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Acquisition Finance 2023

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Australia: Law & Practice

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Gilbert + Tobin

AUSTRALIA

Law and Practice

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Gilbert + Tobin advises leading financial institutions, investment banks, corporations and private equity funds, and the lawyers in its Banking + Projects team have strong experience in domestic financing and cross-border transactions. The Banking + Projects team is one of the largest dedicated banking and finance legal teams in the country, comprising 18 partners, 11 special counsels and approximately 82 associates. The firm has offices in Sydney, Melbourne and Perth and consistently provides an outstanding, comprehensive offering on the region's most complex, market-leading deals. It also has well-established relationships with some of the largest firms across the globe.

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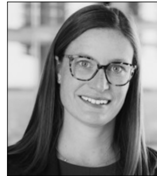

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1. Market

1.1 Major Lender-Side Players

There is a long history of M&A activity in Australia, and accordingly, leveraged finance is a well-understood and active area for financiers and sponsors alike. The financing of acquisitions in Australia remains the domain of banks, both domestic and international, together with institutional debt funds.

Banks

Australia's major domestic banks (Australia and New Zealand Banking Group, Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation) have traditionally been quite active in the acquisition finance market. These banks often take leading roles in arranging acquisition facilities and often provide a significant portion of the debt commitments.

The major domestic banks compete with a range of foreign and local investment banks, such as Jefferies, UBS, Deutsche Bank, Macquarie Bank, JP Morgan, Bank of America Merrill Lynch, Royal Bank of Canada and Goldman Sachs, particularly on large-ticket (eg, AUD1 billion plus) transactions, which typically require an underwritten facility.

Japanese and Chinese banks such as Mitsui, Sumitomo, Mizuho, Bank of China and ICBC are also increasingly active in taking senior debt positions as part of a syndicate, with Chinese banks regularly funding Chinese investment into Australia.

Institutional Lenders and Alternative Capital Providers

Traditionally, debt funds and institutional lenders were limited to structured, distressed or mezzanine financing and were not as popular in Australia as in other jurisdictions. While Australia remains a bank-led market (particularly in comparison to the USA and Europe), alternative credit providers such as institutional non-bank lenders and, more recently, Australian pension/superannuation funds are rapidly gaining significant market share.

This trend is likely to continue, and as both political and regulatory pressure increases on the major domestic banks, alternative credit providers are becoming increasingly attractive to sponsors, particularly given their willingness to offer a range of products not offered by the major domestic banks, such as unitranche or Term Loan B (TLB) facilities. The increased presence of the alternative credit providers has resulted in the importation of terms from the US and European markets, including "covenant-lite" structures and other more borrower-friendly terms.

Private equity firms have gravitated towards these alternative credit providers and products to benefit from higher leverage multiples, longer tenors, less amortisation and more permissive terms. This is particularly the case with the large international private equity funds, such as those identified in **1.2 Corporates and LBOs**, which are very familiar with these structures and able to leverage their experience to adapt these products to the domestic market.

1.2 Corporates and LBOs

From a sponsor perspective, acquisition finance activity in Australia is primarily driven by private equity firms. In this respect, a number of the large international private equity firms have a presence in Australia (including Bain, Blackstone, Carlyle, KKR and TPG). In addition to the global players, a number of domestic private equity firms are also active in the acquisition finance

space (including BGH Capital, CPE Capital, PEP and Quadrant).

From a market perspective, the Australian market experienced positive performance during the first half of 2022, with a slowdown during the second half of 2022 due to the impact of inflation and increased cost of funding, together with geopolitical challenges and market uncertainty. Australian syndicated lending decreased by 3% and the number of syndicated loans decreased by 27%, in each case, over the first nine months of 2022 relative to the same period in 2021.

1.3 Geopolitical and Global Health Considerations

In 2022, the effects of the COVID-19 pandemic were no longer having a pronounced effect on the Australian market. Rather, the Australian market enjoyed a buoyant start to the year with increased M&A activity and pre-pandemic levels of syndicated lending. However, in the second half of 2022, the Australian market was affected by the strong economic headwinds of inflation and increased cost of funding, as demonstrated by the Reserve Bank of Australia's decision to increase the official cash rate every month for ten consecutive months. This increased cost of funding, together with geopolitical challenges (abroad and, to a lesser extent, closer to home, with changes in leadership in the Australian federal and numerous state governments) and market uncertainty led to a downturn in M&A transactions and consequently in acquisition financing.

From a documentation and transaction perspective, the first half of 2022 saw the increased popularity of TLB and unitranche facilities in acquisition financings. Sponsors sought unitranches where they wanted to deal with a single lender for quick and easily executed transactions without the usual risk of a delayed TLB syndication period. In the second half of 2022, as the US TLB financing market became increasingly affected by macroeconomic conditions, a number of notable acquisition financings completed in Australia funded by unitranche facilities. Also, sponsors who have historically raised debt for Australian acquisitions in the unitranche or TLB financing markets more frequently considered traditional bank loans as a viable option, due to the banks offering competitive pricing and a willingness by some sponsors to forgo flexibility for economics in the current market environment.

Transaction timelines (at least for purely domestic transactions) have normalised and returned to their pre-pandemic profile. From a local perspective, transaction implantation is easier given that COVID-19-related reliefs have now become a permanent feature of the Australian legislative landscape. The legislative responses to COVID-19 have modernised transaction implementation that will facilitate efficient implementation going forward. For example, the Corporations Amendment (Meetings and Documents) Bill 2021 received royal assent on 22 February 2022, and makes permanent reforms to the Corporations Act 2001 (Cth) (Corporations Act) to allow companies and registered schemes to hold virtual meetings, distribute meeting-related materials and execute documents electronically. This builds on the temporary COVID-19 relief measures introduced at the height of the pandemic in 2020. Such measures will be further expanded in the second half of 2023, when the Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2023 (Cth) is passed by Parliament.

2. Documentation

2.1 Governing Law

For domestic transactions, debt documentation (including commitment letters, term sheets and full-form facility and intercreditor agreements) is governed by the law of an Australian state or territory – generally New South Wales or Victoria. There are no material differences between the laws of each state or territory from a governing law perspective, with all Australian companies regulated by Commonwealth law irrespective of the governing law of the documentation. If the acquisition debt is arranged offshore, the governing law of that offshore jurisdiction may be used (typically, English law or the laws of a state of the USA).

Security documents affecting Australian assets are similarly governed by the law of a state or territory, and only one jurisdiction is chosen for the governing law even if the assets are located in multiple states. Again, the choice of law is usually determined by where the grantor operates, where its assets are located and/or where the law firm drafting the documents practises. If assets are located outside Australia, financiers will usually require the relevant obligor to provide security governed by the law of the jurisdiction where the assets are located. Where a foreign company is granting security over assets located in Australia, financiers will require separate security documents to be executed over those assets, with one security document governed by the law where the foreign company is incorporated and one governed by the jurisdiction where the assets are located.

2.2 Use of Loan Market Agreements (LMAs) or Other Standard Loans

The Loan Market Association (LMA) equivalent in Australia is the Asia Pacific Loan Market Association (APLMA), which has produced a suite of documents, including bilateral facility documentation, commitment letters, confidentiality letters, mandate letters, and both investment grade and standard secured syndicated facility agreements, but is yet to produce an equivalent to the LMA's leveraged acquisition documentation (unlike the LMA suite, these documents are not specifically tailored to acquisition finance transactions). The APLMA standard secured syndicated facility largely mirrors the structure of the LMA version, with notable differences in Australia's interest withholding tax regime and local laws (eg, financial assistance legislation) and market practice.

The APLMA documentation has largely followed the approach of the LMA precedents to the use of risk-free rates as replacements for IBOR rates, again with some differences (eg, taking into account that Australian dollar denominated loans typically use a forward-looking term rate rather than a backwards-looking risk-free rate – a position that appears unlikely to change in the short term).

Each firm tends to have its own precedent acquisition facility documentation, which is, to a greater or lesser extent, based on the APLMA standard facility documentation. As US and European private equity funds have become more active in the Australian market, facility documentation has become more aligned to offshore norms, often incorporating documentation "technology" seen in more developed capital markets. Similarly, as the market dynamic has changed, there have been a number of acquisition financings of Australian companies documented via an offshore law-governed facility document, whether a US-style TLB or an English law-governed "unitranche"-style facility.

Each firm also has its own precedent security documentation, though all asset security will be taken under a "general security" agreement/deed (equivalent to a UK debenture) and security over a specific asset or class of asset (typically shares or other equity interests) will be taken under a "specific security" agreement/deed.

2.3 Language

From a domestic perspective, debt documentation (including the finance documents and security documents governed by Australian law) is almost exclusively drafted in English. Occasionally, debt might be arranged in an offshore jurisdiction such as China, where the facility documentation will be in the national language of that offshore jurisdiction, with an English translation required by the financiers. In that case, any security documents affecting Australian assets will be drafted in English (and governed by Australian law), with security over offshore obligors governed by the local customs applicable to the relevant jurisdiction.

2.4 Opinions

As is typical, lenders will ordinarily require the provision of a legal opinion as a condition precedent to the initial drawdown of the facilities (and any subsequent accessions). Legal opinions typically cover the capacity, authority and corporate power of the obligors incorporated in Australia to enter into the finance documents and the enforceability of the Australian law-governed finance documents against the obligors. In a secured transaction, the relevant legal opinion will also cover the creation of valid security interests, though will not typically opine on the priority of security interests over assets other than real property due to the complexities of the federal law that applies to the priority of such security interests.

These opinions are often expanded to cover additional matters such as the payment of stamp duty, immunity from suit and whether the transaction requires the financiers to be licensed or registered in Australia (which is often requested by international banks).

The general rule remains that counsel to the financiers will issue the legal opinion, even where the borrower's counsel has drafted the finance documents (noting that there is no hard and fast rule in Australia as to whether the borrower's or financier's legal counsel drafts the documents, though increasingly strong sponsors' legal counsel will hold the pen on all key documents). However, due to increased cross-border acquisition activity, borrowers' counsel have become more willing to issue opinions addressed to the financiers, particularly if they are drafting the documents or if the acquisition debt is being raised in the USA to fund an Australian acquisition. In a syndicated financing, it is typical for reliance on the legal opinion to be offered to financiers joining primary syndication within the first three or six months.

The one exception to the above rule is in the context of an offshore capital transaction (eg, a high-yield bond), where the borrower's lawyers will typically opine on "fair disclosure" in the context of the Australian-related disclosure and risk factors in the offering memorandum.

While each law firm has its own form of precedent opinion, most are consistent (in substance but not necessarily form) with a precedent legal opinion made publicly available by the Banking and Financial Services Law Association of Australia.

3. Structures

3.1 Senior Loans

Traditionally, a senior Australian acquisition finance package has featured an amortising Term Loan A (which is no longer common), together with a bullet Term Loan B, to collectively fund the acquisition of the target group. The financing package will usually include a revolving credit facility to be used for the group's working capital and general corporate purposes (including any contingent instrument requirements) and may include capex or acquisition facilities, as required, which tend to be on a committed basis. These facilities will typically rank pari passu in both payment and security.

However, in recent times, the market has seen a shift away from the traditional senior bank loan capital structure highlighted above to standalone TLB facilities and unitranche loans offered by institutional lenders (which generally contemplate limited amortisation). This competition has led the major domestic banks to offer more flexible terms in their traditional leveraged products, including reducing or eliminating amortisation and offering more flexible terms in relation to financial covenants. This has now become the norm.

The unitranche facilities are generally accompanied by a "super senior" revolving credit facility for working capital and contingent instrument purposes. Facilities of this nature are typically provided by a local bank and rank in priority to the term facilities on enforcement.

In addition to the above, loan documentation increasingly includes mechanics that provide the borrower with the flexibility to incur accordion or incremental facilities, which facilitate increased leverage within the confines of the existing facility documentation.

3.2 Mezzanine/Payment-in-Kind (PIK) Loans

"Opco" mezzanine financing was previously a common feature of the Australian acquisition finance market, but is something of an anachronism in the current market.

If additional leverage is required to fund larger acquisitions, sponsors typically achieve this via a "holdco" instrument. In these circumstances, mezzanine financing is provided at a holdco level above the senior debt obligor group. This structure enables sponsors and senior lenders to avoid the complexity of having the subordinated debt provided at the level of the senior debt, as the debt will be structurally subordinated to the senior debt. This also avoids the often-protracted negotiations between senior and mezzanine lenders on the intercreditor arrangements to achieve a contractual subordination of these facilities. Holdco financings have become increasingly popular as a means to reduce debt service in the current market environment as interest rates continue to rise, as the holdco can typically elect to either pay or capitalise (ie, payment-in-kind – PIK) interest on such debt.

For similar reasons, on occasions, a further special purpose company (topco) will be interposed between the sponsors and the holdco, the purpose of which is to facilitate the raising of PIK debt, which is again structurally subordinated to both the mezzanine and senior debt.

3.3 Bridge Loans

Bridging debt facilities may be used where it is intended that the acquisition debt will be refinanced shortly after completion of the acquisition by either a capital raising or a high-yield

debt or private placement raised in the US market. Typically, bridging facilities have a tenor of 365 days or less. Traditionally, such facilities are less common in the Australian leveraged finance market than the facilities mentioned in **3.2 Mezzanine/Payment-in-Kind (PIK) Loans**.

3.4 Bonds/High-Yield Bonds

The Australian debt capital markets are traditionally not as diverse (or deep) as those in Europe or the USA. As such, there is no domestic high-yield market to speak of.

There have been limited examples of acquisitions accompanied by subordinated retail notes issuances (which sit alongside a more traditional senior loan structure), although these are relatively rare. Such issuances are made to retail as opposed to institutional investors, so they are distinguishable from high-yield products.

While the domestic Australian market does not cater for the high-yield needs of sponsors, it is common for Australian companies to seek to raise funding through offshore capital markets. Accordingly, there are examples of companies that have sourced funding through the US high-yield and private placement markets (see **3.5 Private Placements/Loan Notes**).

3.5 Private Placements/Loan Notes

Consistent with the position expressed in **3.4 Bonds/High-Yield Bonds**, domestic private placement transactions are not a feature of Australian acquisition financings.

However, the “tapping” of the US private placement market is a common feature for sponsors and companies that seek longer term debt. This style of financing is particularly common in the infrastructure space, where the longer-term nature of the debt (together with the flexible terms) is attractive to investors. Often, a private placement will be sought to refinance a portion of the original acquisition debt (rather than being a form of debt that is sought to fund the acquisition itself).

Accordingly, sponsors who are raising debt in the Australian market will often have their intercreditor and security sharing arrangements reviewed by US counsel to ensure that they can be marketed to investors in the private placement markets.

3.6 Asset-Based Financing

Asset-based finance structures in Australia have followed structures implemented in the English market, and products include borrowing base-style financings, property-backed financings and receivables-backed financings.

The main consideration in Australia is around the security structure and issues relating to the secured party establishing control over certain classes of assets that form part of the underlying collateral. This can either be control in the ordinary sense of the word or, depending on the class of asset, where the Personal Property Securities Act (2009) (PPSA) requires certain conditions to be satisfied for a secured party to establish control. A secured party that establishes control prevents the borrowing base collateral from being categorised as “circulating assets”.

Certain assets will always constitute circulating assets (unless control is established over these assets), including authorised deposit-taking institution (ADI) accounts, receivables, currency and inventory. In addition, circulating assets are any asset over which the secured party has given the grantor permission to transfer the asset in the ordinary course of the grantor’s business, free of the security interest.

Establishing control over circulating assets is an important consideration from an insolvency perspective as certain unsecured creditors will have a priority claim to certain insolvency proceeds (such as claims in respect of certain employee entitlements and certain costs of an administrator and liquidator). Such priority claims will be paid from the proceeds of circulating assets ahead of secured parties that have security over those circulating assets. The level of control required to ensure that the borrowing base collateral is not treated as circulating assets is set out in the PPSA. This concept of control is distinguishable from the control that establishes superior ranking security in respect of certain assets, including ADI accounts, investment instruments (such as shares) and intermediated security (such as listed shares). Perfection by control is discussed in **5.3 Registration Process**.

4. Intercreditor Agreements

4.1 Typical Elements

Intercreditor agreements are customary in the Australian market and, as is typical, regulate the rights and obligations of the providers of the various classes of debt raised to fund the acquisition (including shareholder debt and hedging liabilities).

Unlike the position in Europe, where the LMA suite of documents contains various market standard intercreditor agreements, there is no market standard document in Australia. A set of intercreditor principles (primarily applicable to leveraged transactions) has been circulated within the market but has not been universally adopted. Several provisions remain negotiated points, such as drag rights, standstill periods, mezzanine information rights and release provisions.

Australia recognises the concept of contractual subordination and, as such, intercreditor agreements contractually regulate the order of priority for the repayment of each class of debt. The senior debt will rank ahead of the junior debt, and any "super senior" facilities will rank ahead of the senior debt on enforcement. Repayment of the junior debt is typically deeply subordinated so that no principal repayments are permitted until the senior debt has been repaid in full. The payment of interest to the junior creditors is permitted, subject to certain conditions being satisfied (which may include a leverage or debt service coverage ratio set at a tighter threshold than the financial covenants contained in the senior debt documents, and that no event of default occurs).

Equity or quasi-equity financing provided by non-sponsor entities will always be subject to contractual subordination unless it is structurally subordinated (sponsor debt is typically subject to both). The common position is that equity or quasi-equity financing is deeply subordinated to all other layers of the acquisition debt, and no payments can be made, except to the extent they are made from amounts that would otherwise be permitted to be distributed to equity holders.

Structural subordination is not unusual, and as discussed in **3.2 Mezzanine/Payment-in-Kind (PIK) Loans**, it is mainly used for mezzanine or PIK debt, or for other vendor financing raised at the holdco or topco levels.

Intercreditor agreements usually contain a provision whereby any amounts paid by a debtor to a subordinated creditor are agreed to be paid by the subordinated creditor to the senior creditor (this is referred to as "turnover subordination") or held on trust by that subordinated creditor for

the benefit of the senior creditor until the senior creditor has been repaid (referred to as "trust subordination").

In addition to regulating the right of repayment of competing creditors, intercreditor agreements will also regulate how the proceeds of the enforcement of security are to be applied (commonly known as the enforcement waterfall) and set out which creditors can instruct the security agent in relation to the enforcement and release of the security (which is typically shared by the senior and junior debt).

The default position will be that the senior creditors rank ahead of the subordinated creditors in the waterfall, and as such, the senior creditors will form the "instructing group" unless and until the subordinated creditors obtain rights to enforce. The rights of subordinated creditors to enforce their security will be limited and often arise only after a standstill period has expired (in some transactions, the subordinated creditors will not benefit from any such right prior to the senior debt being discharged).

The prevalence of unitranche-style facilities has had an impact on intercreditor arrangements. The working capital provider is typically given "super-senior" status on any recoveries of enforcement, which has manifested (from an intercreditor perspective) in a modification of certain terms to lessen these lenders' ability to unilaterally take (or control) enforcement action.

4.2 Bank/Bond Deals

As noted in **3.4 Bonds/High-Yield Bonds**, there is no domestic high-yield market to speak of. Accordingly, the bank and bond transactions seen in the market are governed by laws other than those of Australia (and, therefore, the intercreditor position and approach reflect the norms in those markets).

4.3 Role of Hedge Counterparties

There will often be hedging liabilities owed to hedge counterparties relating to the hedging of interest and/or exchange rate risks under the senior (and potentially the mezzanine) debt documentation.

Under the terms of the intercreditor agreement, hedge counterparties will typically benefit from security and will rank pari passu in right of payment and right of enforcement proceeds with the senior lenders.

However, the intercreditor agreement will typically contain restrictions on the hedge counterparties' right to:

- terminate the hedging arrangements prior to enforcement;
- make amendments to the terms of the hedging documents;
- take enforcement action; or
- benefit from additional guarantees and/or security.

These restrictions are often coupled with provisions that enable the hedges to be novated to a new hedge provider in certain circumstances.

Such hedging arrangements are typically documented using the market standard ISDA Master Agreement and Schedule, with some modifications by way of the Schedule for local law issues and market practice.

5. Security

5.1 Types of Security Commonly Used

Acquisition financings in the domestic market are typically secured. Any security interests in real estate must be in the form prescribed by the jurisdiction where the relevant land is located. The granting of security over "personal property" by Australian companies is governed by the PPSA. Security will nearly always be granted in favour of a security trustee, who will hold the security for the benefit of the secured parties (including lenders, hedge providers and the facility agent).

A general security agreement is used to secure all types of property other than real estate, which under Australian law must be secured by way of a real property mortgage. Typically, all obligors would enter into a general security agreement to grant all asset security. If all asset security is not agreed, specific security can be granted over a particular asset under a specific security deed (commonly used for standalone security over shares or bank accounts).

Security will be provided by each borrower, relevant holding companies and sufficient operating companies to ensure compliance with the guarantor coverage test.

The latter category of obligors will generally accede and grant security within a prescribed timeframe post-funding (from 45 to 120 days, depending on the sponsor's bargaining power). The key reason for this is to allow sufficient time for such operating companies to complete a "whitewash" process, as described in more detail in **5.5 Financial Assistance**.

The guarantor coverage test typically requires entities that own between 80% and 95% of the target group's assets and contribute between 80% and 95% of the target group's EBITDA to grant guarantees and security in favour of the financiers.

Each of the main asset classes is considered below.

- Shares – Shares are considered "personal property" under the PPSA, and security interests may be perfected by either control or registration. While financiers will always perfect security interests by registration of a financing statement on the Personal Property Securities Register (PPSR), the security document will also require delivery of all share certificates and share transfer forms executed in blank to be delivered to the security trustee to allow perfection by control. If the shares being secured are shares in a listed company, a secured party can perfect its security interest over such shares by control by entering into a Clearing House Electronic Subregister System (CHESS) security deed with the CHESS participant, under which the CHESS participant agrees to hold the shares subject to the secured party's order.
- Inventory – Security over tangible movable assets, which is stock-in-trade ("inventory" under the PPSA), is usually a circulating security interest over fluctuating assets and is called a "circulating asset" (as discussed in **3.6 Asset-Based Financing**). A security interest over tangible movable property is perfected by way of the registration of a financing statement on the PPSR. The timeframe within which to register a security interest over inventory on the PPSR is very short compared to other categories of collateral and can require that the security interest be registered on or prior to the day it is granted.

- Bank accounts – It is customary for bank accounts (ADI accounts) subject to security to be held with an ADI. If the bank account is of material importance or value, an account control agreement will often be sought to be entered into between the account holder, the security trustee and the ADI where the account is maintained, in addition to the registration of a security interest on the PPSR. An ADI will have a security interest in an ADI account that is perfected by control by virtue of the ADI account being held with that ADI. Where the secured party is not also the ADI where the ADI account is held, an account control agreement may have been entered into to establish perfection by control because the ADI itself may have a superior ranking security interest in the account that would be perfected by control. Notwithstanding the legislative framework that affords superior ranking priority to security in an ADI account that is perfected by control, the entry into account control agreements for acquisition financings has become less typical in the market, and it is more common for a security interest in an ADI account to be perfected solely by registration. This is mainly due to a recent development in which many Australian banks implemented policies refusing to enter into any account control agreements.
- Receivables – Security is commonly taken over claims and receivables (such as debts, trade receivables or contractual rights) and perfected by registration. In certain circumstances, an assignment of receivables will also constitute a deemed security interest (and will be capable of a separate registration without the need for a standalone security document).
- Intellectual property rights – A security interest over intellectual property rights (such as trade marks, patents, registered designs and copyright) must be registered on the PPSR to preserve its priority. Specific registers exist for patents, registered trade marks and registered design rights, and security interests can be recorded in those registers maintained by the Intellectual Property Office of Australia, although this only provides certain limited procedural benefits and does not have any effect on the priority of such security interests.
- Real property – Most Australian land is registered under a system known as the Torrens system. Each state and territory operates its own Torrens system for land located in its jurisdiction, and records details of the land and any registered interests in that land, such as mortgages, via a centralised registry. The most common form of security granted over real estate is a registered real property mortgage, which is a separate document to the all-asset general security agreement. While the general security agreement will secure all assets of the grantor, including land, the PPSA excludes interests in land, and this means that a registration on the PPSR in relation to the secured property that is the subject of the general security agreement will not perfect the security interest over land. Financiers, therefore, require a mortgage over land to be registered on the Torrens system, which is done by recording the particulars in the relevant land titles register. It should be noted that it is common for the agreed security principles to specifically exclude any real property mortgages being granted, though this will, of course, depend on the nature of the transaction, the value of the real estate in the context of the deal, and the bargaining position of the parties.
- Movable assets – Security may be granted over tangible movable property. As mentioned above, security over tangible movable prop-

erty that is stock-in-trade ("inventory" under the PPSA) will usually be a circulating security interest over fluctuating assets, which are referred to as "circulating" assets under the PPSA. A security interest over collateral that secured the obligations of a grantor to pay the purchase price of that particular collateral is a "purchase money security interest" under the PPSA, which may, if certain conditions are satisfied, afford the secured party a form of "super priority" over the relevant collateral in priority even to a prior-perfected security interest.

5.2 Form Requirements

Security over real property requires a mortgage form to be used and lodged at the relevant land registry. The form must be the one prescribed by the jurisdiction where the land is located (noting that, distinct from the position regarding security over personal property, security over real property is dealt with on a state-by-state basis). Many states have now implemented a "National Mortgage Form", but each participating state imposes its own requirements on how the form is completed and executed.

There are generally no prescriptive form requirements for other types of security, though it is common for all asset security to be granted by way of a general security agreement and for security over a single class of asset to be granted by way of a specific security agreement.

5.3 Registration Process

A secured party can perfect its security interest in personal property in the following ways:

- by effecting a registration on the PPSR in respect of the collateral;
- by the secured party having "possession" of the collateral;
- by the secured party having "control" of one of the limited classes of collateral; or
- by a combination of these ways.

The most common form of perfection is registering a financing statement on the PPSR in respect of the collateral. A registration may be made by filing a financing statement electronically on the PPSR and, once made, reflects instantaneously on the PPSR. A registration may be made at any time a person believes on reasonable grounds that the secured party described in the registration is or will become a secured party in relation to the collateral and, with some exceptions, must be made within 20 business days of the security agreement coming into force. Certain kinds of registrations (for example, registrations relating to security over inventory) need to be made in a shorter timeframe, such as within 15 business days or even on the same business day as the security interest is granted. Most registrations can be registered with no end date, and the registration will remain perfected over time. Registrations for certain asset classes (including motor vehicles) have limited durations and may need to be refreshed.

A secured party may perfect security by way of control over certain classes of collateral, including ADI accounts, investment instruments (including shares), intermediated securities (including listed shares), letters of credit and negotiable instruments. For instance, in respect of certificated investment instruments generally (ie, certificated shares), perfection by control typically occurs when the secured party has physical possession of the share certificate and can transfer, or otherwise deal with, the securities.

A common method by which transferability is facilitated in Australia is through the execution of

blank share transfer forms by the holder of such shares. This would typically be a completed and signed share transfer form with the section relating to the transferee's details left blank, allowing the secured party to transfer to itself or another entity to enforce its security interest. Perfection by control is established once control is established, without any need to register that security interest, and perfection will be maintained for as long as the secured party maintains control. While perfection by control affords the best possible priority against competing interests, secured parties will often also effect a registration on the PPSR against the grantor in case control is inadvertently relinquished.

A secured party may perfect by way of possession. A secured party must have actual or apparent possession of the property and cannot have possession if the grantor has actual or apparent possession. The security interest is perfected once the secured party has possession, without any need to register that security interest, and perfection will be maintained for as long as the secured party has possession. As with perfection by control, it is advisable for a secured party that intends to perfect by possession to also effect a registration on the PPSR against the grantor in case possession is inadvertently relinquished.

The manner in which a security interest is perfected over personal property will affect its priority on enforcement. A security interest in personal property that is perfected will take priority over any unperfected security interest. Where there are two perfected security interests, the security interest that is perfected earlier in time will, in most circumstances, take priority over the later-perfected security interest. A security interest that is perfected by control is the highest-ranking security interest and will rank ahead of a security interest perfected by any other means, including, for instance, a security interest that is perfected earlier in time by registration. A security interest over collateral that secured the obligations of a grantor to pay the purchase price of that particular collateral is a "purchase money security interest" under the PPSA, which may, if certain conditions are satisfied, afford the secured party a form of "super priority" over the relevant collateral in priority even to a prior-perfected security interest, other than a security interest perfected by control.

Security can be granted over real property (both freehold and leasehold) through a registered real property mortgage. The grant of security over real property is dealt with on a state-by-state basis. However, from a practical perspective, there are few fundamental differences between the regimes in the various states. Recent legislative changes have moved away from paper lodgement at land registry offices to electronic lodgement using an electronic lodgement network. After completing the settlement process through the electronic lodgement network, the mortgage registration will appear on the title within a few hours and up to 48 hours after lodgement, depending on the relevant state. A real property mortgage will remain registered until the secured party agrees to discharge the mortgage.

5.4 Restrictions on Upstream Security

There are two main restrictions on the granting of upstream security. These are the rules regarding financial assistance and corporate benefit issues outlined in **5.5 Financial Assistance** and **5.6 Other Restrictions**.

5.5 Financial Assistance

Section 260A of the Corporations Act restricts a company from providing financial assistance

for the acquisition of its shares or its holding company's shares until certain conditions are satisfied or an exception applies.

The concept of financial assistance includes granting security and the provision of guarantees, which means that financial assistance is always a consideration in acquisition finance when looking to take security over the target entities.

While a transaction that breaches the prohibition on financial assistance is not invalid, any person involved in a contravention of the prohibition is guilty of a civil offence; this liability could extend to the financiers and advisers involved in a transaction. If any involvement in the contravention of the prohibition is found to be dishonest, that person also commits a criminal offence.

The most common workaround is to rely on the "whitewash" process, under which the shareholders of the company and the ultimate Australian holding company approve the granting of the financial assistance by the relevant target entities. Notice of all shareholder resolutions must be lodged with the Australian Securities and Investments Commission (ASIC) at least 14 days prior to providing the financial assistance. Any special resolution passed must also be lodged by the relevant company within 14 days of it being passed. Given the timeframes involved, security over Australian target entities is generally granted within an agreed period post-closing, but this is typically no less than 45 days and may be as generous as 90 or 120 days.

There is also the possibility for borrowers and lenders to rely on the "no material prejudice" exception, which permits the granting of financial assistance where doing so does not materially prejudice the interests of the company or its shareholders, or its ability to pay its creditors. However, given the potential consequences of breaching the prohibition, the customary way to avoid the financial assistance restriction in acquisition financing is to undertake a whitewash.

The prohibition on financial assistance does not affect the granting of security by any Australian special purpose vehicle set up for the acquisition (ie, holdco or bidco), or any offshore parent over its shares in an Australian-domiciled entity, each of which can provide security in a more timely fashion and – typically, in the case of a holdco or bidco – as a condition precedent to the initial utilisation.

For completeness, it should be noted that there are other exceptions to the general restriction, although these are more targeted and typically not relevant to an acquisition financing.

5.6 Other Restrictions

Under Australian law, directors owe a number of duties to the companies to which they have been appointed, including a duty to act in good faith for the benefit of the company as a whole and for a proper purpose. These duties are enshrined under Sections 181 and 184 of the Corporations Act and arise under general law (as fiduciary duties).

The directors will need to consider these duties in a secured lending transaction to determine whether the transaction is sufficiently beneficial to the company. In making that determination, direct benefits (such as the company's ability to use funds drawn under the facility) and indirect benefits (eg, if the company requires the ongoing support of other companies within the group) can be considered. However, each company within the transaction must derive sufficient

benefit itself when entering into the financing transaction.

It is not sufficient that the benefit is derived by the group as a whole or by other members of the group. The duty to act for the benefit of the company as a whole and for a proper purpose will come under scrutiny when a subsidiary is requested to guarantee or secure the obligations of its parent. Where a party obtaining a benefit of a guarantee or security knows or ought to have known that the directors have not acted in the best interests of the company as a whole, the guarantee or security will be voidable against that party.

One helpful provision of the Corporations Act is Section 187, which provides that a director of a corporation that is a wholly owned subsidiary of a body corporate is taken to act in good faith and in the best interests of that company if the director acts in good faith in the best interests of the holding company, provided that certain conditions are met. One of those conditions is that the constitution of the subsidiary company expressly authorises the directors to act in good faith in the best interests of the holding company. Financiers will usually request that any wholly owned subsidiaries providing credit support have this provision in their constitution.

5.7 General Principles of Enforcement

A secured party's right to enforce its loan, guarantee or security will be governed by the underlying debt and security documents. A financier will typically be able to accelerate the debt upon the occurrence of an event of default or other enforcement event. Guarantees can only usually be enforced following a default by the principal obligor.

A secured creditor will have enforcement rights under the security documents and applicable legislation. The security documents will typically set out the secured party's right to enforce its security by appointing either a receiver or a receiver and manager. Pursuant to the Corporations Act (regardless of whether they are appointed as receivers or receivers and managers), receivers and managers are afforded a broad ambit of statutory powers which enable them, subject to the security documents under which they are appointed, to enter into possession of the secured property, carry on the business of the grantor company or realise the secured property, among other things.

Under the Corporations Act, a holder of registered security over all – or substantially all – of a company's assets can appoint a voluntary administrator. Once a company goes into voluntary administration, a person cannot enforce a charge on the property of the company except with the written consent of the administrator or the leave of the court unless the person who holds the charge does so over the whole or substantially the whole of the property of the company. During administration, a person who holds a charge of the latter type can enforce that charge within the first 13 business days following the appointment of the administrator.

One potential outcome of voluntary administration is (upon resolution by the creditors) entry by the company into a "deed of company arrangement", which is intended to give effect to a restructure of the company (with a view to enabling the company to continue as a going concern). The rights that a secured creditor has to realise its security interest are not extinguished by entry (by the debtor company) into a deed unless the secured creditor voted in favour of the deed or by court order.

In Australia, it is common to take "featherweight" security to address the administration risk, whereby a secured creditor needs to hold security against all or substantially all of the assets to be able to appoint a receiver during the administration of a company. Where the security only covers a small part of the business, lenders will often seek to have a featherweight security that "springs" upon the remainder of the assets when the "featherweight event" occurs – eg, the appointment of an administrator. The amount recoverable from the featherweight is usually a nominal amount (eg, AUD10,000) to reflect that the purpose is not to asset back the security, but to address the administration risk.

The key benefit of the inclusion of a featherweight security clause in a security document is that the secured party can then argue that, in a default scenario, it has security over all or substantially all of the assets of the company – this entitles them to enforce that charge within the first 13 business days following the appointment of the administrator and to appoint a receiver. Without the featherweight, where security has been taken (and assuming this does not comprise all or substantially all of the assets of the company), the secured party would not have a right to appoint a receiver during the voluntary administration of the company. This does not affect the quality or existence of the secured party's security interests, but it means that they will be unable to enforce their security for the duration of the administration (without the leave of the administrator or the consent of the court).

The courts are generally not involved in the enforcement of consensual security interests against corporate borrowers, and there is generally no requirement to obtain a judgment before enforcement. A range of enforcement remedies are available under the PPSA, depending on the nature of the collateral, including:

- seizure;
- retention (ie, foreclosure without the need for a court order, by which the collateral is forfeited to the secured party and the secured debt is extinguished in full); and
- disposal of the collateral to a third party or to the secured party itself.

Certain sections of the PPSA enforcement provisions may be contracted out of.

When enforcing security over real property, the secured party will be required to satisfy various notice requirements contained in state-based property legislation, and the common law remedies of sale, possession, foreclosure or the appointment of a receiver will be available depending on the nature of the security interest.

6. Guarantees

6.1 Types of Guarantees

Guarantees in an acquisition finance context are typically "all monies" cross-guarantees, which extend to all obligations owed by each borrower and each other guarantor. As is customary in most markets, the guarantors' secondary obligations under the guarantee provisions are supplemented by indemnification obligations. There are no substantive differences between Australian law-governed guarantees and those used in other common law jurisdictions.

As mentioned in **5.1 Types of Security Commonly Used**, the terms of most acquisition financings require guarantees from sufficient entities to comply with the guarantor coverage test.

Such guarantees are typically contained in the facility agreement or security trust deed, although standalone guarantees may be provided in unsecured financings or by third parties outside the obligor group.

There are no registration requirements with respect to guarantees under Australian law.

6.2 Restrictions

A company can grant a guarantee for the debt of a borrower regardless of whether the borrower is located in Australia or elsewhere, provided that the company is not restricted from doing so in its constitution and it has complied with the financial assistance legislation and corporate benefit issues outlined in **5.5 Financial Assistance** and **5.6 Other Restrictions**, which apply equally to the giving of a guarantee.

6.3 Requirement for Guarantee Fees

There is no requirement under Australian law for there to be a guarantee fee (or fees associated with the enforcement of guarantees).

7. Lender Liability

7.1 Equitable Subordination Rules

Unlike the position in jurisdictions such as the USA, there is no concept of equitable subordination in Australia. However, the Corporations Act provides that shareholder claims, in their capacity as a member of the company (eg, for dividends), generally rank behind all other claims. Moreover, any debt claims that a shareholder may have against members of the obligor group are typically contractually subordinated to the claims of the lenders.

7.2 Claw-Back Risk

The Corporations Act and PPSA both contain provisions that can potentially affect a creditor of an Australian entity in an insolvency scenario. If a transaction is voidable, the court can make a range of orders, including the repayment of money received by the creditor under the transaction and the discharge/release of debts and security.

A security interest will be voidable under the PPSA and the Corporations Act if the secured party has failed to perfect it. In order to be enforceable against third parties, a security interest must be perfected (by either control, registration or possession). If perfecting by registration of a financing statement on the PPSR, the financing statement must be registered within 20 business days of the relevant security agreement coming into force (subject to some shorter timeframes for certain security interests, as outlined in **5.3 Registration Process**), or at least six months before the start of the winding-up or voluntary administration for most security interests (though this is not applicable to certain deemed security interests that do not secure payment or performance of an obligation, nor to security interests where another method of perfection is used, such as control or possession).

Transactions are vulnerable to challenge once a company enters into liquidation, and a liquidator has the power under the Corporations Act to bring an application to the court to declare certain transactions void. This contrasts with an administrator, which is required to identify potential voidable transactions (which would then need a liquidator to recover them) in its report to creditors but does not itself have the standing to challenge the transactions.

There are several types of transactions that can be held voidable:

- unreasonable director-related transactions;
- unfair preferences;
- uncommercial transactions; and
- unfair loans.

Except for transactions entered into by companies in voluntary administration, operating under a deed of company arrangement, under restructuring or subject to a restructuring plan, transactions held to be unfair preferences or uncommercial will only be voidable where the transaction was also an insolvent transaction. An insolvent transaction is an unfair preference or uncommercial transaction that occurred while the company was cash-flow insolvent or contributed to the company becoming cash-flow insolvent. Insolvent transactions involving a related party or entered into to defeat, delay or interfere with the rights of any or all creditors in a winding-up may be voidable.

Each type of voidable transaction has different criteria and different hardening periods (which may be longer if the transaction involves a related party). An unfair preference will occur where an unsecured creditor receives a greater amount than it would have received if the creditor had been required to prove for it in the winding up of the company. A loan, guarantee or security may be set aside as an uncommercial transaction if a reasonable person in the company's position would not have entered into the transaction. An unfair loan to a company at any time before liquidation is liable to be set aside, irrespective of whether or not the company was insolvent at the time the loan was made. A loan is unfair if the interest or charges in relation to the loan either were extortionate at the time the loan was made or have since become extortionate (eg, following a variation). This provision has seldom been used, as Australian courts are reluctant to intervene unless the commercial terms greatly deviate from typical market terms.

8. Tax Issues

8.1 Stamp Taxes

Ad valorem mortgage duty was previously a feature of secured financings but is no longer payable in any Australian jurisdiction.

Stamp duty may be payable on transactions such as (but not limited to) a transfer of property or the creation or acknowledgement of a trust. In most acquisition financings, it is the creation of a trust that is relevant, as the security trustee will hold the security on trust for the benefit of the financiers (resulting in a declaration of trust). The document creating that trust (usually the security trust deed) may attract nominal stamp duty, depending on the jurisdiction in which such document is executed by any party. Documents that are not duly stamped may be inadmissible in court.

8.2 Withholding Tax/Qualifying Lender Concepts

Broadly, interest withholding tax (IWT) at a domestic rate of 10% applies on gross payments of interest (or payments in the nature of or in substitution for interest) made by Australian borrowers to non-resident lenders (except where the lender is lending through an Australian permanent establishment) or residents lending through a foreign permanent establishment. IWT is a final tax and can be reduced (including to zero) by domestic exemptions such as the "public offer" exemption and/or the operation of Australia's suite of double tax agreements (DTAs). Each exemption is outlined below.

IWT may be exempt under Australian domestic law if the debt satisfies the "public offer" exemption in Section 128F or 128FA of the Income Tax Assessment Act 1936 (Cth). Satisfying this exemption will make the debt more attractive in the market, as incoming lenders generally remain entitled to the benefits of the exemption from IWT if specific criteria are met.

In summary, the public offer exemption will apply where an Australian company or an Australian trust that meets requirements publicly offers the debt via one of several prescribed methods, including (most commonly):

- offering the debt to at least ten persons, each of whom carries on a business of providing finance, or investing or dealing in securities in the course of operating in financial markets, provided each of those persons is not known or suspected by the borrower to be an associate of any of the other persons; or
- offering the debt to the public in an electronic form used by financial markets for dealing in debt interests or debentures, although this method is under increasing scrutiny by the tax authorities, and some Australian arrangers are reluctant to use this method in light of that scrutiny.

The type of debt that may qualify for the public offer exemption consists, broadly, of debentures (which are defined to include notes) and syndicated facility agreements.

One key point to note in respect of the public offer exemption is that the exemption is not available if it was known or suspected, at the time of the issue or invitation, that a lender would be an "associate":

- who is a non-resident and the debenture or debt interest was not or would not be acquired by the associate in carrying on business through a permanent establishment in Australia; or
- the associate is a resident, and the debenture or debt interest was or would be acquired by the associate in carrying on business through a permanent establishment in a country outside Australia.

There is an exception where the associate becomes a lender in the capacity of a dealer, manager, clearing house, custodian, funds manager or responsible entity of a registered scheme.

It should also be noted that if the debt is in the form of a syndicated facility agreement, it can only benefit from the public offer exemption if additional conditions are satisfied, including that:

- there are two or more lenders where each lender severally, but not jointly, agrees to lend money (or to otherwise provide financial accommodation); and
- the agreement describes itself as a "syndicated loan facility" or "syndicated facility agreement", and the borrower(s) will have access to at least AUD100 million (or its equivalent) at the time of the first drawdown (even if that amount is not actually drawn at such time).

Australia has DTAs in place with Finland, France, Germany, Iceland, Japan, New Zealand, Norway, South Africa, Switzerland, the UK and the USA, under which no IWT is payable for interest derived by a qualifying financial institution unrelated to, and dealing wholly independently with, the borrower (subject to certain exceptions). DTAs with Chile and Israel reduce the IWT to 5%

for similar financial institutions. The definition of a financial institution generally covers banks, but can include an enterprise that substantially derives its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance, and excludes debt funds that do not accept deposits.

8.3 Thin-Capitalisation Rules

The thin-capitalisation rules are a set of integrity provisions designed to ensure that excessive amounts of interest cannot be deducted against income subject to tax in Australia.

Very broadly, the rules apply to the Australian operations of foreign entities investing into Australia (ie, foreign-controlled Australian groups) and to Australian entities or groups investing overseas if the group's Australian debt deductions exceed AUD2 million per income year (on an associate inclusive basis).

When applicable, the thin-capitalisation rules deny tax deductions for interest to the extent that the amount of debt used to fund the group's Australian operations exceeds a "safe harbour amount" (broadly being 60% of the difference between the value of the group's assets and its non-debt liabilities). There is also an arm's-length debt test, which broadly permits Australian groups to be debt-funded up to the amount a third-party lender would be willing to lend (based on certain assumptions), and a worldwide gearing test, which broadly allows an eligible entity to gear its operations in certain circumstances by reference to the level of gearing in its worldwide group.

The current federal government, in its post-election 2022 Budget, announced that changes would be made to the thin-capitalisation rules. If implemented, the safe harbour amount will be replaced with a 30% of EBITDA cap consistent with the OECD framework. This measure is proposed to apply from 1 July 2023. Special purpose financial entities which are used by some large borrower groups may be exempt from the proposed changes.

9. Takeover Finance

9.1 Regulated Targets

Certain industries are regulated in Australia, including:

- casinos;
- insurers;
- superannuation funds;
- the "big four" banks and other financial service providers;
- media broadcasters; and
- owners of key infrastructure such as airports and power and utility providers.

A change in the ownership or control of companies in the regulated industries (at either a federal or state level) will usually require governmental approval. Regulatory consents may be required to complete the acquisition itself or take security over the assets of the entity, but these consents do not usually affect the financial covenants or other terms of the debt documents.

Legislation relating to the foreign investment or acquisition by foreign persons of a legal or equitable interest in Australian companies, assets, land or businesses generally must be considered. The Foreign Acquisitions and Takeovers Act 1975 (Cth) and associated regulations may require a proposed acquisition to be notified to the Foreign Investment Review Board (FIRB), which provides advice to the Treasurer, who has

the discretion to prohibit the acquisition if it considers it to be contrary to the national interest or, in some cases, national security only.

9.2 Listed Targets

There are two principal methods of acquiring control of an Australian publicly listed company or managed investment scheme. These are pursuant to either a takeover bid or a scheme of arrangement.

Takeover Bids

Takeover bids in Australia are regulated by Chapter 6 of the Corporations Act. A takeover bid can be made on an "on-market" or "off-market" basis and either a "hostile" or "friendly" basis. For both on-market and off-market bids, a bidder must prepare and send to the target security holders a document (known as a "bidder's statement") that includes details of the offer, information about the bidder and certain other prescribed information (eg, in relation to the bidder's intentions). The target must respond by preparing and issuing a "target's statement", including the target board's recommendation as to whether security holders should accept the offer, as well as any other material information.

An on-market bid is made through a broker and can only be used to acquire securities in a listed entity. On-market bids are far less common than off-market bids because they require the consideration to be 100% cash and, importantly, are required to be made on an unconditional basis. Accordingly, it will often be the case that an on-market bid is not a viable option – eg, because the bidder requires regulatory approvals or other conditionality, or because the bidder's financing arrangements require security to be taken over the target's assets (which can only be assured in a 100% ownership scenario).

An off-market bid essentially takes the form of a written offer to security holders to purchase all or a specified proportion of their securities. The consideration can take the form of cash or securities or a combination of the two. The offer must be open for acceptance for no less than one month and no more than 12 months. All offers made under an off-market bid must be the same.

An off-market bid may be subject to any conditions the bidder chooses, other than conditions that are solely within the control of the bidder (or that turn on the bidder's state of mind) and certain other prohibited conditions.

Typical conditions include those relating to:

- the non-occurrence of certain statutorily prescribed events (including certain insolvency-type events);
- the non-occurrence of a material adverse effect;
- the obtaining of any necessary regulatory approvals;
- the absence of any legal restraints or prohibitions on the acquisition's completion; and
- the receipt of a minimum number of acceptances (usually 50% or 90%, with the latter corresponding to the threshold for the compulsory acquisition – or "squeeze-out" – of minorities).

Schemes of Arrangement

A scheme of arrangement is a court-approved arrangement entered into between a body (ie, the target) and all of its members, or a class thereof. For a scheme to become binding on the target and its members (or the relevant class thereof), it must be approved by more than 50% of members who vote on the scheme, and those members must represent at least 75% of the

votes cast on the scheme. If these thresholds are met, the scheme is binding on all members (or all members in the relevant class), including those who vote against it or who do not vote at all.

The typical operation in the context of an acquisition financing is for the scheme to affect the transfer of target securities to the offeror in exchange for a specified consideration (whether cash or securities, or a combination of both).

A scheme of arrangement is a target-driven process, with the target preparing the necessary materials and seeking the necessary orders from the court. As such, a scheme requires the support of the target's directors and, therefore, is only a viable option in "friendly" transactions.

As with "off-market" bids, schemes can be subject to conditions, and it is common to see schemes being subject to the receipt of any necessary regulatory approvals, together with the non-occurrence of any material adverse effect with regard to the target. In addition, there are standard conditions relating to the necessary shareholder and court approvals.

Certain Funds Requirements

Neither of the aforementioned methods imposes a strict legal requirement for "certain funds" financing. However, from a practical perspective, financiers' commitments to fund are often provided on a certain funds basis.

The Corporations Act prohibits persons from making a takeover offer if they are unable to complete the offer or if they are reckless as to whether they can complete the offer. The Australian Takeovers Panel has indicated that, where an offer is funded by debt, the bidder would have binding commitments from its financiers when it announces its offer and would not declare an offer as unconditional unless it was highly confident it could draw down the facilities (ie, that the finance documents were in the final form and commercially significant conditions precedent to utilisation had been satisfied or there is no material risk they would not be satisfied).

As part of the court-led scheme of arrangement process, the offeror will be required to satisfy the court that it has sufficient funds to pay the scheme consideration and complete the transaction. From a practical perspective, this often results in an offeror seeking "certain funds" financing from its financiers.

10. Jurisdiction-Specific Features

10.1 Other Acquisition Finance Issues

There are no further considerations relevant to acquisition financing in Australia.

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