Hogan Lovells

Around Asia Pacific

Australia

November 2016

Contents

The big picture

Around Asia Pacific" is Hogan Lovells' periodic overview of the private equity landscape in the Asia Pacific region and supplements our "Around Europe" series.

This edition focuses on Australia, following our recent reviews of Singapore, Vietnam, Indonesia, Malaysia and Greater China (including Hong Kong).

As a general observation, the Australian private equity market remains strong, with successful fundraisings in the last twelve months and cheap finance offsetting recent political instability and macroeconomic headwinds.

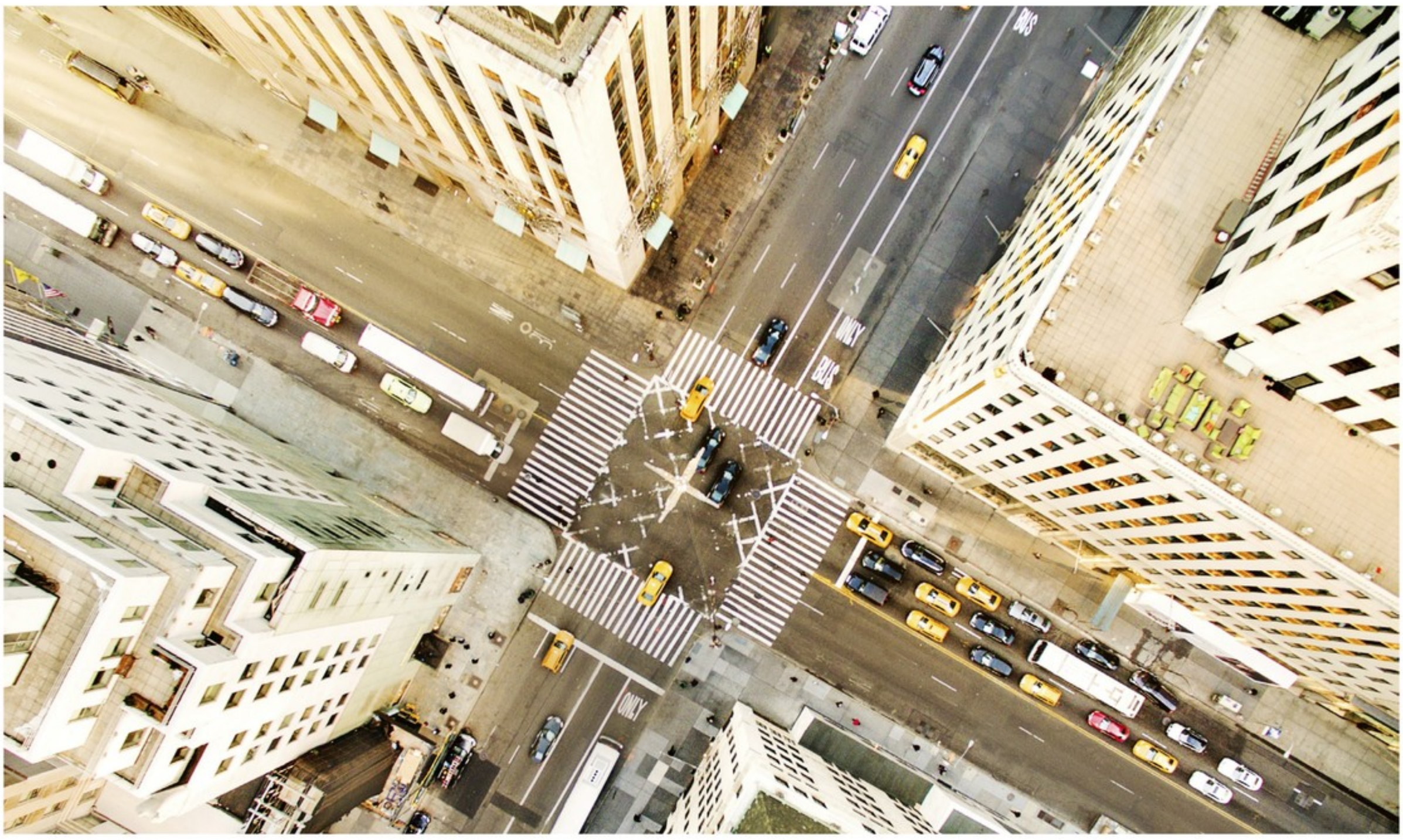
As highlighted later in this edition, the historically active industries of healthcare, education, financial products and natural resources have seen a number of successful transactions, while IPO exits have noticeably slowed with institutional investors digesting the collapse of some recent private equity sponsored ASX listings.

Looking forward we expect to see the upward pressure on valuations continue as larger amounts of domestic capital compete for a finite number of investments.

This will be particularly evident at the high end of the market with offshore funds (particularly Chinese-based) focusing on infrastructure and infrastructure-like assets.

Another trend that continues to grow in the Australian market is the desire of Australian pension fund managers to directly participate in investments rather than simply act as limited partners or co-investors. While still in its infancy here, this is an important development given that Australia's pool of investable pension funds is the fifth-largest in the world and would, if even fractionally utilised in this way, be a formidable presence in direct investment processes.

In this edition of Around Asia Pacific we will highlight some of the key private equity related transactions over the last twelve months, look at the current investment climate and what we see coming in the financing space, speak to some of the key aspects of investing in Australia and then finish by touching on some recent legal developments.



The deals

Consortium led by China Resources Group and Macquarie Capital acquires a majority stake in GenisisCare, Australia's largest provider of radiation oncology, cardiology and sleep treatments at an enterprise value of A$1.7 billion.

A consortium comprising China Resources Group, Macquarie Capital and a number of existing doctor and management shareholders have entered into an agreement to acquire between 50.01% to 74% of the equity in GensisCare from KKR for an enterprise value of approximately A$1.7 billion. KKR acquired its 45% stake in GenesisCare in August 2012, at an enterprise value of $550 million. Completion of the transaction is subject to typical conditions including Foreign Investment Review Board approval and is expected to close during Q3 2016.

GenesisCare focuses on providing high quality specialist care to patients with cancer and cardiovascular disease, the two largest disease burdens globally. The Group is the largest provider of radiotherapy across Australia, operating 25 cancer centres in major metropolitan and also regional settings (including in tertiary teaching public hospitals). More than 80 locations provide cardiology and sleep services. It is also the largest provider of radiotherapy in the UK, where it has 11 treatment centres, and recently acquired the leading Spanish private cancer provider, IMOncology.

Partners Group acquires Guardian Early Learning Group, Australia's largest provider of company-sponsored childcare centres, at an enterprise value of approximately A$440 million.

In January 2016, Partners Group acquired a controlling stake in Guardian Early Learning Group (**Guardian**) from Navis Capital Partners (**Navis**) for approximately A$440 million. Partners Group is the third private equity owner of the company since 2010, as Navis previously acquired the company from Wolseley Private Equity in 2013.

Founded in 2004, Guardian today owns 71 early learning centres that provide care to more than 10,000 families. In addition to its local community centres, Guardian is Australia's leading provider of company-sponsored childcare centres, providing corporations with on- or near-site care for their children.

This acquisition is in line with Partners Group's experience in education-related businesses; in 2015 it acquired the largest for-profit provider of early childhood education in the US, KinderCare Learning Centers, and it has a number of other investments in education-related businesses globally.

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QIC, The Queensland Government-owned investment manager, acquires an 80% stake in the North Australian Pastoral Company (NAP) for approximately A$400 million

NAP is one of Australia's oldest and largest agricultural enterprises covering 5.8 million hectares across Queensland and the Northern Territory and approximately 178,000 head of cattle.

NAP's largest shareholder prior to the acquisition, the Foster family retained an interest in NAP of approximately 20%. Funds advised by QIC including Australian superannuation capital and the UK-based Pension Protection Fund (**PPF**) now hold approximately 80% having acquired the remainder of the Foster family's holding and the 34% stake in NAP that was owned by UK-listed MP Evans.

This acquisition demonstrates a growing trend of fund managers looking to invest directly in underlying assets rather than into sponsor LP products or co-investment opportunities.

KKR, Varde and Deutsche Bank acquire GE Capital's Australian and New Zealand consumer lending arm for an enterprise value of A$8.2 billion

In March 2015, a consortium comprising of Varde Partners, an alternative investment firm, KKR and Deutsche Bank signed an agreement for the purchase of GE Capital's Australia and New Zealand Consumer Lending Business (the **GE Business**).

The GE Business was valued at A$8.2 billion with more than 3 million customers at the time of purchase. The GE Business is a financial services provider, providing credit card and personal loan services, as well as interest-free financing for products sold by local retail partners. The GE Business manages credit card portfolios for retailers Coles and Myer.

The transaction fits with GE's strategy to divest from consumer finance business and to focus on industrial operations and lending in complementary sectors such as aviation and energy.

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PEP acquires Academic College Group, New Zealand's largest private provider of secondary school education, university foundation studies and tertiary training, for approximately NZ$530 million

Waterman Capital agreed with other shareholders to sell 100% of the shares in Academic College Group (**ACG**) to Pacific Equity Partners (**PEP**) in September 2015. Pacific Equity Partners is Australia's largest private equity firm with A$6 billion of funds under management. ACG has 12,000 students and 1,000 staff, running seven schools and several tertiary training centres in New Zealand, as well as a school in Indonesia and one in Vietnam.

The Overseas Investment Office gave approval for Global Academic Group, which is owned by investment funds managed and advised by PEP, for the purchase of ACG in April 2016.

The deal continues PEP's recent trend of acquisitions in New Zealand, including Tegel Foods, Manuka Health and Independent Liquor. The transaction will allow ACG to expand the size and profitability of ACG in New Zealand and offshore.

DUET Group acquire Energy Developments Ltd from PEP for approximately A$1 billion

DUET Group (**DUET**) agreed to buy Energy Developments, an ASX-listed landfill gas and clean energy provider majority-owned by PEP, for approximately A$1.92 billion, in July 2015. The acquisition was finalized in October 2015. This transaction allowed DUET to gain natural gas plants in Australia, the United States and Europe, including power plants with about 900 MW of capacity.

DUET offered A$8 cash per share, or 9-times earnings. This was a 3.6% premium to the last close. The acquisition was said to be implemented by a scheme of arrangement and funded by an A$1.67 billion equity raising executed by Macquarie Capital and UBS.

The deal allowed for increased cash flow for DUET, which upgraded its 2015-2016 distribution guidance to A$0.18 per security from A$0.175, and forecast higher dividend payouts in 2017 and 2018. However, it was also considered a risk for DUET which had been predominantly focused on regulated assets such as electricity and gas networks, offering stable returns.

Archer Capital divests Healthe Care, Australia's third largest private hospital operator, to China's Luye Medical Group, for A$938 million

Healthe Care, which was founded in 2005 with the backing of CHAMP Ventures, comprises one of the largest networks of privately-owned private hospitals in Australia. The company owns and operates 17 hospitals across 5 states, seeing over 550,000 patients each year.

Archer Capital acquired Healthe Care from CHAMP for A$240 million in 2011 and then sold the business in December 2015 to Luye Medical for A$938 million.

Luye Medical currently comprises a network of healthcare service facilities across major cities in China, focusing on key therapeutic areas, including rehabilitation nursing, plastic surgery, postpartum nursing, geriatric medicine, cardiovascular medicine, oncology and orthopaedics. Luye Medical is a part of Luye Pharma Group, which floated on the Hong Kong Stock Exchange in 2014. After the acquisition of Healthe Care, Luye Pharma Group is one of the largest international players in the healthcare sector in the region.

Quadrant acquires V.I.P Petfoods for A$410 million from founders

Quadrant Private Equity No. 4 (**Quadrant**) acquired V.I.P Petfoods (**VIP**) from owners and founders Tony and Christina Quinn for A$410 million in late 2015. As part of the transaction, Quadrant agreed to partner with the existing management team to grow the business and allowed a substantial management roll-over as part of that arrangement.

VIP is one of Australia's premier producers of fresh chilled petfoods. More recently, VIP has launched in the United States (in particular through the H.E.B grocery stores throughout Texas) and continues to service overseas markets in Canada, Korea and Japan.

Navis Capital Partners to sell Worldmark Group Holdings Pty Ltd to Quadrant

In August 2016, Navis Capital Partners (**Navis**) announced that it had signed "definitive documentation" to sell its 87% interest in WorldMark Group Holdings Pty Ltd (**WorldMark**) to Quadrant Private Equity, in a deal estimated to be worth A$300 million. The transaction is expected to close later this year.

WorldMark is a leading provider of products and services to Australian dealerships. It supplies either a product or a service to 1 in every 2 cars sold in Australia. Navis and WorldMark also divested its automotive consulting division into the Asian market in the second quarter of 2016.

Infratil acquire Canberra Data Centres from Quadrant for $800 million

Infratil, a New Zealand civil infrastructure investment company, and the Commonwealth Superannuation Corporation agreed to acquire a 48% stake each in data centre provider, Canberra Data Centres (**CDC**) for A$800 million in May 2016. Infratil received Foreign Investment Review Board approval in September 2016. CDC management, which was previously owned by Quadrant Private Equity, will own the remaining 4%.

Commonwealth Superannuation Corporation is an Australian pension fund which manages the retirement savings of Australian federal employees and former defence force staff.

CDC makes approximately A$50 million in earnings before interest, tax, depreciation and amortisation a year from its data centres, which house data for a number of federal government agencies.

Infratil, managed by HRL Morrison & co., paid A$392 million for its share. The acquisition by Infratil will provide access to Australia's growing data and related telecommunications infrastructure sector. This transaction aligns with the company's recent trend of investing in higher risk infrastructure assets.

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Market commentary and analysis

2016 has been a year marked by substantial uncertainty and instability in global economic markets. Global M&A activity has been hurt considerably by factors such as the Brexit referendum, slowing growth in China, falling oil prices and political uncertainty surrounding the upcoming US federal election.

Although Australia continues to perform strongly compared to other developed countries, it has not been immune to the turbulence experienced by global financial markets in 2016. Factors including the recent Australian federal election, depreciation of the Australian dollar, and a decline in mining investment following an historic boom period are often cited as being key contributors to a decline in local deal activity in the first half of 2016.

However, despite the mixed view of the Australian economy and its performance and capacity, there is an emerging appetite for exposure to sectors that either remain robust, are considered to be right for renewed or further growth, or which simply have not been able to attract traditional funding.

"The economic outlook of Australia is too often assessed through a singular lens that focuses heavily on the impact of the slowdown in activity in the energy and resources sectors" says Tim Lester, head of Hogan Lovells' corporate practice in Australia, "the Australian economy and its changing dynamics present a much broader range of interesting opportunities, and we are starting to see PE funds and firms increasingly invest in and pay attention to these opportunities".

Noting this and despite a heavily-weighted focus on the performance of the energy and resources sectors, when you strip back to the basics, Australia has all the fundamental ingredients of a safe yet exciting environment for sophisticated PE investors.

Indeed, various industry sectors within Australia are increasingly capturing the attention of PE investors. These industries include education, healthcare and life sciences, consumer services and retail, information technology, tourism and transport, energy and resources and financial services.

2016 has been a year marked by substantial uncertainty and instability in global economic markets.

The Australian market and economy are fundamentally strong in global terms; Australia has a stable history of economic achievement and growth. In context, Australia has not experienced a technical recession since 1991 – an impressive feat given the global economic impact of the 1997 Asian Financial Crisis and the 2008 Global Financial Crisis. Australia's 100 consecutive quarters without recession is second only to the record held by the Netherlands – which stands at 103 consecutive quarters.

However, Australia is not showing any signs of slowing. In fact, the 3.3% annual growth rate for the year ending 30 June 2016 was the fastest pace of annual growth that Australia has seen for four years.

Further, the Reserve Bank of Australia has recently cut interest rates to a record low of 1.5%, making debt considerably cheaper for funding PE activity.

A market, such as Australia, that has strong fundamentals but which is also experiencing some areas of economic disruption presents interesting opportunities. Opportunities emerge in response to companies seeking new capital or project-specific investors or seeking to rebalance their portfolios or exposure in response to their strategic focus or own specific economic circumstances.

The above factors, when combined with comparatively low debt levels, strong population growth, a stable and conservative banking system and a strong and impartial rule of law, make Australia an attractive environment for growing PE activity.

Looking ahead

Debt financing of private equity deals in Australia

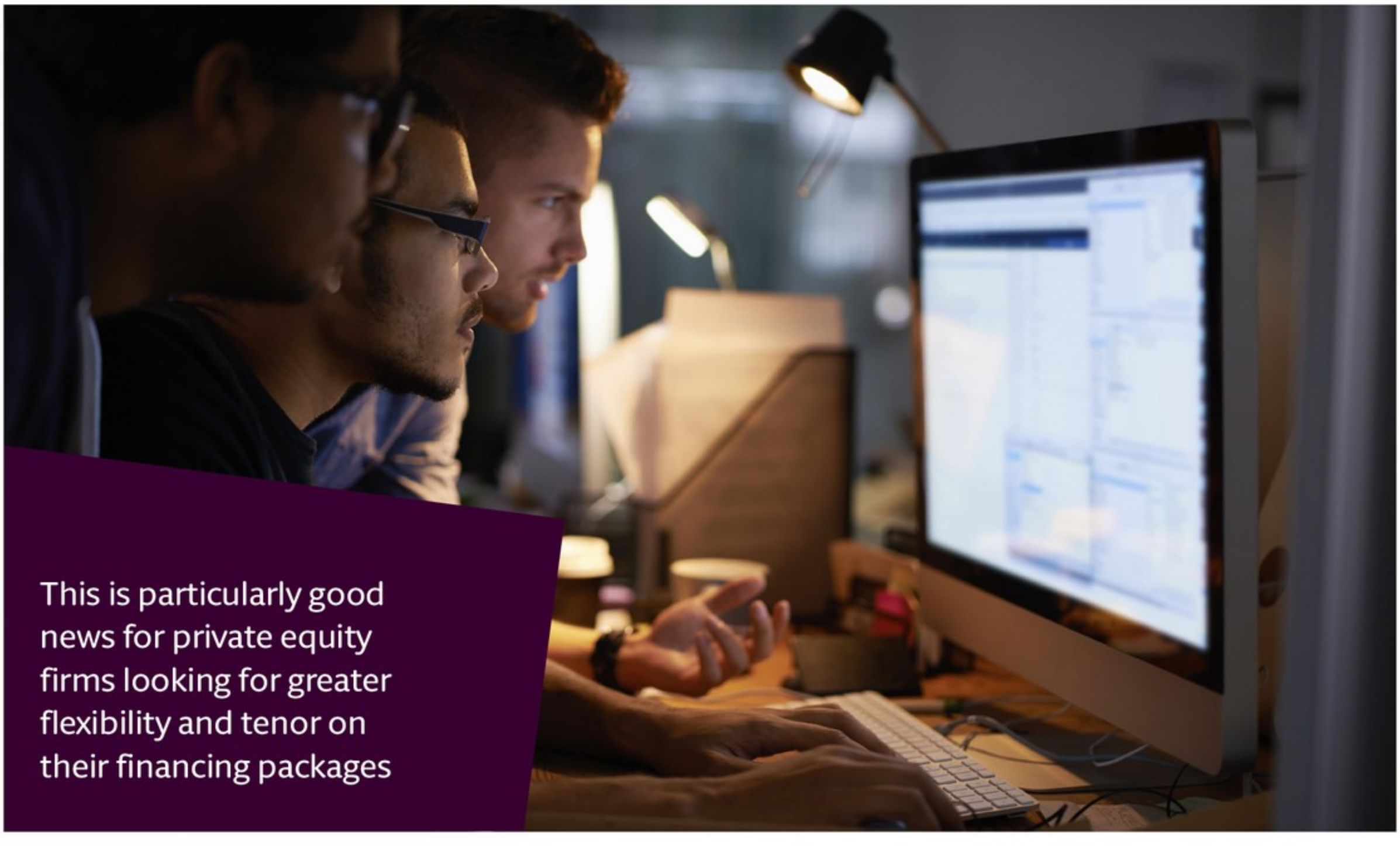
An evolving market

The landscape for debt financing of private equity deals in Australia has recently evolved from being a bank dominated market to being one dominated by non-bank lenders, including Babson, Challenger, ICG, KKR Credit, Metrics Credit Partners, Partners Group, and Sankaty (Bain Credit). We are also seeing local pension (superannuation) funds lending directly into transactions. This growing trend of disintermediation in the Australian market is also consistent with what we are seeing in the US and European markets.

This is particularly good news for private equity firms looking for greater flexibility and tenor for their financing packages. For example, the financing for Apollo and CIMIC's joint venture vehicle, Ventia, included the first ever Australian-denominated Term Loan B facility which was up-sized from an initial target of A$250 million to A$359 million.

This was a seven year 'covenant lite' deal which was initially priced at 5.50% above BBSY. This deal was again recently up-sized by an additional A$225 million and re-priced downwards in connection with a dividend recapitalization of the business.

This is great news for private equity firms who are now able to access an AUD Term Loan B market without having to incur the cost of expensive AUS – USD cross-currency swaps. We anticipate that this may become the new financing solution of choice for many, particularly when compared with the quarterly maintenance covenant regime typically imposed by the traditional Australian bank debt market.



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Doing Deals in Australia

Can we invest?

Approach to foreign investment

Australia welcomes foreign investment and recognises the benefits of foreign investment to the continuing development of Australia's economy, provided such investment is not contrary to Australia's national interest.

Australia has a stable political environment and a robust common law legal system, supported by federal and state-specific legislation.

Foreign investment into Australia is relatively lightly regulated in most sectors comparative to many jurisdictions in the Asia-Pacific region, although following recent media and public attention, there has been some tightening of investments in agricultural land and agribusiness as well as an enhanced review of acquisitions of State-owned critical infrastructure assets.

Foreign investment approvals are ultimately the responsibility of the federal government with assistance from the Foreign Investment Review Board ("**FIRB**") and the Australian Tax Office ("**ATO**").

The foreign investment regulatory framework comprises the *Foreign Acquisitions and Takeovers Act 1975 (Cth), the Foreign Acquisitions and Takeovers Regulation 2015 (Cth)*, the *Foreign Acquisitions and Fees Imposition Act 2015* and Australia's Foreign Investment Policy (together referred to as the "**FATA**").

The FATA imposes a range of monetary thresholds dependent on the type of foreign investor and on the relevant asset to be acquired.

Where the FATA thresholds are triggered, applications are required to be submitted to FIRB for assessment and 'no objections' approvals are issued from the office of the Treasurer of Australia (the "**Treasurer**"), a minister of the Australian Government.

The Treasurer has the ultimate discretion to accept or refuse applications for foreign investment on a case-by-case basis on national interest grounds.

The Treasurer's discretion to refuse applications is, however, exercised sparingly and rejections have been limited only to investments with special political and social considerations, for example, acquisitions of critical infrastructure or in respect of acquisitions of large areas of agricultural or other sensitive land in Australia.

Foreign persons vs foreign government investors

'*Foreign persons*' and '*foreign government investors*' are treated differently for the purposes of determining which foreign investments into Australia must be notified to FIRB, with stricter requirements and lower thresholds applicable to foreign government investors.

'*Foreign persons*' includes individuals who are not ordinarily resident in Australia, and corporations/ trusts in which foreign persons and their associates hold an interest of **20% or more**. Trustees and general partners are also caught where underlying investors in a fund meet the 20% threshold. An investment of a 'substantial interest' of 20% or more by a foreign person in an Australian corporation, or the acquisition of an Australian business, is generally notifiable to FIRB if the value of the corporation or the purchase price for the acquisition exceeds **A$252 million** (higher thresholds apply for certain recognized jurisdictions, including the US, China, Japan and South Korea). Lower thresholds apply, however, for investment in Australian land interests.

A '*foreign government investor*' under FATA refers to entities (or funds) which are 20% or more held or controlled by foreign governments from a single country, or 40% from multiple foreign countries, including by the '*agency or instrumentality*' of a foreign government.

Australia has a stable political environment and a robust common law legal system, supported by federal and state-specific legislation.

This has been interpreted by FIRB to extend to public sector pension funds, which can constitute a considerable portion of the investor register for many PE funds, who often find themselves caught under the FIRB regime as a foreign government investor despite the private nature of the fund. In general, investments of a 'direct interest' of 10% or more by a foreign government investor in Australian assets or land will require notification to FIRB with no monetary threshold.

Sensitive sectors and investment in Australian agricultural land

Lower notification thresholds apply to investment in 'sensitive businesses', which includes: media, telecommunications, transport and various military activities, encryptions and securities technologies and communications systems, and the extraction of uranium/plutonium and the operation of nuclear facilities. In addition, all foreign persons must get approval to make investments of at least 5% in an Australian media business, regardless of the value of the investment.

In certain sectors, separate legislative regimes impose additional foreign ownership restrictions and thresholds, including under specific Australian legislation which applies to the banking, civil aviation and airports, shipping and telecommunications sectors in Australia.

All acquisitions of residential land in Australia by foreign persons require notification to FIRB, regardless of the value of the investment. FIRB's approach to foreign investments in Australian agricultural land and agribusinesses has continued to tighten over the previous year. Refer to the section "*Recent legal developments*" for further information.

Common thresholds and other considerations when investing in Australia

The Australian Securities and Investments Commission ("**ASIC**") is the corporate regulator in Australia and monitors and enforces Australia's corporations and securities laws. The Takeovers Panel is responsible for regulating public corporate control transactions in Australia and the Australian Competition and Consumer Commission ("**ACCC**") regulates consumer and anti-trust laws. Listed companies in Australia are subject

'Foreign persons' and 'foreign government investors' are treated differently

to additional oversight by the Australian Securities Exchange ("**ASX**") and the ASX Listing Rules.

Fundraising and disclosure requirements

Both local and foreign companies may raise funds in Australia provided they do so in accordance with disclosure requirements set out in the *Corporations Act 2001 (Cth)* ("**Corporations Act**").

Persons dealing in financial products and financial advice also need to comply with financial services licensing requirements under the Corporations Act. The offer of securities to Australian investors and financial services licensing is administered by ASIC.

Unless certain exceptions apply, an offer of securities to a person in Australia requires disclosure.

This will generally involve the production of a full **prospectus** or similar disclosure document, which contains detailed information necessary for investors to make an informed assessment of the rights and liabilities attaching to the securities being offered.

A prospectus is required to be lodged with ASIC prior to any offer being made, and attaches to it liability for directors and other persons in connection with the offer and statements made in the prospectus.

Private companies may raise additional capital from their existing shareholder base or employees without full disclosure subject to complying with specific requirements. In addition, offers of securities to **sophisticated investors or professional investors** are permitted without disclosure.

This is provided that, in each case, the relevant person who is offered securities fits within the relevant exceptions to disclosure.

ASX-listed companies may raise capital through a more streamlined and less stringent disclosure process, which involves the production of a **cleansing notice** and supplementary disclosure to the market.

Advice should be sought to confirm which disclosure requirements may apply when raising capital in Australia.

For further information please refer to our guide "*Raising Capital in Australia*", which can be requested by calling our Australian office.

Lower notification thresholds apply to investment in 'sensitive businesses'

Acquiring a substantial shareholding in a listed company

Any person who acquires a substantial holding of securities in a listed company in Australia is required to give notice to the company and publicly disclose that fact to ASX within two business days of becoming aware of the information. A **substantial holding** includes a relevant interest in **at least 5%** of the voting shares or interests in the listed company. The test for determining a 'relevant interest' is broad and also considers the interests of associates.

A substantial holder must also notify the listed company and ASX if the relevant interest moves up or down by **at least 1%**. Where a person makes a takeover bid for a listed company, they are also required to notify the listed company and ASX of their holding upon making the bid.

The notice given to the ASX is publicly disclosed and is required to include limited information which traces the underlying ownership of the securities and, in some cases, must attach the underlying contractual arrangements that give rise to the relevant interest disclosed.

Acquiring a controlling interest in a public company

In Australia, there is a general prohibition on any person acquiring a relevant interest in voting shares in a listed company or an unlisted company with more than 50 members if that person's or someone else's voting power increases to above 20%, or increases from a starting point that is above 20% and below 90%, unless that person complies with prescribed takeover bid procedures.

Common exceptions to the general prohibition include where the acquisition has been approved by the shareholders of the company (excluding the acquirer and its associates), acquisitions under IPO fundraisings (including for underwriters) or rights issues to existing shareholders, and a 3% creep exception which allows holders of at least 19% voting power to acquire 3% or less additional voting power over a 6-month period.

In addition, a compulsory acquisition threshold of 90% applies, in relation to which a person is entitled to compulsorily acquire all of the remaining interests in a public company if it has acquired 90% or more of the voting power in that company.

Unless certain exceptions apply, an offer of securities to a person in Australia requires disclosure.

Recent legal developments

Foreign investment

A number of key changes to Australia's foreign investment regime have been introduced through the passage of a new legislative framework in December 2015 and through follow-up policy and regulatory changes. The key changes to the regime are set out in the table below.

In addition, significant fees have been introduced for the lodgement of FIRB applications, ranging from A$25,000 for acquisitions of a substantial interest in an Australian business, to up to approximately $A100,000 for certain acquisitions of Australian land.

Given the statutory review timeframe of 30 days (plus 10 day notification period) only commences upon the payment of relevant application fees, it is important for buyers to strategically consider the timing of making an application, particularly in competitive bid processes.

In response to criticism from the private equity community, fee reductions have been agreed by FIRB for applications required to be made by PE funds which technically trigger the foreign government investor thresholds, where the value of the transaction is less than A$10 million or where the transaction involves developed commercial land valued at less than A$55 million.

Key changes to the foreign investment regime in Australia

Substantial interest threshold – the substantial interest threshold used to determine whether an investment by a foreign person in an Australian entity is notifiable to FIRB (provided it meets the monetary threshold) has been increased from 15% to 20%.

For example, foreign persons must obtain approval before acquiring more than a 20% interest in an Australian entity that is valued above A$252 million. The direct interest threshold for investments by foreign government investors remains unchanged at 10%.

Foreign government investor (FGI) thresholds – the changes provide for the aggregation of the interests held in an entity or fund by underlying FGI when determining whether the entity or fund is itself a FGI. "Associates" of a FGI are now deemed to include any other FGI from the same country even if the relevant investors are unrelated to each other.

This change further broadens the definition of foreign government investor, and should be carefully considered by PE funds which have multiple minority FGI investors on their register.

Agricultural investments – foreign investors who hold an interest in farming land are now required to register their interest on a national register (regardless of the value of such interest and whether or not FIRB approval is required). Investments in Australian agricultural land will require notification if the value of the interest exceeds A$15 million. In addition, a foreign person who acquires a direct interest of 10% or more in an agribusiness (over the A$55 million threshold) now requires prior approval. The concept of 'rural land' has also been replaced with the broader concept of 'agricultural land'. Note that the thresholds for investments in residential or undeveloped vacant commercial land have been set at A$0.

Mining and production tenements – foreign investors seeking to acquire an interest in a mining or petroleum production tenement will need to obtain FIRB approval regardless of the value of the interest (unless the grant is made by the Australian government).

Exploration tenements are generally not notifiable.

Investments in State-owned critical infrastructure – as of 31 March 2016, amendments have been passed to the FATA to provide that the sale of critical state-owned infrastructure assets (for example, ports or electricity networks) to foreign investors shall be assessed by FIRB.

Previously, an exemption had applied which meant that such sales were not notifiable to FIRB.

Tax conditions – new changes to the FIRB regime mean that FIRB can impose tax conditions to its approvals, which require the applicant to comply with local tax laws, provide documentation requested by the ATO and pay all outstanding local tax debt.

In addition, special tax conditions may be added to the approval where a particular tax risk has been identified. The Treasurer also has the ability to unwind transactions if tax conditions are not complied with.

Harsher penalties - introducing civil penalties and stronger criminal penalties for serious offences, as well as providing for the issue of infringement notices for less serious offences.

Under the new regime, bodies corporate can be held liable for a fine of up to A$675,000.

China-Australia Free Trade Agreement – Chinese investment in Australia

On 20 December 2015, the China-Australia Free Trade Agreement (**ChAFTA**) came into force. ChAFTA builds on a large and successful commercial relationship between Australia and China, by securing markets and providing even better access to each other across a range of key business interests, including goods, services and investment.

ChAFTA not only promotes sector-specific opportunities, but also safeguards and facilitates cross-border investment between Australia and China, improving opportunities for investors in both countries.A number of fundamental changes envisaged by ChAFTA to promote and protect the Chinese investment activities in Australia include:

- easing of Australia's foreign investment threshold for private Chinese investors in 'non-sensitive' sectors from A$252 million to A$1,094 million. Lower thresholds for agricultural land (A$15 million) and agribusiness (A$55 million) will continue to apply to private Chinese investors.

The position regarding investments by Chinese government bodies (including state owned enterprises) has not changed, and will continue to require scrutiny of the Treasurer.

- implementing the Investor-State Dispute Settlement (ISDS) mechanism, which allows Australian and Chinese investors to directly enforce investment obligations under ChAFTA.
- reducing barriers to labour mobility by improving access for a range of Australian and Chinese skilled service providers, investors and business visitors.

  Large infrastructure development projects over A$150 million across a broad range of sectors including food and agribusiness, resources and energy and transport which are substantially owned by a Chinese enterprise will be able to operate under an Investment Facilitation Agreement (IFA). IFA will provide greater flexibility for companies to mobilise foreign labour to address labour market challenges.

Anti-corruption and bribery developments

There have been a number of recent reforms to the anti-corruption and bribery regime in Australia to implement Australia's obligations under the OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions and the United Nations Convention against Corruption (**UNCAC**).

The recent changes include:

- **False accounting** – the introduction of new offences for false accounting records under the Criminal Code 1995, with harsh penalties. This applies to foreign and domestic organizations and has extra-territorial effect and applies when accounting documents are altered with the intention to conceal illegitimate benefits (including a recklessness standard).
- **Intention to influence** – clarification that an intention to influence a particular foreign public official is not required to establish the offence of bribery of a foreign official.
- **Deferred Prosecution Agreements (DPA)** – a consultation process is currently being run by the Justice Department on whether DPAs should be adopted in Australia.
- **Legislative review** – a Senate Standing Committee on Economics review is currently underway, which will examine the effectiveness and any required improvements to the anti-corruption and bribery legislation and its investigations/ prosecution in Australia.

New collateral financing laws – super-priority over local security interests

The new G20 margining requirements for derivatives came into effect in September 2016, requiring gross initial margin to be exchanged for derivative transactions with variation margin requirements to follow. The international regulation requires immediate enforcement of collateral arrangements following insolvency of a derivative counterparty which required overriding standard insolvency provisions in the *Corporations Act 2001* (Cth) and the priority regime in the *Personal Property Securities Act 2009* (Cth) (among others) in Australia pursuant to the *Financial System Legislation Amendment (Resilience and Collateral Protection) Act 2016* (Cth). These legislative amendments provide super-priority protection for security over financial property granted to collateral counterparties pursuant to a close-out netting contract.

Previously, for Australian derivative transactions, collateral was transferred absolutely. These amendments mean that collateral will now be transferred by way of security interest, resulting in PPSA registrations now being made for these types of transactions. Counterparties will also need to amend their credit support annexes to facilitate transfer by way of security interest.

Whilst the amendments are designed to regulate derivative transactions, they may have a broader application to larger finance transactions. For example, swap banks may now need different security arrangements and may seek to ring-fence their swap security from other financiers. Consideration will need to be given to beneficiary sharing arrangements in syndicated transactions. Whilst the standard sharing provisions are not prohibited by the new regime, swap banks may insist that their security or proceeds are kept separate.

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