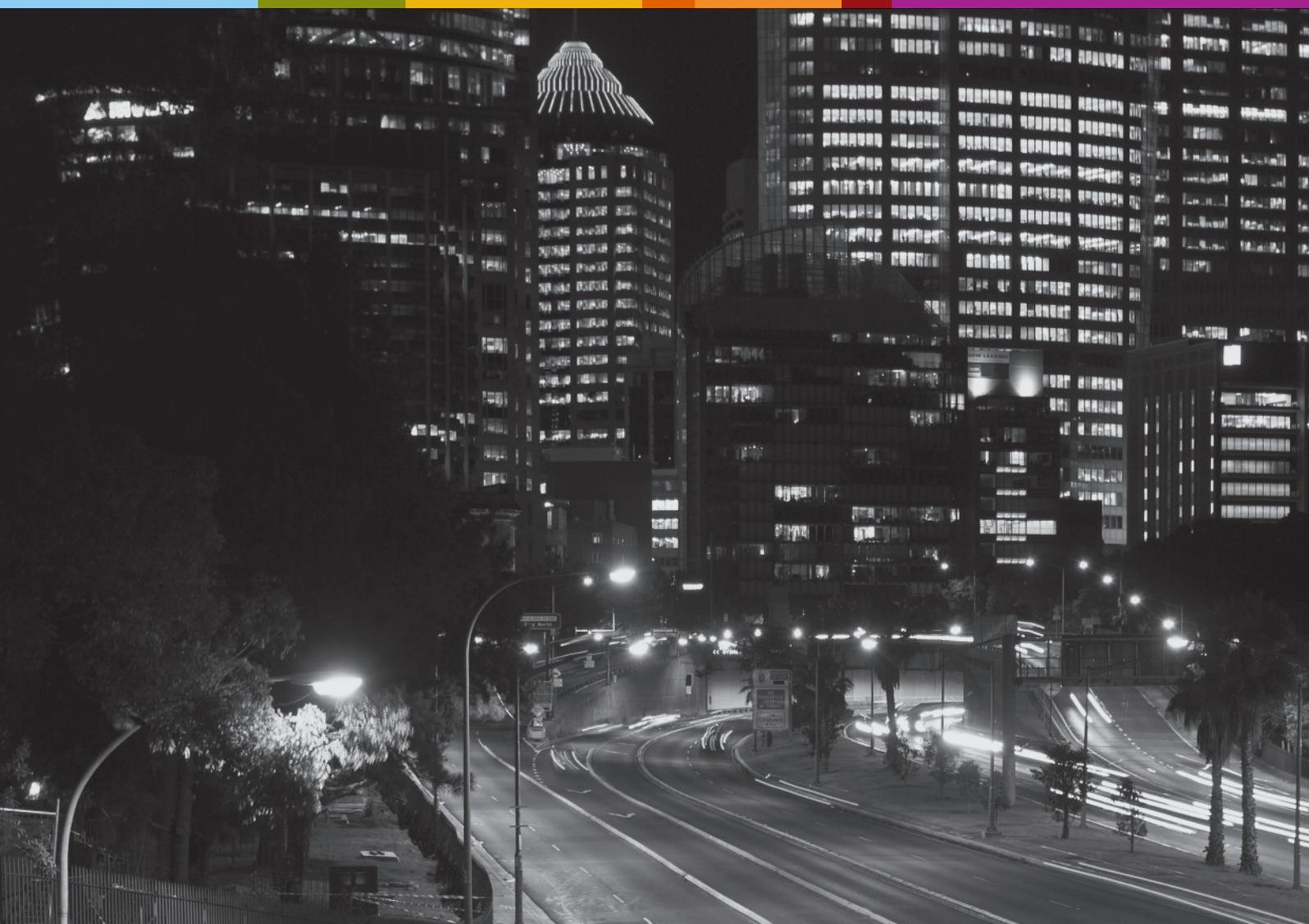


Australian Hotel Investment

A Legal guide

2014



Overview

Australia's tourism industry is one of the largest in the world. Tourism is Australia's largest services export and it contributes approximately A\$35 billion to the country's Gross Domestic Product. The Australian tourism industry spans across a range of sectors including luxury resorts, casinos, nature retreats, theme parks, short-term accommodation, travel agents, transport companies, retail, and education providers. This publication provides an overview of the business, legal and policy issues relating to foreign investment in tourism assets as well as particular legal issues associated with investments into the hospitality industry (see chapter 4) and the gaming industry (see chapter 5).

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1

Investment market

Australia's proximity to expanding Asian markets has enabled it to capitalise on the increasing demand for unique tourism destinations from consumers in the Asia-Pacific region.

In the past five years, offshore investment into the Australian tourism industry has been on a steady increase. During 2013, Asian investors' interests in Australian tourism assets grew rapidly as evidenced by the completion of a number of large hotel transactions involving Asian investors.

Strong investment conditions comprising of stable and consistent consumer demand, a stable economy, a transparent legal system and a secure political environment have made and will continue to make Australian tourism assets appealing investment options for offshore investors.



2

Government policy

National strategy – *Tourism 2020*

The Australian Government's publication *Tourism 2020* sets out its national strategy to enhance the growth and competitiveness of the tourism industry. The policy aims to accelerate the growth of tourism and tourism investment in Australia by focusing on the following six strategic areas:

- growing demand from Asia;
- building competitive digital capability;
- encouraging investment and implementing a regulatory reform agenda;
- ensuring the tourism transport environment supports growth;
- increasing supply of labour, skills and Indigenous participation; and
- building industry resilience, productivity and quality.

As part of the *Tourism 2020* initiative, some of the more specific commitments the Australian Government is working towards include:

- reducing barriers to investment in the tourism industry;
- improving levels of investment facilitation by State and Territory governments;
- facilitating the increase of international and domestic airline seats on a sustainable basis; and
- increasing the supply of labour in the tourism industry.

Government incentive policies

Since *Tourism 2020* was published, the Australian Government has allocated \$40 million over four years to an incentive policy for the promotion of sustainable growth in the Australian tourism industry. In particular there are three types of project funding available under the incentive policy:

- **Strategic Tourism Investment Grants** – to fund a small number of larger projects to support Indigenous tourism, economic development and tourism employment.
- **Tourism Quality Projects** – to fund smaller scale projects to support collaborative community tourism industry development projects, particularly those which stimulate private sector investment.
- **Tourism Industry Regional Development Fund (TIRF) Grants** – targets projects with community benefits, which also stimulate private sector investment in regional areas and encourage investors to stay for longer periods.



3

Foreign investment in Australian tourism assets

The general policies and regulatory requirements which apply to foreign investment in Australia under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) also regulate foreign investment in Australian tourism assets. Generally for foreign investment in Australia, an application must be made to the Foreign Investment Review Board (**FIRB**) prior to a foreign person obtaining an interest in Australian urban land.

The table below sets out the types of real estate transactions requiring FIRB approval.

Acquisition type	Acquisition description	When approval is required and when approval is available under current FIRB policy
Vacant land	Vacant land	<p>Any acquisition of vacant land (no monetary threshold) requires approval.</p> <p>Applications are normally approved subject to conditions, such as:</p> <ul style="list-style-type: none"> • continuous construction begins within 24 months • minimum development spend.
Developed non-residential land	Includes commercial, retail, industrial premises and hotels	<p>Approval is normally required unless the land is valued at:</p> <ul style="list-style-type: none"> • less than A\$54 million or \$1,078 million for US and NZ investors (as at 1 January 2014); or • less than \$A5 million for heritage listed land. <p>Applications are normally approved, provided not contrary to the national interest.</p>
New residential	Residential land not previously sold by the developer AND not occupied for more than 12 months	<p>Any acquisition of new residential land requires approval (no monetary threshold).</p> <p>Applications are normally approved for foreign residents and non-residents, provided not otherwise contrary to the national interest.</p>
Used residential	Any residential land which is not new residential land	<p>Any acquisition of used residential land requires approval (no monetary threshold).</p> <p>Normally, temporary residents are approved to buy one used dwelling only to live in.</p> <p>Non-resident foreign persons cannot buy used residential land as investment properties or homes.</p> <p>Foreign companies can acquire for staff housing (subject to conditions).</p>
Used residential for development	Any used residential land which requires demolition of existing buildings and the erection of new dwelling(s)	<p>Any acquisition of used residential land requires approval (no monetary threshold).</p> <p>Applications are normally approved for residents and non-residents, but subject to conditions such as:</p> <ul style="list-style-type: none"> • cannot be rented out prior to demolition • continuous construction begins within 24 months.

In addition to the previous table, the table below sets out the types of acquisitions and arrangements in the tourism industry which are subject to the FATA.

Type of transaction	Examples	When approval is required
Acquisition of certain interests in Australian urban land	Purchase of a hotel or purchase of land to develop as a hotel or mixed use project	<p>Notification is required to acquire an interest in developed commercial real estate that is valued at A\$54 million, or \$5 million in respect of heritage-listed land. A higher notification threshold of A\$1,078 million applies to NZ or US investors, unless the proposed investment is in a prescribed sensitive sector (including for example media, telecommunications, transport, military goods) in which case the threshold is currently A\$248 million (as at 1 January 2014).</p> <p>Irrespective of value, notification is required to acquire an interest in Australian urban land where the land is vacant land or residential real estate.</p>
Acquisition of securities in Australian corporations and trusts considered to be Australian urban land corporations or trust estates	Acquisition of shares in an Australian Fund which owns several hotels	Notification is required for the acquisition of shares in a company or units in a trust or fund if the value of its (and subsidiaries') total Australian urban land assets exceeds 50% of the value of its total assets, irrespective of the total value of the company/trust or the value of the proposal.
Manage or franchise a hotel located in Australia	Entering into a hotel management agreement as an operator	A management or franchise agreement where the fee is calculated by reference to a percentage of the hotel's revenue or profit can be considered to be an arrangement involving the sharing of profits or income from the use of Australian urban land, although FIRB has recently indicated a relaxation of policy in this area.
Acquisition of a substantial interest in an Australian corporation, business or trust valued at A\$428 million or more (except in the case of US and New Zealand investors)	Acquisition of a substantial interest in an Australian business valued at A\$500 million	Notification is required where the interest being acquired is valued at A\$428 million or more. A higher notification threshold of A\$1,078 million currently applies to US or NZ investors, unless the proposed investment is in a prescribed sensitive sector (including for example media, telecommunications, transport, military goods), in which case the threshold is currently A\$248 million (as at 1 January 2014).
Direct investment by a foreign government related investor including sovereign wealth funds	A foreign company, in which a foreign government has a 15% indirect interest, makes any of the above types of acquisitions	<p>Notification by foreign government investors is required irrespective of the size of the investment.</p> <p>A foreign government related investor includes for example:</p> <ul style="list-style-type: none"> • entities in which governments or related entities from a single foreign country have an interest of 15% or more; • entities in which governments or related entities from more than one foreign country have an aggregate interest of 40% or more; • entities that are otherwise controlled by foreign governments or related entities.

Contracts or binding documentation

Contracts or binding documentation entered into by foreign investors in relation to any of the above transactions must be made conditional upon the Treasurer's approval (unless approval has already been granted or a no objection letter has been obtained). Contracts should provide for a minimum 40 days from the date of lodgement for a decision from the Treasurer unless the foreign investor is a foreign government or related to a foreign government, in which case these time frames may not apply.

Decision to approve or object

In deciding whether to approve or object to a foreign investor's proposed transaction, the Treasurer assesses whether the proposed transaction is contrary to the national interest. FIRB has previously reported that the following factors are normally assessed in respect of each proposed transaction, on a case by case basis:

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

The Treasurer is entitled under the FATA to impose conditions when approving a proposed transaction (for example, time periods for the commencement and completion of construction or development works in relation to a proposal to acquire vacant land for development into a hotel). More recently, conditions are increasingly being imposed on foreign government related investors.

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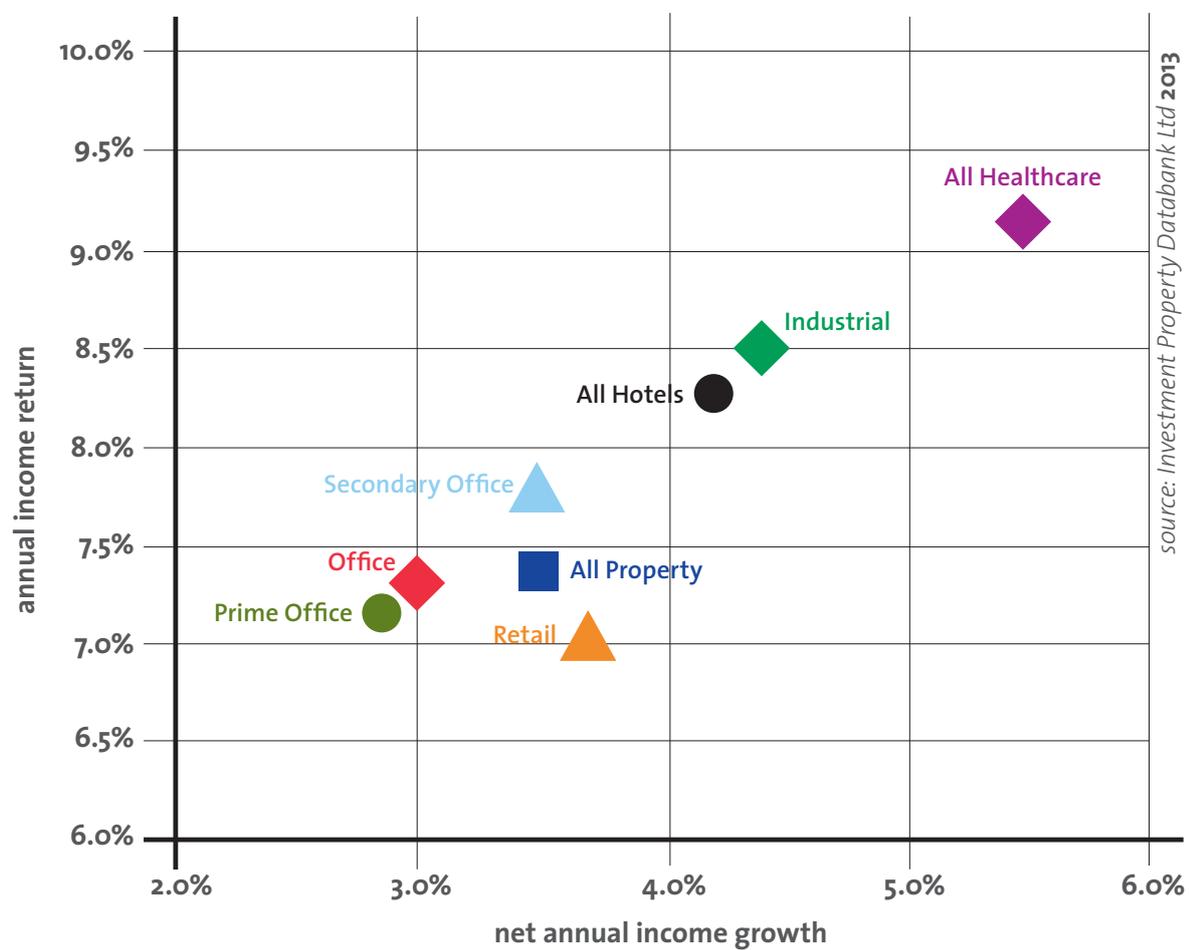


Hotels

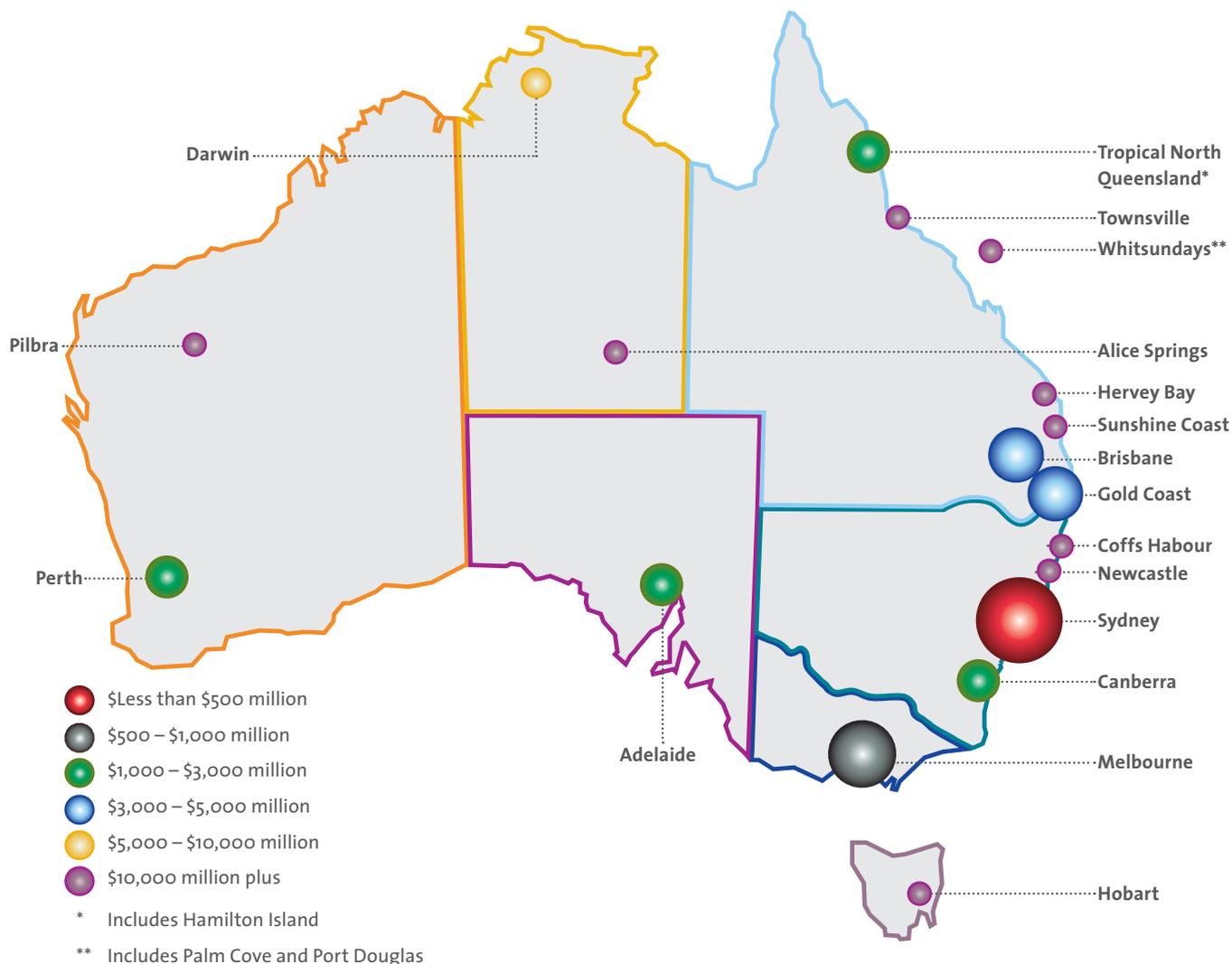
According to Jones Lang LaSalle, over the past five years, capital inflows from foreign investors account for more than 50% of the capital invested in the hotel investment market. These capital contributions were primarily sourced from Asia, in particular Singapore, Hong Kong and Malaysia, with growing investor interest from China. Offshore investment interest has mainly been concerned with hotel acquisitions and hotel developments. The attractiveness of hotel investment in Australia is illustrated by the diagram on page 11. More specifically, the diagram shows the relative performance of the hotel industry, in terms of annual income return and income growth, as compared with all other property investments in Australia during the five year period preceding September 2013.

Income return versus income growth

Five year sample period to September 2013



Australia has 18 major accommodation markets which account for almost 90% of all accommodation assets in Australia. The largest of these include Sydney, Melbourne, Gold Coast and Brisbane, as shown in the diagram below.



Source: Jones Lang LeSalle 2012, Mapping the Australian Hotel Investment Landscape dated February 2012

Hotels are a distinct class of accommodation asset which can be broadly categorised into three types:

- traditional hotels and motels;
- resorts; and
- serviced apartments.

Rating systems which can be used by Australian hotels are governed by the AAA Tourism STAR Rating Scheme. Under the STAR Rating Scheme, hotels are rated between 1 to 5 stars based upon a hotel’s compliance with the hotel standards established by AAA Tourism.

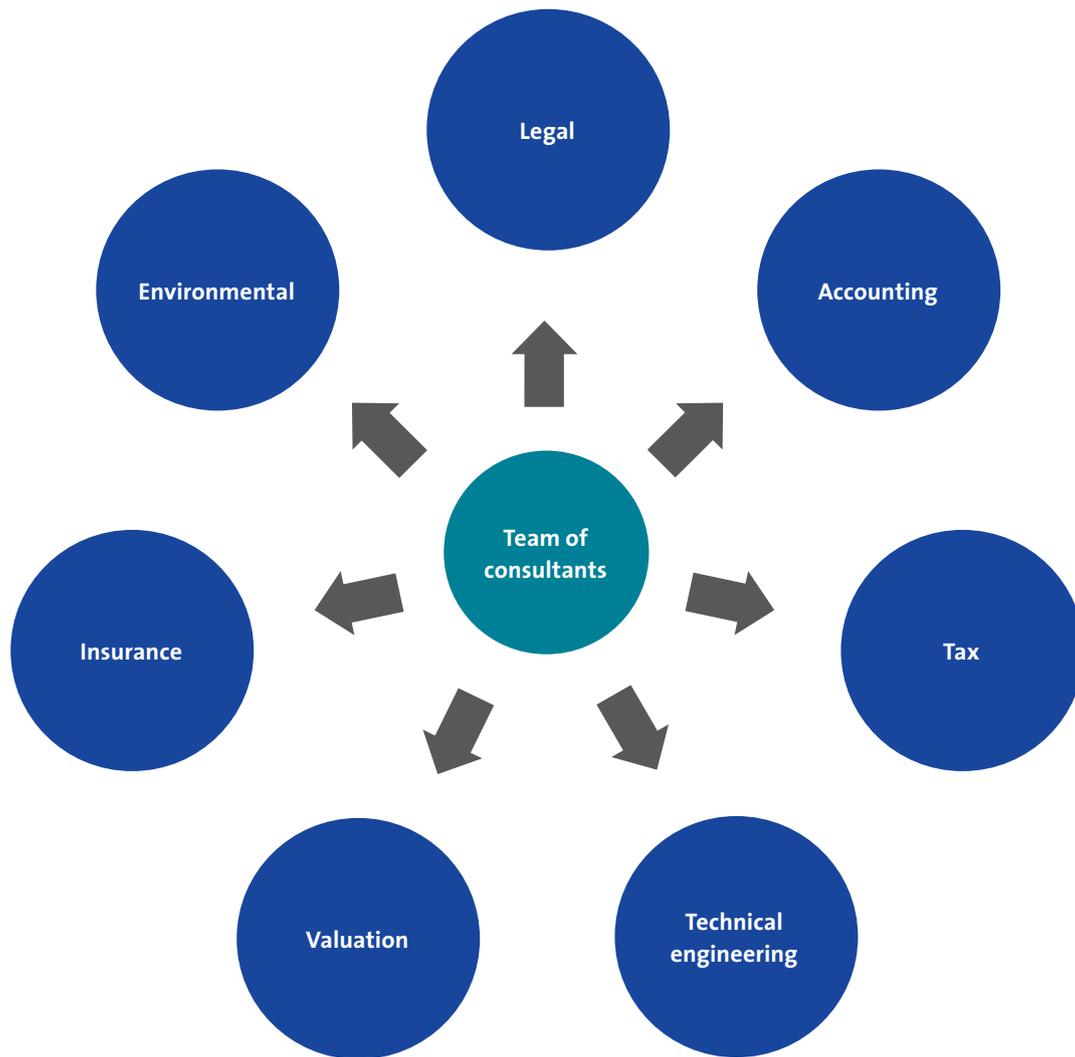
The hotel sector is one of the most highly regulated areas compared to other business sectors. Each State and Territory has different legislation and different policies governing liquor licensing, gambling, food hygiene, safety/security and planning in relation to hotels. The following sections provide guidance on a number of legal issues a foreign investor should be aware of when considering hotel investments in Australia.

Hotel transaction process

While a hotel transaction involves the acquisition of property in most cases, it is far more complex than a typical property sale. The diagram below shows the typical transaction process for a hotel sale from a buyer's perspective and the legal issues and steps to be taken at each stage of the transaction process (these are further discussed below). It should be noted that a hotel sale transaction can be by way of an asset sale or a share sale. An asset sale involves only the transfer of the physical hotel and the business assets to a purchaser. A hotel acquisition by way of a share sale, on the other hand, involves buying the shares in the entity holding the relevant hotel asset. Depending on which method of sale is proposed, different legal issues will arise (for example, only a share sale will require the purchaser to take on any liabilities, including tax liabilities, of the entity in which it seeks to acquire shares, which were accrued prior to the purchase of the hotel).

To be assisted through each stage of the transaction process, an investor should engage consultants with adequate experience and specialised knowledge of the hotel and tourism industry. This step should be undertaken at the beginning of the transaction process before any action is undertaken as a strong team of consultants is essential to ensuring a successful transaction. The diagram below shows a typical team of consultants that an investor may appoint at the beginning of a transaction.





Property law and title due diligence

While hotels are businesses, they are also a subclass of commercial property. The land and building on which a hotel is situated is governed by property law. An investor wishing to acquire an interest in a hotel must undertake title due diligence to examine the quality of the interest they are proposing to acquire.

Overview of Australian property law

Under the Torrens system, title or ownership right to land or property is created by the act of registration in a central register or record. In most cases, the person who is recorded as the owner of a parcel of land cannot have their title challenged or overturned. Priority between interests in property is determined by order of registration and not order of execution. Generally, upon registration of an interest, a person's registered interest is only subject to prior registered interests and free from all interests which are not registered. This rule is subject to a number of exceptions such as fraud, some short-term leases and misdescription of boundaries.

Each State and Territory has its own property legislation and title registration system. Whether an interest can be registered or not varies between States and Territories. A buyer undertaking title due diligence of a hotel should be aware of the types of interests, including property interests and contractual interests, which may arise in a hotel transaction.

Property interest

Property interests, unlike contractual interests, can be enforced against all other persons. The table below sets out a number of property interests, some of which may be registered under the Torrens system.

Types of interests in property	Sub-class	Description
Freehold estates	Fee simple	This is the most common form of land ownership in Australia and is an estate of unlimited duration.
	Life estate	This grants a person exclusive possession of the property during their lifetime. These are not common.
Leasehold estates	Fixed term	This grants exclusive possession of the land for a fixed period. This is the most common form of lease.
	Periodic tenancies	This is a grant of exclusive possession of the land on a periodic basis, such as from week to week, month to month or year to year, until one party terminates it by giving the appropriate amount of notice.
	Tenancies at will	Arises when a person occupies land on the terms that either party may terminate at any time.
	Tenancies at sufferance	Arises when a tenant remains in possession after the expiration of a lease without the landlord's assent or dissent.
Crown Land		Land owned by the Commonwealth or a State or Territory. Title to land in the Australian Capital Territory is held by individuals under a Crown lease.
Mortgages		An interest in land created in favour of a party to secure repayment of a loan or other financing arrangement.
Easements		An interest in land to the extent that it creates a right to use, but not occupy, the land of another for a specific purpose. For example, a right of way or a right to drain water.
Caveats		A registered instrument on the title to the land which records a "caveatable" interest in the land, for example pursuant to a contract to buy the land.

Contractual rights

Contractual interests and rights are only enforceable against particular persons who may be party to the contract giving rise to the contractual interest. The following rights are purely contractual:

- **Licence** – a grant of non-exclusive use or access to land;
- **Options** – a call option or put option to acquire land; and
- **Right of first refusal to acquire land** – where the land owner agrees with a person not to sell the land without first offering it to that person.



Liquor licensing

One of the complex issues that can arise in a hotel transaction is in relation to a hotel's liquor licence. While the operation of a hotel's accommodation business does not require a licence, a liquor licence is required if a hotel's business will involve the sale and supply of alcohol for consumption.

The sale and supply of liquor is regulated by each State and Territory, through its own legislation, regulatory authority and licensing framework. While there are similarities between the regulatory framework in each State and Territory, the framework in each operates independently. Generally the decision to grant a liquor licence is based on an assessment of the overall social impact of the hotel.

In some States, for example NSW, a hotel licence may also enable gaming machines to be operated where separate approval has been granted.

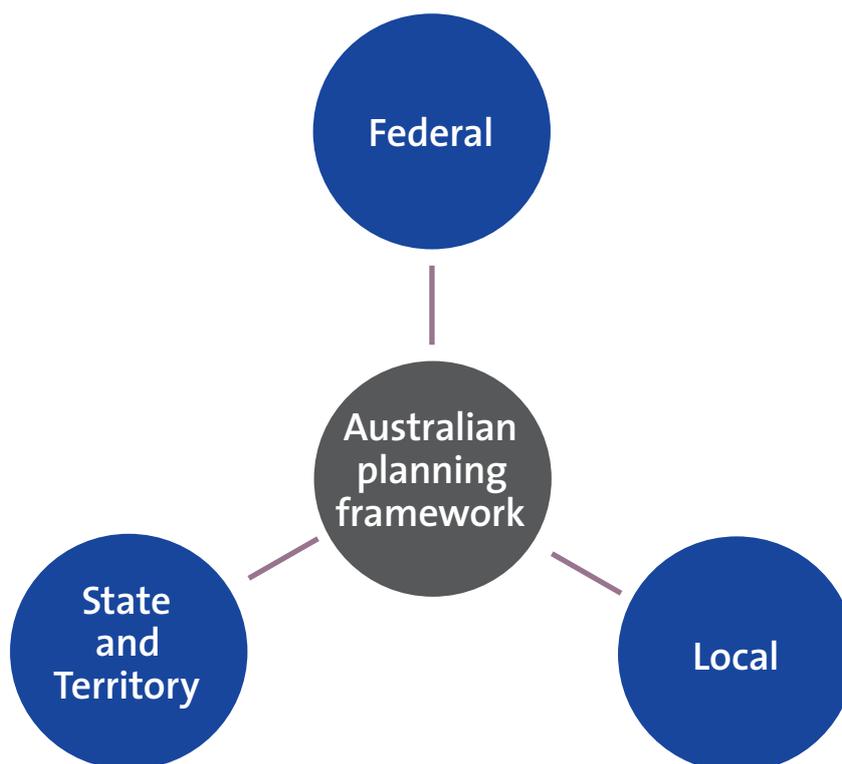
One of the most important questions an investor should ask when entering into a transaction to purchase a hotel is: who holds the beneficial interest in the hotel's liquor licence and how can this be effectively transferred to the hotel purchaser? There may be different answers to this question depending on the licensing framework and hotel structure that has been adopted by the hotel owner and operator (see page 19 for information on hotel structures).

Furthermore, the approval process of the relevant licensing authority may also complicate, if not cause delay to, a hotel transaction. In some jurisdictions, there are disclosure requirements imposed by the licensing authority which require personal and confidential details of the incoming hotel owner and directors. In order to ensure that the hotel business as a whole is successfully transferred to the buyer, due diligence must be conducted in the early stages of a transaction so that appropriate measures can be taken to transfer the hotel's liquor licence to the buyer.

Hotel development

Not all hotel investments in Australia have been in the form of a purchase of an existing hotel. Over the years there has been a steady interest in hotel development where investors either acquire vacant sites for development into hotels or mixed-use developments, or acquire existing commercial or office buildings for conversion into hotels. Some key issues and trends in relation to hotel developments are addressed in the following sections.

Planning



Environmental and planning laws in Australia have many complexities. There is no uniform national planning system in Australia. Each State and Territory has its own legislation and administrative departments for regulating the use and development of land within its jurisdiction. Within each State and Territory, there are regulatory frameworks and policies at both the state level as well as the local government level. For example, in NSW the legislation permits local governments and the state government to each create environmental planning instruments (EPs) to regulate the development of land in matters within their control.

In addition to the development control framework in each State and Territory, the federal government also imposes obligations on developers in relation to issues of national significance (for example, approval is required where a development will have or likely have a significant impact on World Heritage areas or threatened or migratory species). Similar to the regimes in each State and Territory, there are also defined processes for obtaining development approvals from the federal government.

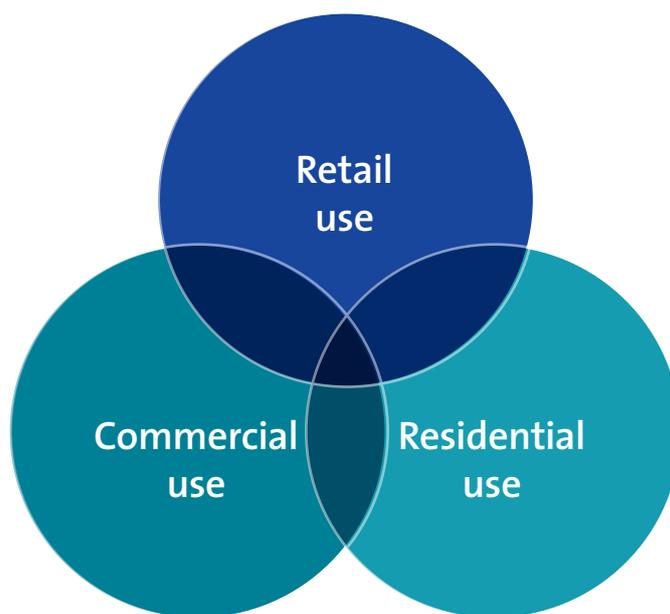
Land use is controlled at the broadest level by the division of land into “zones”. Depending on the zoning of land, a particular development may be permitted without regulatory approval, only permitted with regulatory approval, or prohibited. For example, land in an urban area may be zoned “residential” and only certain kinds of dwellings and associated infrastructure may be permissible with development consent from the applicable local government.

While there are similarities between development control processes in each State and Territory, there will also be significant procedural differences. It is recommended that a foreign investor be aware of all the development approvals and processes (at the state level and federal level) required before committing to a development proposal.

Office conversion

In recent times, investors faced with limited hotel investment opportunities have turned to the option of converting well located office buildings to hotel accommodation. At a time when the office leasing market has faced relatively high vacancy rates, the option of office conversion has proven particularly attractive in both Brisbane and Sydney. Investors interested in exploring office conversion options should obtain advice in relation to real estate law and environmental and planning law in the relevant jurisdiction.

Mixed use developments



Given the significant emphasis placed by foreign investors on investment return and growth potential, many investors have ventured outside the traditional hotel development and instead have turned to mixed use developments. Mixed use developments are developments which involve any combination of residential, commercial (including hotel) or retail land uses. For investors, mixed use projects are generally considered to bring higher returns, spread risks and generate synergies between uses.

Strata-titled developments

Strata-titled hotel developments emerged in response to investors' needs for flexible funding options, and have become particularly popular in many tourism destinations around Australia. Strata-titled developments involve the division of land or property into multiple parcels to permit independent ownership of the divided parcels. Generally the individual strata units in a hotel are sold to individual investors and then leased back to the developer/operator to be managed and operated as a hotel. This form of development is particularly relevant for serviced apartment development (which is a form of mixed use development involving commercial accommodation use and residential use). As an alternative to the traditional debt and equity financing structure, strata-titled developments permit a developer or investor to attract capital from small, medium and large investors.

The legal frameworks relating to strata-titled properties differ across Australia. This factor can be an inhibiting issue in the pursuit of large Australia-wide operations by developers, body corporate service providers and other key players in the industry.

Hotel structures

There are a number of ownership structures that can be adopted by a hotel owner to deal with the management and operation of a hotel. The following sections will briefly explain the features and key issues affecting a hotel operated under a management agreement, franchise agreement and a management lease.

Hotel management agreement

A hotel management agreement is the most common form of hotel operating structure. A management agreement is an agreement between the hotel owner and the hotel management company, under which the hotel owner appoints the hotel management company to manage and operate the hotel for and on behalf of the hotel owner. Under a management agreement arrangement in Australia, the operator is responsible for managing the day to day running of the hotel while the hotel owner is responsible for providing capital and employing the employees. The operator is usually paid a management fee which is calculated by reference to the gross revenue or profit of the hotel.

Hotel franchise agreement

A hotel franchise agreement has many of the essential features of a hotel management agreement. However a key difference with a franchise arrangement is that the hotel owner, as a franchisee, also acts as the operator of the hotel and the franchisor has very little day to day management of the hotel business. Under a franchise arrangement, the hotel owner pays a fee to the franchisor in return for the franchisor's business system and branding. These arrangements are generally more appropriate where the hotel owner is interested in adopting a working business model but not willing to give up control of the operation of the hotel business.

Hotel management lease

A management lease is a hybrid arrangement combining many of the terms usually contained within a lease and a management agreement. However, unlike a management agreement or a franchise arrangement, the hotel owner does not have an interest in the hotel business other than through the payment of rent. Under the arrangement, the hotel owner owns the land and the improvements of the hotel building. The hotel owner leases the land to the operator who manages the hotel business on its own behalf. While, subject to the rent structure, the hotel owner is less exposed to the risk of the business, a management lease is not a typical arrangement for managing a hotel in Australia.

The table below identifies some of the key features and responsibilities of parties in each of the hotel ownership structures outlined above.

	Responsibilities of parties involved	
Management agreement	Owner	Operator
	<ul style="list-style-type: none"> • Pays operator a management fee • Carries out construction and fitting out at its own cost • Carries out capital works and supplies and maintains furniture, fixtures and equipment • Provides working capital requirements • Employs the hotel employees 	<ul style="list-style-type: none"> • Manages and operates hotel for and on behalf of the owner • Design to operator's brand standards • Provides marketing and reservation systems and services • Provides intellectual property and branding • Provides technical services • May be subject to a performance test
Franchise agreement	Franchisee	Franchisor
	<ul style="list-style-type: none"> • Owns and operates the hotel on its own behalf in accordance with the Franchisor's system • Carries out construction and fitting out at its own cost • Carries out capital works and supplies and maintains furniture, fixtures and equipment • Employs the hotel employees • Provides working capital requirements • May be subject to performance targets • Pays franchisor the initial fee plus ongoing loyalty fee 	<ul style="list-style-type: none"> • Design to franchisor's brand standards • Provides marketing and reservation systems and services • Provides intellectual property and branding • Provides technical services
Management lease	Landlord	Tenant
	<ul style="list-style-type: none"> • Receives rent from tenant, which may comprise a fixed component and a portion calculated by reference to gross revenue or rooms revenue of the hotel business 	<ul style="list-style-type: none"> • Tenant (operator) leases the land to run the hotel business for and on its own behalf (in accordance with the brand standards of an international/national operator) • Construction and fitout at its own cost • Carries out capital works supplies and maintains furniture, fixtures and equipment • Provides working capital requirements • Employs the hotel employees



astoria

A summary of some of the key terms for each hotel ownership arrangement is set out in the table below.

	Hotel management agreement	Hotel franchise agreement	Hotel management lease
Term	Generally between 10-20 years with option for a further term.	Generally between 5-10 years with option for a further term.	Generally longer than 5 years with option for a further term.
Fee structure	<p>Base management fee plus incentive management fee.</p> <p>Base management fee is generally a fixed percentage of revenue throughout the term of the arrangement.</p> <p>Incentive management fees may be calculated as a percentage of the gross operating profit.</p>	<p>Initial franchise fee plus continuing loyalty or royalty fee calculated as a percentage of turnover or gross revenue.</p> <p>The owner may be required to contribute to the cost of the business systems or services made available (for example, loyalty program).</p>	<p>Rent is usually structured with fixed and percentage components.</p> <p>The fixed rent would be subject to annual rent reviews.</p> <p>The turnover rent is calculated by reference to the revenue of the hotel business.</p>
Performance tests	The operator may be subject to performance tests which relate to gross operating profit or average revenue per available room (RevPar) or a competitive set. The operator's failure to achieve performance tests may give rise to termination rights or repayment of fees paid.	<p>The franchisor sets specific performance targets to protect the reputation of its brand and ensure its entitlement to fees.</p> <p>Performance tests vary between franchisors and may take the form of a guest satisfaction evaluation system or be linked to financial performance of the hotel.</p>	A performance test may be negotiated as the turnover rent may be a significant portion of the rental obligations of the operator. Performance test options are similar to those for hotel management agreements.
Other key terms	<ul style="list-style-type: none"> • Extent of owner's involvement in hotel management, eg approval rights for key employees such as general manager, financial controller • Approval of budget • Intellectual property ownership • Insurance 	<ul style="list-style-type: none"> • Reporting • Intellectual property ownership • Insurance 	<ul style="list-style-type: none"> • Transmission of business provision (for example, in the event of early termination where the owner needs to put in a new tenant or operator) • Approval of budget • Insurance

Other issues

Intellectual property

Intellectual property may be relevant to a hotel transaction in two scenarios. The first scenario relates to the intellectual property of the outgoing hotel owner. Where the seller owns intellectual property (including business name, trade mark and domain name) in relation to the hotel business, these interests may not necessarily be transferred with the hotel business if they are not specifically dealt with in the transaction documentation. Accordingly, due diligence and diligent contract preparation will be crucial for ensuring all intellectual property necessary for the operation of the hotel business are transferred to the incoming hotel owner.

The second scenario is in relation to intellectual property of third parties, including where intellectual property is owned by a franchisor or operator under a management or franchise agreement. Generally the buyer is responsible for managing the use of any intellectual property owned by third parties. However in relation to a management or franchise agreement, consent will be required from the operator or franchisor if the buyer intends to operate the hotel on an as is basis. Due diligence will enable the buyer to understand the obligations of the hotel owner under the relevant arrangement.

Employees

One of the key features which distinguish a hotel sale transaction from a traditional property sale transaction relates to a hotel's employees. In Australia, the employees of a hotel business are usually employed by the hotel owner and not by the hotel operator. Therefore where there is a sale of the hotel business, the incoming hotel owner will generally assume all the rights and responsibilities of the outgoing owner and employ the existing hotel staff. Accordingly, it is important for a hotel investor to undertake due diligence on key employment contracts of a hotel business in order to understand the scope of its rights, obligations and liabilities in respect of the hotel's employees. Failure to do so may expose an incoming hotel owner to potential liability under employment laws.

Tax

The main taxes that apply to hotel investment and transactions for both local and foreign investors in Australia include:

- income tax – which encompasses capital gains tax (CGT) and withholding tax for foreign investors;
- goods and services tax (GST);
- stamp duty; and
- land tax.



5

Legal environment – gambling

The gambling industry is a heavily regulated sector in Australia. Each State and Territory implements a number of distinct laws, and establishes regulatory authorities and policies for governing this area. Despite this, investment in the sector has grown and in recent years this sector has received increased attention from investors.

Forms of legal gambling

Legal gambling in Australia can be categorised as follows:

- Gaming – which comprises all legal forms of gambling (other than wagering), including:
 - electronic gaming machines (EGMs);
 - lotteries;
 - keno; and
 - table games;
- Wagering – which is another name for betting, includes:
 - sports betting; and
 - race betting.

In Australia, gambling revenue is primarily dominated by gaming. In the past five years, revenue from EGMs in clubs and hotels has accounted for around 50% of gross profits from gambling operators in the industry. Revenue from casinos account for around 20% and wagering for around 15% of gross profits of gambling operators. The following sections will provide a brief overview of the electronic gaming machines market, casino market and wagering market.

Electronic gaming machines

In each of the States and Territories legislation and authorities regulate almost every aspect of business activity relating to EGMs. There are stringent licensing processes which apply to businesses wishing to operate in the industry with different licences needed in order to manufacture, supply, transfer, service, own or hold, and operate gaming machines in each jurisdiction. Additionally, for some States and Territories, there are caps and limits on the number of EGMs which may be operated within the State or Territory.

Casinos

As at January 2014, the Australian casino industry comprises 13 casinos. In addition to the existing casinos, there are also a number of proposals which relate to the development of new integrated resorts with casino features.

The operation of casinos involves a complex regime of policies, regulations and fees and there are in some jurisdictions restrictions on foreign ownership of casinos. For example, in Western Australia legislation limits foreign ownership of a casino licensee to 40%.

The profitable nature of a casino business has underpinned growing interest in integrated resort developments. Foreign investors considering investment into casinos should note that a casino's revenue source include EGMs, table games and international VIP programs.

Wagering

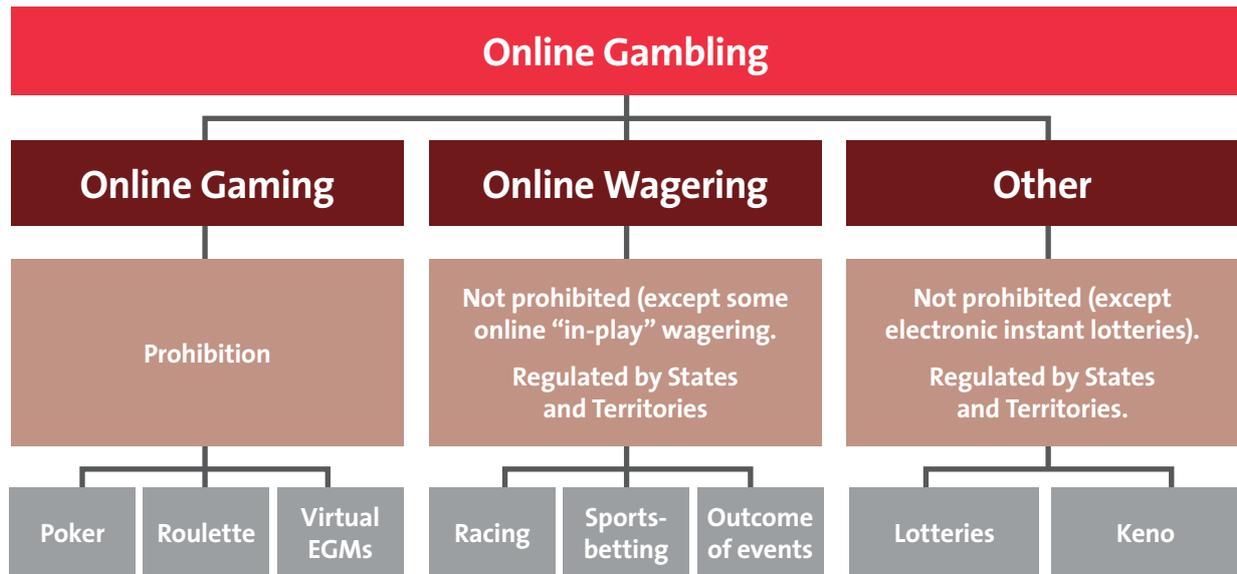
Australia has a number of wagering and betting service providers, some of which have been recently purchased by foreign investors. These betting agencies generally act as sports and racing bookmakers, and providers of online wagering.

While the legislative framework for wagering is state-based, the provision of online wagering services has changed the dynamics of the industry significantly. In particular, many betting agencies are now able to provide services to individuals in another jurisdiction without obtaining separate licences in that second jurisdiction.

Interactive gaming

Interactive and internet gaming is regulated under State and Territory legislation as well as federal legislation, which regulates interactive and internet gaming occurring both within Australia and extraterritorially.

The diagram below provides a useful summary of what types of gaming are considered to be “*interactive gambling services*” under the federal legislative framework.



Taxes

Taxes related to gaming and wagering are regulated separately by each jurisdiction and are dependent upon the type of gaming and wagering conducted. It is important for investors to be aware of the tax obligations associated with the operation of gambling services.

Given the recent developments and growth in foreign investment in Australian tourism assets and the Australian Government’s commitment to supporting the growth of tourism investment in Australia, the Australian tourism industry will continue to be an area of international focus. For Chinese investors and institutions proposing to invest in the industry, it is recommended that steps be undertaken to understand the unique and complex commercial, legal and policy issues affecting relevant investment. Advice should be sought from professionals and consultants with specialised knowledge in this industry.



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