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Practical Law Australia's fully integrated Corporate Transactions resources are designed to assist corporate lawyers with their day-to-day workflow. Lawyers have instant access to overviews and detailed guidance on corporate law issues, along with standard documents that provide clause-by-clause commentary to assist lawyers with drafting and negotiations. Clients expect that their lawyers will get the law right as a minimum. We help you to do that faster, so that you can spend your time on the value-adds that differentiate you.



Tim Perry, Head of Corporate

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### **Asset acquisitions**

#### Practice notes

- Asset purchases
- Completion accounts: acquisitions
- Confidentiality agreements
- Disclosure letters
- Due diligence: acquisitions
- Exclusivity: acquisitions
- Goods and Services Tax (GST)
- Heads of agreement
- Intra-group reorganisations
- Post-completion integration: acquisitions
- Regulation of foreign investment in Australia
- Restraints of trade on the purchase of a business
- Signing, exchange and completion
- Structuring the purchase price: acquisitions
- Warranties and indemnities: acquisitions
- Warranty and indemnity insurance
- Warranty and indemnity insurance: a broker's perspective (NEW)

- Asset purchase agreement: simultaneous signing and completion
- Board briefing note (skeleton): acquisition
- Board minutes: authorising grant of power of attorney and execution of deed of power of attorney
- Board minutes: buyer (simultaneous signing and completion): asset purchases
- Board minutes: buyer: asset purchase (simultaneous signing and completion): intra-group reorganisations
- Board minutes: revocation of power of attorney
- Board minutes: seller (simultaneous signing and completion): asset purchases
- Board minutes: seller: asset purchases (simultaneous signing and completion) intra-group reorganisations
- Completion Agenda: asset purchases: simultaneous exchange and completion

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- Confidentiality deed (mutual)
- Confidentiality deed (one-way)
- Confidentiality letter (one-way)
- Deed of assignment
- Deed of novation
- Deed of novation: intra-group reorganizations
- Deed of waiver and release (existing indebtedness or obligations)
- Disclosure letter: asset acquisition
- Escrow instruction letter: share or asset purchases
- Exclusivity agreement: share and asset acquisitions (seller friendly)
- Exclusivity agreement: share and asset acquisitions (buyer friendly)
- Heads of agreement: asset purchases
- Legal due diligence report: acquisitions
- Notice of assignment (with subcontracting option)
- Request for consent to assignment (with subcontracting option)
- Steps list: intra-group reorganizations
- Subscription letter
- Template cover letter: application to the Foreign Investment Review Board (FIRB)

#### Standard clauses

- Back-to-back warranties: asset purchase agreement
- Completion accounts: asset adjustment: asset purchase agreement
- Guarantee and indemnity clause: buyer's obligations: asset purchase agreement
- Guarantee and indemnity clause: seller's obligations: asset purchase agreement
- Retention (warranty claims): asset purchase agreement
- Trustee warranties and restrictions: share purchase agreements and asset purchase agreements: single seller as trustee
- Trustee warranties and restrictions: share purchase agreements and asset purchase agreements: multiple trustee sellers

#### Checklists

- Duty on asset acquisitions
- Legal due diligence checklist: asset purchases
- Legal due diligence questionnaire: asset purchases

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- Quick guide to determining whether the sale of a business between nonassociated entities triggers an obligation to pay the statutory minimum redundancy payment by the old employer for transferring employees
- Toolkits
  - Asset acquisitions: toolkit
  - Restraints of trade

#### **Disclosure documents**

- Practice note: overview
  - Equity fundraising: disclosure requirements
  - Initial public offerings of equity securities by companies

#### Due diligence

- Practice notes
  - Asset purchases
  - Confidentiality agreements
  - Disclosure letters
  - Due diligence: acquisitions
  - Setting up and administering a data room
  - Share purchases
  - Warranties and indemnities: acquisitions
- Standard documents
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  - Confidentiality deed poll (one-way)
  - Confidentiality letter (one-way)
  - Disclosure letter: asset acquisition
  - Disclosure letter: share acquisition
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  - Online data room rules and protocols

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- Online data room terms of access
- Checklists
  - Legal due diligence questionnaire: share purchases
  - Legal due diligence questionnaire: asset purchases
  - Legal due diligence review template: material contracts
  - Legal due diligence review template: corporate records
  - Legal due diligence: asset purchases
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- Toolkits
  - Due diligence

#### Foreign investment

- Practice notes
  - Regulation of foreign investment in Australia
- Standard documents
  - Template cover letter: application to the Foreign Investment Review Board (FIRB)

#### **Initial public offerings**

- Practice note: overview
  - Equity fundraising: disclosure requirements
  - Initial public offerings of equity securities by companies

#### Joint ventures

Practice note: overview

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- Joint ventures in Australia
- Standard documents
  - Confidentiality deed (mutual)
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  - Deed of accession to shareholders' agreement
- Checklists
  - Shareholders' agreement for joint venture company

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  - Intra-group reorganisations
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  - Board minutes: seller: asset purchases (simultaneous signing and completion): intra-group reorganisations
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  - Loan agreement: intra-group reorganisations
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  - Notice of change of control: share purchases: intra-group reorganisations
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- Consideration satisfied by release of existing indebtedness or obligations: asset purchase agreement
- Consideration to be left outstanding as debt: share purchase agreement: intra-group reorganisations
- Consideration to be left outstanding as debt: asset purchase agreement: intra-group reorganisations
- Resolution (members): Approval of acquisitions, disposals and commercial agreements: intra-group reorganisations

#### Returns of value

#### Practice notes

- Dividends
- Reductions of share capital: unlisted companies
- Reductions of share capital: ASX-listed companies
- Reductions of share capital: tax implications
- Share buy-backs: ASX listed companies
- Share buy-backs: unlisted companies
- Share buy-backs: tax implications

- Board minutes: employee share scheme buy-back within the 10/12 limit
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- Board minutes: equal access buy-back over the 10/12 limit
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- Board minutes: equal share capital reduction (with or without cancellation of shares)
- Board minutes: minimum holding buy-back
- Board minutes: on-market buy-back over the 10/12 limit
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- Board minutes: paying an interim, final or special dividend: proprietary company
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- Board minutes: selective buy-back
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- Board minutes: selective reduction of share capital with no cancellation of shares
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- Notice of general meeting: equal access buy-back over the 10/12 limit
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- Notice of general meeting: on-market buy-back over the 10/12 limit
- Notice of general meeting: selective buy-back
- Notice of general meeting: selective reduction of share capital involving cancellation of shares
- Notice of general meeting: selective reduction of share capital with no cancellation of shares
- Notice of special meeting of shareholders whose shares are to be cancelled as part of a selective reduction of share capital

#### Checklists

- Paying a dividend
- Procedure for undertaking a selective capital reduction: ASX-listed companies
- Procedure for undertaking an equal capital reduction: ASX-listed companies

#### Share acquisitions: private

#### Practice notes

- ASIC class orders and legislative instruments
- ASIC forms
- ASIC regulatory guides
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- Disclosure letters
- Due diligence: acquisitions
- Exclusivity: acquisitions
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- Post-completion integration: acquisitions
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- Restraints of trade on the purchase of a business
- Setting up and administering a data room
- Share certificates
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- Share purchases: duty payable on share transfers
- Signing, exchange and completion
- Structuring the purchase price: acquisitions
- Transfer of shares
- Warranties and indemnities: acquisitions
- Warranty and indemnity insurance
- Warranty and indemnity insurance: a broker's perspective (NEW)

- Board briefing note (skeleton): acquisition
- Board minutes of the target at completion: share purchases (simultaneous signing and completion): intra-group reorganisations
- Board minutes: buyer (simultaneous exchange and completion): share purchases
- Board minutes: buyer: share purchases (simultaneous signing and completion): intra-group reorganisations
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- Board minutes: target company (completion): share purchases
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- Notice of general meeting: financial assistance: company providing financial assistance (NEW)
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- Online data room terms of access
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- Put option agreement
- Register of members
- Share certificate
- Share purchase agreement: simultaneous signing and completion
- Share transfer form
- Skeleton board minutes: transactional
- Steps list: intra-group reorganisations
- Subscription letter
- Template cover letter: application to Foreign Investment Review Board (FIRB)

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- Retention (warranty claims): share purchase agreement
- Standard resolution: approval of a transaction
- Standard resolution: approval of acquisition by company's members
- Standard resolution: approval of share issue by a company
- Trustee warranties and restrictions: share purchase agreements and asset purchase agreements: single seller as trustee
- Trustee warranties and restrictions: share purchase agreements and asset purchase agreements: multiple trustee sellers

#### Checklists

- Acquisition checklist: share purchases
- Approving and registering a transfer of shares
- Due diligence review template: corporate records
- Due diligence review template: material contracts
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- Legal due diligence review template: corporate records
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- Restraints of trade

#### **Takeovers**

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  - Takeovers: takeovers regulation: overview
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- Key strategies for preparing for shareholder activism (NEW)
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- Execution of deeds and documents by companies incorporated under the Corporations Act 2001 (Cth)
- Execution of deeds and documents by individuals
- PowerPoint presentation: Valid execution of documents, remote signings and electronic signatures
- Protocols for remote or virtual signings

- Board minutes: authorising grant of power of attorney
- Board minutes: Revocation of power of attorney
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- Execution block (agreement): company: by signature of authorised representative
- Execution block (agreement): company: by signature of sole director who is also sole company secretary
- Execution block (agreement): company: by signature of two directors OR one director and one company secretary
- Execution block (agreement): individual
- Execution block (deed OR agreement): individual: unable to read or physically unable to sign
- Execution block (deed): company: by common seal
- Execution block (deed): company: by signature of authorised representative
- Execution block (deed): company: by signature of sole director who is also sole company secretary
- Execution block (deed): company: by signature of two directors OR one director and one company secretary
- Execution block (deed): individual
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  - Deed of termination of contract
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  - Consumer guarantees
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  - Electronic contracts and transactions
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- Variation of contracts

#### Toolkits

Contract administration

#### COMING SOON TO CORPORATE TRANSACTIONS

Practical Law is a dynamically evolving service. We plan to develop additional documents and resources in the following topic areas in 2017:

#### • Share acquisitions: private

 New documents will include a new standard form share purchase agreement for private acquisitions, example warranty schedules and complementary standard clauses.

#### Asset acquisitions

- New documents will cover the stamp duty implications of asset acquisition transactions.

#### • Foreign investment

 New documents will cover registration and reporting requirements for foreign companies.

#### Joint ventures

- New documents will include a standard form unincorporated joint venture agreement and related standard documents and standard clauses.

#### Takeovers

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- New documents will cover shareholder activism in Australia, including:
  - Two practice notes: one that takes a broad look at shareholder activism and another that focuses on shareholder activism in the context of climate change.
  - Comprehensive checklists that set out the steps a company can take to prepare for, and respond to, shareholder activism.
  - An overview of the key reporting requirements and guidelines relating to environmental, social and governance issues.

The following new Corporate Transactions topics are scheduled for publication in 2018:

- **Equity capital markets**. This new topic will include resources on fundraising processes and requirements under the Corporations Act.
- **Private equity and venture capital**. This new topic will include resources relevant to venture capital and private equity investments.

We welcome customer feedback on the development of Practical Law Australia. Should you have comments or suggestions, please contact me at <a href="mailto:timothy.perry@tr.com">timothy.perry@tr.com</a>.