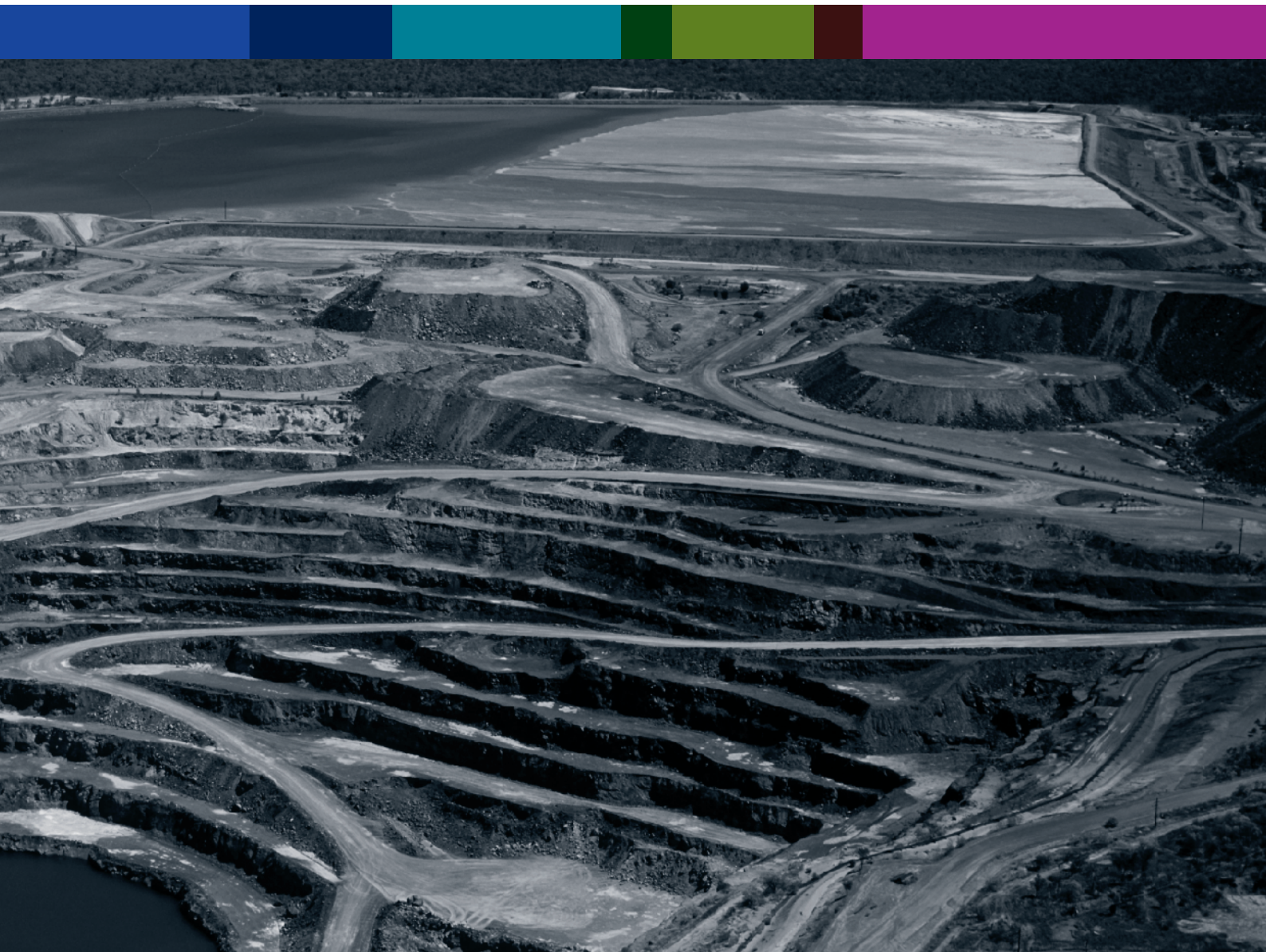


# Uranium in Australia

A guide for foreign investors and purchasers

April 2013



# Introduction

This is an exciting time for companies with an interest in Australian uranium (whether as an investor or purchaser). Australia, which has the largest known uranium resource endowment in the world (estimated at approximately 31% of global resources<sup>1</sup>) and does not use uranium domestically, has recently relaxed its attitude toward uranium exploration, mining and exports. Also, Australia offers a stable investment environment with comparatively high corporate governance standards and adheres to the rule of law.

The purpose of this guide is to inform interested investors and purchasers from outside Australia about the Australian uranium sector so that they can be best positioned to take advantage of Australia's endowment.

This guide is divided into two key sections:

## PART A – Industry overview and regulation

This section illustrates where uranium is found in Australia, who the key players are, how the industry is regulated, and the potential for exports.

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## PART B – Investment in Australia's uranium industry

This section provides an overview of the key considerations for a potential acquirer of Australian uranium assets (either at the share level or asset level) under Australia's takeovers regulation and foreign investment regime.

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<sup>1</sup> Economics of the Australian Uranium Industry: An update, September 2011, Australian Uranium Association

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# Part A

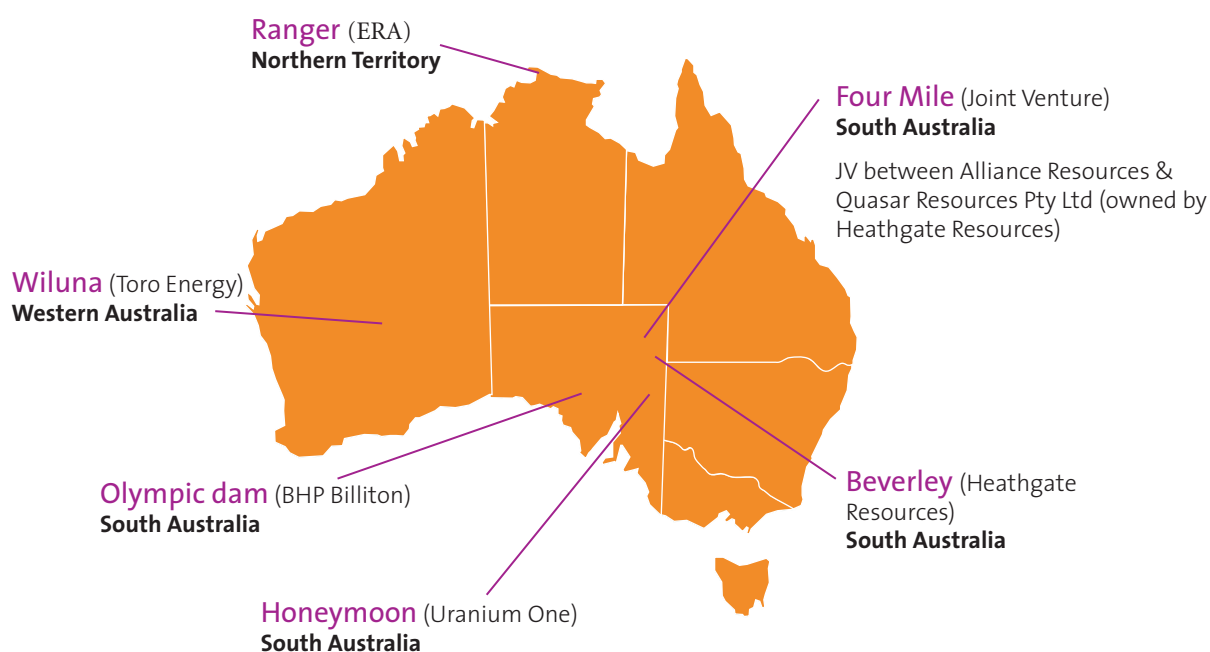
Industry overview and regulation

## 1 Snapshot of the Australian uranium industry



## Snapshot of the Australian uranium industry

Although uranium has been mined in Australia for almost 60 years, Australia's production comes from just four operating mines (Olympic Dam, Beverley and Honeymoon in South Australia and the Ranger mine in the Northern Territory). Furthermore, several other projects are being developed concurrently across South Australia (such as the Four Mile deposit), Western Australia (such as the Lake Way and Centipede deposits at Wiluna) and the Northern Territory. The locations of Australia's six development-approved uranium mines are shown on the map below.

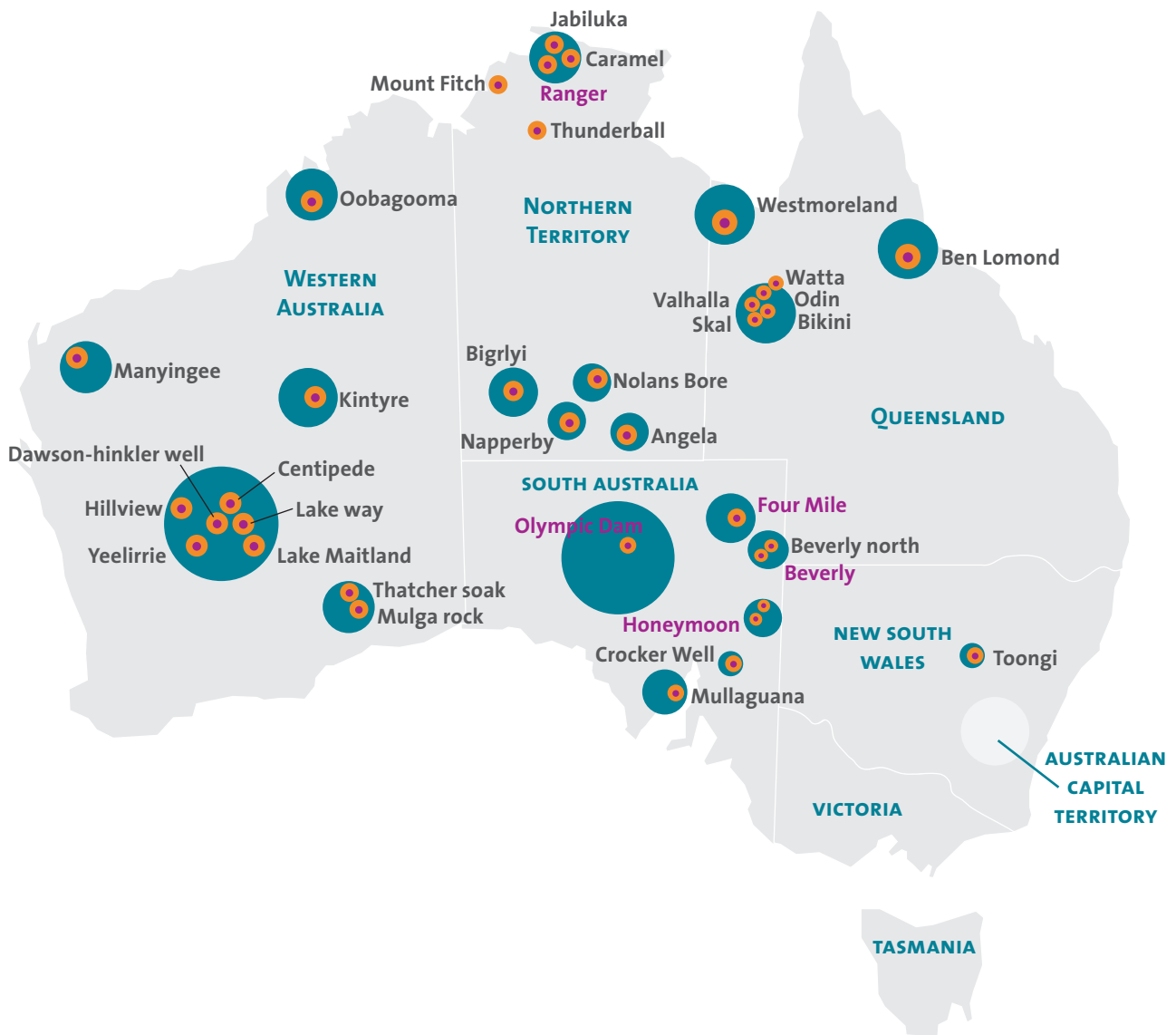


State/Territory	RAR U <sub>3</sub> O <sub>8</sub> Recoverable (tonnes)	Inferred U <sub>3</sub> O <sub>8</sub> Recoverable (tonnes)	Total Resources (tonnes)	% Total Resources
South Australia (SA)	940,200	431,100	1,361,300	78%
Northern Territory (NT)	164,700	59,000	223,700	13%
Western Australia (WA)	55,300	39,000	94,300	6%
Queensland (Qld)	36,200	20,300	56,500	3%
New South Wales (NSW)	Nil	Nil	Nil	0%
Victoria (Vic)	Nil	Nil	Nil	0%
Tasmania (Tas)	Nil	Nil	Nil	0%
<b>Total</b>	<b>1,196,400</b>	<b>549,400</b>	<b>1,735,800</b>	<b>100%</b>

Source: Geoscience Australia, "Australia's Identified Mineral Resources 2012", (Commonwealth of Australia, 2012)

## Where are Australia's uranium deposits?

Uranium deposits are found across the entire Australian continent, but particularly in South Australia, Western Australia, and the Northern Territory. The map below illustrates Australia's major uranium mines and deposits.



# Who's who of the Australian uranium industry

Australia's publicly listed uranium producers and explorers that have resources of at least two million tonnes of uranium ore and a market capitalisation of at least A\$10 million as at 2 April 2013 (excluding diversified miners BHP Billiton and Rio Tinto) are shown in the table below.

	Company	Comment
Production	 <b>Paladin Energy Limited (ASX: PDN)</b>	Flagship asset is the Langer Heinrich Mine in Namibia, but also has assets in Valhalla/Skal (Qld) (through its interest in Summit Resources Ltd), Bigirlyi (41.71%) (NT), Angela/Pamela (50%) (NT), Manyingee (WA), and Oobagooma (WA). Market cap – \$837m Uranium ore reserves – 120.8MT / resources – 351.1MT
	 <b>ERA Energy Resources of Australia Limited (ASX: ERA)</b>	ERA is 68.4% owned by Rio Tinto. Its assets are the operating Ranger mine and the nearby Jabiluka mine in Northern Territory. Market cap – \$676m Uranium ore reserves – 13.5MT / resources – 182.6MT
Project commissioning commenced	 <b>Alliance Resources Limited (ASX: AGS)</b>	Holds a 25% interest in the development-approved Four Mile deposit in South Australia. Market cap – \$48m Uranium ore reserves – Nil / resources – 9.8MT
Development approval received	 <b>Toro Energy Limited (ASX: TOE)</b>	Flagship asset is the Wiluna uranium project in Western Australia. Toro has received approval from the Commonwealth and Western Australian Governments to mine the Centipede and Lake Way uranium deposits, south of Wiluna and is seeking project funding. Market cap – \$135m Uranium ore reserves – Nil / resources – 55.2MT
Project funding secured	 <b>Peninsula Energy Limited (ASX: PEN)</b>	<i>No Australian uranium assets.</i> Peninsula primarily holds interests in the Lance uranium project located in Wyoming, USA and the Karoo uranium/molybdenum project in South Africa. Market cap – \$86m Uranium ore reserves – Nil / resources – 48.1MT

Exploration  
only

Company

Comment



**Summit Resources  
Limited (ASX: SMM)**

82.08% owned by Paladin Energy Ltd. Focused on Mt Isa region (Qld) and holds 50% interest in Valhalla/Skal.

Market cap – \$320m

Uranium ore reserves – Nil / resources – 126.8MT



**Deep Yellow Limited  
(ASX: DYL)**

Focus is on deposits in Namibia (Omahola, Tubas-Tubas and Assusinanis), but also holds assets in Napperby (NT) and interests in various mixed ore deposits in Queensland. Paladin holds a 19.9% shareholding in Deep Yellow.

Market cap – \$72m

Uranium ore reserves – Nil / resources – 274.7MT



**BANNERMAN**

**Bannerman  
Resources Limited  
(ASX: BMN)**

*No Australian uranium assets.* Flagship asset is the Etango Uranium Project in Namibia. Bannerman was approached in 2011 by Chinese entity Hanlong Mining Investments Pty Ltd in regard to potential acquisition but rejected the offer after several rounds of negotiation.

Market cap – \$24m

Uranium ore reserves – 279.6MT / resources – 500.8MT



**Aura Energy Limited  
(ASX: AEE)**

Holds assets in Wondinong, Gunland and Porcupine Well (WA), as well as Sweden, Mauritania and Niger.

Market cap – \$18m

Uranium ore reserves – Nil / resources – 2,350MT



**Uranex Limited  
(ASX: UNX)**

Flagship asset is the Mkuju River Project in Tanzania. Uranex also has assets in Thatcher Soak (WA), Bremer Basin (WA) and Alligator Rivers (NT), all of which Uranex is actively seeking to divest (or find a joint venture partner to develop those assets).

Market cap – \$14m

Uranium ore reserves – Nil / Uranium ore resources – 120.5MT

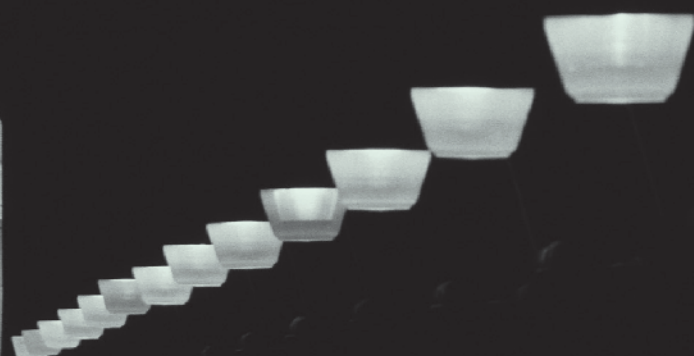


**Manhattan  
Corporation Limited  
(ASX: MHC)**

Primary focus is the Gunbarrel basin (WA), via the Ponton Project. Also has a 40% interest in Gardner Range (WA).

Market cap – \$13m

Uranium ore reserves – Nil / resources – 26MT



Part

A

# 2

Industry overview and regulation

## Australia's regulatory regime applying to uranium



## Overview of regulation

Extraction	Conversion & enrichment	Export
<p>Governed on a State and Territory basis:</p> <ul style="list-style-type: none"> <li>• Western Australia, South Australia, Northern Territory and Queensland permit exploration and mining</li> <li>• Following the overturning of a ban on exploration in 2012, New South Wales permits uranium exploration but for the time being prohibits uranium mining</li> <li>• Victoria prohibits both uranium exploration and mining activities</li> </ul>	<p>The conversion and enrichment of uranium as well as nuclear power generation is prohibited in all States and Territories by Commonwealth legislation</p>	<p>Export takes place within the international nuclear non-proliferation regime and requires adherence to a number of measures such as the IAEA Safeguards and Additional Protocol.</p> <p>Bilateral security arrangements must be put in place between Australia and its uranium export partners before exports are permitted.</p>

### Government policies towards extraction

Land access and tenure for uranium exploration is permitted in all Australian States and Territories except Victoria.

The ability to mine uranium in Australia over the past 60 years has largely been influenced by domestic public opinion towards the issue, and is controlled by legislation and policy at both Commonwealth and State levels. Although neither of the major political parties at a Commonwealth level is as a policy matter any longer opposed to uranium mining, the positions of the respective State Governments in relation to uranium mining are mixed.

The uranium resource-rich States of South Australia, Western Australia, Queensland and, to a lesser extent, the Northern Territory, no longer oppose the mining of uranium and are instead encouraging uranium mine development. However, the mining of uranium is prohibited in Victoria and, despite the recent reversal of its ban on exploration, New South Wales<sup>1</sup>.

While there is no legislative restriction on uranium exploration or mining in Tasmania or the Australian Capital Territory, there is and known significant uranium mineralisation in Tasmania and the Commonwealth would retain title to any uranium in the Australian Capital Territory.<sup>2</sup>

<sup>1</sup> 57 of the Uranium Mining and Nuclear facilities (prohibitions) Act 1986 (NSW); and 55 of the Nuclear Activities (Prohibitions) Act 1983 (Vic).  
<sup>2</sup> 535 of the Atomic Energy Act 1953 (Cth).

In South Australia, the Four Mile mine was approved in 2009 (the first approval since the current Federal Government's "no new uranium mine" policy was dropped) and the expansion of Olympic Dam received approval in 2011. In April 2013, Toro Energy received approval to mine uranium at its deposits near Wiluna, Western Australia (the first approval for a uranium mine in Western Australia).

## Recent positive signs for the approval of uranium extraction in Australia

<b>August 2008</b>	Beverley (SA) expansion plans approved
<b>November 2008</b>	Western Australia overturns ban on uranium mining
<b>July 2009</b>	Four Mile (SA) development approved
<b>October 2011</b>	Olympic Dam (SA) expansion plans approved
<b>November 2011</b>	Honeymoon (SA) production commenced
<b>April 2012</b>	New South Wales overturns ban on uranium exploration (but not mining)
<b>October 2012</b>	Queensland overturns ban on uranium mining
<b>April 2013</b>	Wiluna (WA) development approved

## International uranium safeguards and regulation of exports

The primary instrument governing Australia's participation in the international uranium market is the Treaty on the Non-proliferation of Nuclear Weapons (NPT), which Australia signed in 1970 and ratified in 1973. The NPT has been given force in Australian law under the *Nuclear Non-Proliferation Act 1987* (Cth). One of the fundamental obligations under the NPT is to implement safeguards to ensure that nuclear material is not diverted to nuclear weapons programs.

The International Atomic Energy Agency (IAEA) monitors the implementation of the NPT's requirements and acts as an independent international nuclear inspectorate. The IAEA, among other things, enters into agreements with contracting states to require compliance with IAEA safeguards and protocols. Australia has entered into a comprehensive Safeguard Agreement with the IAEA and has agreed to abide by the IAEA's "Additional Protocol" which grants rights (particularly access rights) to the IAEA complementary to those provided in the underlying Safeguard Agreement.

In addition to the various domestic requirements for transporting, processing and preparing uranium or other nuclear products (known as "Australian Obligated Nuclear Material" or AONM) for export, a number of requirements must be satisfied (as set out in the table on page 11).

## The steps to export Australian uranium

<b>NPT signatory (unless exempt)</b>	Importing state to be a signatory to (and comply with) NPT (an exception to this requirement applies in relation to exports to China and is currently being negotiated with India).
<b>Use for peaceful purposes</b>	AONM may only be exported for exclusively peaceful, non-explosive purposes.
<b>Additional Protocol</b>	Nuclear weapon states must provide assurance that AONM will not be diverted to non-peaceful or explosive uses and accept and facilitate application of the IAEA safeguards and Additional Protocol to the AONM for the duration of its life.
<b>Bilateral Agreement between States</b>	<p>Entry into a bilateral agreement that provides for:</p> <ul style="list-style-type: none"> <li>• tracking and accountability requirements of the AONM as it moves through the nuclear fuel cycle in the destination country;</li> <li>• application of the IAEA safeguards and Additional Protocol to the AONM for its full lifecycle or until legitimately removed from safeguards;</li> <li>• fall-back safeguards in the event that IAEA safeguards no longer apply for any reason;</li> <li>• prior Australian consent for any transfer of AONM to a third party, enrichment beyond specified levels or reprocessing;</li> <li>• entry into the IAEA Convention on the Physical Protection of Nuclear Power,</li> </ul> <p>and entry into a confidential Administrative Agreement that supports the implementation of the bilateral agreement at an executive level.</p>
<b>Ministerial approvals</b>	<p>Permission from:</p> <ul style="list-style-type: none"> <li>• the Minister of Resources and Energy for the export of “controlled materials” under Regulation 9 of the <i>Customs (Prohibited Exports) Regulations 1958</i> (Cth), which requires a safeguard clearance from the Australian Safeguards and Non-Proliferation Office; and</li> <li>• the Minister of Defence for the export of defence and dual-use goods under Regulation 13E of the <i>Customs (Prohibited Exports) Regulations 1958</i> (Cth), which requires clearance from the Defence Export Control Office.</li> </ul>



# Part B

## 3 Industry overview and regulation Takeover regulation and acquisition structuring

Frequently, foreign entities will seek to obtain an interest in an Australian uranium asset by acquiring the shares in an Australian company which owns the relevant uranium exploration or mining licence.

Takeover regulation under Australian law is not limited to purchases of shares in listed companies which are incorporated in Australia. The takeover provisions in the *Corporations Act 2001* (Cth) apply to acquisitions of securities in any Australian company with more than 50 members.

Broadly, the takeover laws prohibit any person from acquiring a relevant interest in issued voting shares in an Australian company if that person's or someone else's voting power in that company would increase to more than 20% as a result, unless an exception applies. The most common exceptions (and therefore the two main methods of obtaining control of a listed company) are an acquisition by way of an on- or off-market takeover bid or by a Court-approved scheme of arrangement.

The takeover laws also apply to "downstream acquisitions" (where, for example, a person acquires a majority holding in an unlisted company with less than 50 members, but that company in turn holds more than 20% of, say, a listed company or controls a listed company).

Also, an acquisition of more than 20% of the voting shares in an upstream foreign company is taken to be an acquisition of any shares held by it in an Australian company. However, the *Corporations Act 2001* (Cth) exempts the acquisition from the general prohibition where the foreign company is listed on a recognised foreign stock exchange.

### What are the potential acquirer's options?

As mentioned above, under Australian law, there are two main methods of obtaining control of a listed company – scheme of arrangement and takeover bid. A potential acquirer could also seek to acquire the relevant assets directly. These three methods of acquisition are each discussed below.

Schemes of arrangement are frequently used for acquisitions in Australia where 100% ownership is an essential outcome. However, a takeover bid has the advantage of being quicker as court approval does not need to be obtained, and may be attractive if full control of an entity is not required.

Typically, an acquisition of 100% of the assets is not an attractive strategy for stamp duty reasons, and also because it can trigger uncertain contractual approval processes with third parties.

### Scheme of arrangement

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.

A scheme is often a more attractive method of acquiring 100% of a target company's shares. Some of the main advantages for an acquirer are:

- access to due diligence (target co-operation is essential in a scheme);
- presenting an agreed deal to the market (as opposed to a contested takeover);
- an "all or nothing" structure giving certainty of outcome;
- generally a lower threshold of target company shareholder approval is required for 100% ownership (as compared to the requirements for compulsory acquisition under Chapter 6 of the *Corporations Act*);
- a predetermined timeframe.

Schemes also appeal to target companies because:

- schemes are a target driven process – the target directors will propose the scheme to the company's shareholders and will generally be in control of the scheme process (subject to the terms of the scheme implementation agreement);
- the need for target cooperation encourages consensus decisions between the target and the acquirer and this carries "merger" connotations (rather than being perceived as aggressive); and
- the court process and the Australian Securities and Investments Commission (ASIC) protect shareholders' interests.

A scheme provides considerable flexibility in terms of how a bid may be structured. Under a scheme shares can be transferred or cancelled, new shares can be issued, assets and liabilities can be vested in the acquirer or a new company and the consideration can take the form agreed by the parties (eg possible shares/cash mix and match).



Importantly, the flexibility of a scheme of arrangement may permit an acquirer to identify particular non-core assets (including strategic holdings in listed companies) which it may wish to “demerge” into a separate listed entity. This demerger can also be effected by way of a separate scheme of arrangement. The consideration for the demerger would be that shareholders in the target would receive a proportionate holding of shares in the “new company” holding the demerged assets. The separation of assets (for example, the separation of more speculative or early stage assets) may be attractive to existing shareholders, providing them with flexibility to retain an interest in this aspect of the business.

Structuring any demerger (and the timing and potential interconditionality with any acquisition) will need to be carefully considered and assessed from a tax perspective to ensure demerger tax relief is available.

### Takeover bid

A takeover bid involves a potential acquirer making an offer to all shareholders of a target company to acquire their shares. The bid may be off-market (involving written offers 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 unconditional.

A significant advantage of an off-market offer compared to an on-market offer is the ability to use “defeating conditions”. The most common conditions include minimum acceptance conditions, FIRB approval, no material or adverse changes in the financial position, business or assets of the target and no “prescribed event” takes place, for example, the target sells assets or issues shares. There are no limits on conditionality but the conditions cannot be matters whose determination is within the acquirer’s control or opinion. In general the market will tend to discount highly conditional bids and acceptances will not flow until there is certainty the bid will proceed.

These conditions (other than the minimum acceptance conditions) can also be included in a scheme of arrangement as conditions precedent to the scheme becoming effective.

A takeover, unlike a scheme of arrangement, does not provide offer structure flexibility. In the context of a takeover bid an offer is made for the securities in the target only, and accordingly demerger restructuring as part of that offer would be much more difficult.

### Asset acquisition

An asset acquisition would involve the acquisition of the assets in which the acquirer is interested from the target (or the relevant subsidiary with ownership of those assets). An asset acquisition would be effected by way of asset acquisition agreement. There are a number of legal issues with this approach as follows:

- shareholder approval – if the acquisition of assets involved a disposal of a major asset or a significant change either directly or indirectly in the nature or scale of the target company’s activities, then target company shareholder approval would be required.
- effective management of liabilities – under an asset acquisition, the acquirer would not inherit the liabilities of the target (unless a subsidiary holding the relevant asset is sold) and can more effectively manage (through warranties and indemnities) liabilities in relation to any assets acquired by it.
- complexity of transfer – the sale of assets can be more complicated and can involve more documents than a scheme of arrangement or takeover bid. The target (or relevant subsidiary with ownership of the asset) would need to transfer each asset and assign or novate each contract of the business that is required by the acquirer. Each contract would need to be individually assigned or novated (and would require third party consents) and the transfer of the mining tenements would require government authorisation.
- tax and stamp duty – since the introduction of Australia’s consolidation regime, the differences between the tax treatment of share acquisitions and asset acquisitions is quite minimal. However, stamp duty in an asset acquisition can be as high as 6.75% of the market value of the assets acquired, whereas stamp duty is exempted in the case of an acquisition of the shares in a listed company (and for unlisted companies, would be applied at a significantly lower rate regardless).

Accordingly, absent any commercial drivers for an asset acquisition, it is generally more common for acquisitions to be structured as a share purchase (for transactional simplicity).



# Part **B**

Investment in Australia's uranium industry

# **4** Foreign investment approval framework

## Who needs to apply?

Investments by foreign persons in Australia are regulated under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (FATA). Foreign persons include Australian subsidiaries of foreign companies.

A privately owned foreign company acquiring 15% or more (or 40% or more in aggregate with other foreign companies) in an Australian business or corporation with a value over certain specified (and indexed) monetary amounts must notify the Commonwealth Treasurer of its proposed acquisition.

A foreign government (including any State-owned enterprise and sovereign wealth fund) and its related entities must notify the Treasurer before making a “direct investment” in an Australian business or corporation regardless of its value or before beginning a new business. Under Government policy, a direct investment is described as one which is made with the objective of establishing a lasting interest in, and strategic long-term relationship with, the target. Generally, a direct investment includes:

- in most instances (but depending on the circumstances), the acquisition of an interest above 10%;
- investments preparatory to making a takeover bid; and
- enforcement of a security interest over assets or shares.

## Additional provisions applicable to mining interests

A foreign person proposing to acquire mining interests, including mining leases and production licences, needs to make an application to the Foreign Investment Review Board (FIRB) for approval where:

- such an interest provides the right to occupy “urban land”; and
- the term of the licence or lease (including extensions) is likely to be more than five years.

A FIRB notification will also be necessary where such a licence or lease provides an interest in an arrangement involving the sharing of profits or income from the use of, or dealings in, “urban land”. “Urban land” includes any land that is not used in primary production, including all seabed within Australia’s Exclusive Economic Zone.

An exploration licence will not generally be regarded as creating an interest in “urban land” because:

- it does not give the holder the exclusive right to occupy land;
- it will generally be for a period of less than five years; and
- it does not constitute a mineral right.

Where an area subject to an exploration licence is developed into an operational mine, it will then be considered developed commercial property. Foreign investment in developed commercial property will require FIRB approval where that property is valued at \$50 million or more.

## What should be included in the notification?

FIRB provides advice to the Treasurer on foreign investment proposals. The Government encourages investors to engage with FIRB prior to making an application. Proposals are treated confidentially by FIRB, if requested by the applicant.

At a minimum the application should include information about the investor/acquirer, target and any other relevant parties, the investment (including its nature, the method of acquisition, its value, and the timetable), the reasons for the proposal, and the investor's intentions (immediate and future).

As the Government considers each application against national interest considerations, the application should also indicate how the proposal will impact the following:

Issue	Considerations
<b>National security</b>	The extent to which the investment affects Australia's ability to protect its strategic and national interests.
<b>Competition</b>	Whether the investment affects diversity in ownership and competition within Australian or global industries.
<b>Australian Government Policies (including tax)</b>	The extent to which the investment is consistent with the Government's policy objectives and the impact that investment may have on Government revenues.
<b>Impact on the economy and the community</b>	A range of factors including the nature of funding for the investment, Australian participation in the target enterprise following investment, and the interests of employees, creditors and other stakeholders.
<b>Character of the investor</b>	The extent to which the foreign investor operates on a transparent and commercial basis and is subject to adequate and transparent regulation.

## Within what period will the Treasurer respond?

The Treasurer has 30 days from receipt of the application to make a decision, unless an interim order is made to allow up to a further 90 days to decide. The Treasurer can make an order prohibiting the acquisition if satisfied that it would be contrary to the national interest or the Treasurer can apply conditions to ensure that the acquisition is not implemented in a manner contrary to the national interest. Often these conditions are the subject of negotiation.





# Part B

## 5 Investment in Australia's uranium industry

### Bid vehicle and funding



## Bid vehicle

It is common for a foreign acquirer of an Australian entity or assets to use a newly established special purpose company incorporated in Australia as the “bid vehicle”. The jurisdiction and number of interposed entities between the bid vehicle and the ultimate holding company would generally be structured to take the benefit of certain favourable tax treaties.

Also, in structuring the bid vehicle it will be important for Australian tax purposes that it form its own Australian income tax consolidated group.

If this occurs, certain tax advantages may be achieved upon the acquisition of the shares in the target. Importantly, a step-up in the tax basis of certain assets of the target could be achieved under the tax consolidation regime, if the target is acquired by an Australian tax consolidated group.

Broadly speaking, the step-up is achieved because the amount paid for the shares in the target is “pushed down” to the tax basis of the assets of the target. The benefits of obtaining step-up in the tax basis of assets are broadly:

- increased depreciation deductions (for depreciable assets, which includes certain mining rights); and
- reduced capital gains on the subsequent sale of a CGT asset. This could be of particular benefit in any post acquisition disposal of unwanted assets of the target (including any interests it holds in other entities).

## Funding

Funding of the bid vehicle will be important from a tax and FIRB perspective.

Australia has a thin capitalisation regime which potentially restricts the amount of tax deductible interest (or like costs) which an entity (whether Australian or foreign based) may allocate to its Australian operations. Broadly, the thin capitalisation rules apply to both outbound investors and also inbound investors. There are a number of methods for determining the maximum debt allowable under the rules, but generally a “safe harbour” maximum level of deductible debt is based on 75% of the average value of Australian assets (ie, very broadly, a maximum debt to equity ratio of 3:1).

In addition, funding will be important in the context of a takeover bid and a scheme of arrangement. A bidder that publicly proposes to make a takeover 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 commitment funding. However, the Takeovers 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.

In a scheme of arrangement, an acquirer is generally required to place the scheme funds with the target company in a trust account before the implementation date of the scheme.



## Part B

# 6

Investment in Australia's uranium industry

## Due diligence

We set out below suggested areas of due diligence that may be conducted on the target and its related entities in two phases:

**Phase 1** – due diligence using publicly available information; and

**Phase 2** – due diligence using information provided by the target.

The Phase 1 due diligence would focus on information sourced from ASX announcements, recent periodic reports and the target's website, as well as relevant third parties (for example, joint venture partner's ASX announcements and periodic reports). The purpose of this Phase 1 due diligence would be to aggregate publicly available information that is (or may be) relevant to any proposed transaction.

The scope of Phase 2 will principally be targeted at the key areas of risk and concern identified in the first two phases of due diligence. We would expect that any due diligence (and in particular the Phase 2 due diligence) would focus on the following key areas (subject to any materiality threshold).

Issue	Considerations
<b>Tenements</b>	Identify and confirm rights under exploration licences and mining leases held, and compliance with conditions and any rehabilitation obligations.  Identify and consider any conflicting/competing tenements which may impact on future operations or expansion.
<b>Property</b>	Identify and confirm real property rights and interests (including surface rights to tenements) and identify any potential native title issues arising as a result of the transaction.
<b>Environmental</b>	The Australian resources sector is regulated by complex environmental regulations. These regulations govern the process for obtaining approvals for new and expanded operations as well as the operation, rehabilitation and closure of a mine. Ensuring that all necessary approvals are in place, and have been issued on reasonable terms and conditions is a key function of environmental due diligence.
<b>Project approvals</b>	Identify and confirm key project approvals including environmental and water rights and the site specific approvals (as applicable) and any conditions imposed under those approvals which may be unduly onerous or which may limit future operation or expansion.
<b>Project funding</b>	Consider any current project funding arrangements and determine impact (if any) on proposed transaction structure.  Identify any review event which may be triggered by a transaction and prepayment provisions.

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Issue	Considerations
<b>Material contracts</b>	Identify and confirm material contracts and any termination provisions which may be triggered by any proposed transaction and any change in law/cost pass through provisions to deal with the carbon tax in respect of which the Australian Commonwealth Parliament has recently passed legislation. Identify any off-take arrangements in place.
<b>Infrastructure</b>	Consider key infrastructure to which the target requires access and any agreements or the regulatory framework providing or supporting that access.
<b>Employment and OH&amp;S</b>	<p>Identify key executives and identify any payment or benefits payable to the executives or an employee on a change of control or otherwise triggered by the proposed transaction (including any rights of employees to receive shares in the target on implementation of any proposed transaction).</p> <p>Identify any potential industrial relations issues which may restrict in the future any restructure of the workforce.</p>
<b>Litigation</b>	Identify any material litigation to which the target is subject and which may impact materially on the target or the operation of its assets.
<b>Tax</b>	Identify and consider any potential tax liabilities.

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