

# Australia

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## A fundamental change to the treatment of security interest in Australia

Duncan McGrath  
Gilbert + Tobin  
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### Personal Property Securities Act 2009

The manner in which security interests are treated in Australia will be comprehensively over-hauled from May 1 2011 following the passing of the Personal Property Securities Act 2009 (as amended) (the PPSA) and accompanying regulations. The PPSA will replace in excess of 80 separate pieces of State and Territory legislation which regulate the manner in which various security interests can be taken and will replace them with a single regime. The new regime will affect both corporates and individuals alike.

Under the Act a security interest is broadly defined as "an interest in relation to personal property provided for by a transaction that, in substance, secures payment or performance of an obligation (without regard to the form of the transaction or the identity of the person who has title to the property)". "Personal property" is defined so as to include property other than land.

A security interest will be created where the attachment and perfection requirements under the Act have been satisfied. While perfection can be achieved by possession or control, it can also be achieved by registration on the register. Registration will be on-line and will result in the registrar sending a verification statement in respect of the registration to the secured party who is required to forward it to the grantor. The latter requirement can be waived in writing between the secured party and the grantor in the relevant security agreement. Pre-emptive registration will be available from one month before the commencement date of the Act. Note also that the Act

makes it possible to register a security interest as early as the term sheet stage of transactions.

The PPSA will not only encompass traditional security interests (such as fixed and floating charges) but it will also create a new class of protective security interests enabling a person to be granted a security interest over their own goods by a third party such as equipment which has been loaned to that third party so as to mitigate against insolvency risk. Traditional security interests which were registered prior to the commencement of the Act will be automatically migrated onto the new register. Corporates should verify that migration has been completed in respect of all security interests which were registered prior to the commencement of the Act.

The PPSA also creates a new superior class of security interest which, irrespective of the time when they are perfected, will have a superior priority over any other prior or subsequent security interest which is registered. That class is limited to commercial consignments, bailments of goods and certain types of lease. There will be a two year transitional period commencing on May 1 2011 during which those new security interests will be granted temporary perfection under the Act.

Those security interests which come into effect post May 1 2011 will be entitled to benefit from the enforcement provisions contained in the Act which include rules which require notice to be given to persons with a prior raking security interest of an intention to enforce a security interest over certain liquid assets, rules regarding the seizure, retention and disposal of collateral and rules regarding the order of distribution of personal property or its proceeds. It is not mandatory to adopt those enforcement provisions and parties can elect to opt-out of them.

The Act also contains disclosure obligations for the secured party following a request for information in respect of a particular security interest from a restricted class of persons (including the grantor of the security interest

and an auditor of the grantor). There are strict time limits which must be adhered to in responding to such a request and also specific information that must be provided. Corporates should ensure that they have that information readily available post May 1 2011.

While the Act does not have extra-territorial effect, it will apply in respect of security interests in goods and financial property if the location of the goods or financial property is in Australia or the grantor is an Australian entity. For security interests in intangible property (such as contractual rights), broadly the Act applies if the grantor is an Australian entity, the intangible property is an account payable in Australia or the security interest is an interest of a transferor under a transfer of intangible property that consists of an account or chattel paper and the transferor is an Australian entity or the account or chattel paper is payable in Australia.

Given the breadth of the Act, it will have a significant impact on most corporates in Australia. Corporates should commence a detailed review of their business as soon as possible to determine what the impact of the Act will be for them.

## Capital markets - equity

### Recommended firms

#### Tier 1

Allens Arthur Robinson  
Freehills  
Mallesons Stephen Jaques

#### Tier 2

Blake Dawson  
Clayton Utz  
Minter Ellison

#### Tier 3

Baker & McKenzie  
Corrs Chambers Westgarth  
Gilbert + Tobin  
Norton Rose

#### Tier 4

Arnold Bloch Leibler

The equity capital markets in the last year have seen a substantial number of companies approach the market to raise further equity capital, primarily as a way of ensuring their debt is reduced to manageable levels and to strengthen the company's balance sheet. "The market may see more raisings via single book-build accelerated renounceable offers (Sareo), as well as older Jumbo and Rapids structures. We also expect that many institutional placements will be followed by security purchase plans," says one partner.

As the general economic outlook improves following the global financial crisis, there have also been a number of further capital raisings by companies looking to fund M&A activity and take advantage of opportunities that exist in the market for strategic acquisitions.

Though there has been a re-emergence of IPOs for companies seeking to list on the Australia Stock Exchange (ASX) or on overseas markets (such as London's Aim), and secondary raisings have been more common.

Fundraising in Australia continues to benefit from regulatory reforms aimed at facilitating equity capital raisings, including reforms which enabled innovative forms of accelerated rights issues to be conducted without a prospectus, and others allowing more substantial share purchase plans to be offered to existing shareholders.

New trends observed in the Australian market have been the strategic equity investment by Chinese enterprises in the Australian resources sector, and the advent of strategic investment by traditional private-equity players in public equity or cornerstone investments.

"Cornerstone investments add initial momentum to a capital raising," says a partner. "A cornerstone capital raising may be

attractive to a listed company, where alternative balance sheet repair might require asset sales, because it allows the retention of assets and businesses that may be undervalued in difficult economic conditions, and it can introduce a significant supportive shareholder."

### Allens Arthur Robinson

Allens Arthur Robinson is regarded by peers and clients as a stalwart and ever-present in the equity capital markets. The firm has been involved in the resurgent equity capital markets, and engaged in some of the most high profile deals of the year. Partner Craig Henderson is recommended by a client as a "very good practitioner."

The firm participated in the ANZ bank equity raising which consisted of a A\$2.5 billion (\$2.18 billion) institutional placement and a share purchase plan (SPP) which raised A\$2.2 billion. This transaction is cited as the largest share purchase plan raising of an Australian listed company.

Another notable transaction for the firm was its advice to the underwriters in the BlueScope Steel capital restructuring. BlueScope Steel announced an entitlement offer of up to A\$1.4 billion in May 2009, which is fully underwritten by Credit Suisse as the sole underwriter. It also announced a new A\$1.3 billion syndicated loan note facility that will consist of two tranches: a A\$200 million tranche and a A\$1.1 billion tranche.

#### Leading lawyers

Alex Ding

### Freehills

Freehills retains its top tier status after yet another outstanding year in the bustling equity capital markets. The equity capital markets (ECM) team at Freehills has been hailed by one client as "a most complete team. They are highly capable and highly proficient in three integral aspects necessary for success: commercialism, technical ability, and above all commitment". Long-time leading lawyer Philippa Stone has been praised by both competitors and clients alike as "easily the Australian leader in ECM".

One of the highlights of the past year for the team has been the Myer Holding's IPO valued at A\$2.4 billion (\$2.1 billion) in late 2009. The largest IPO and first large private-equity exit through a public offer since the beginning of the global financial crisis, this deal was integral to the market rebound over the last 12 months. It has been referred to by partners as the one of the deals that "broke the drought".

The range of work completed by the team includes Santos' accelerated *pro-rata* non-

renounceable entitlement offer, with A\$3 billion raised for the multinational oil and gas exploration company. This deal is distinctive in the Freehills team's use of an inventive *blind-date* approach to the syndicate appointment.

A particularly notable cornerstone investment deal for Prime Infrastructure, formerly Babcock and Brown Infrastructure, was headed by Philippa Stone and Tim McEwan. The deal was valued at A\$1.8 billion. The work involved Brookfield's investment in Prime Infrastructure and related capital raising and assets transactions. Completed in November 2009, this was just one example of the restructuring-related work that was undertaken and successfully carried out by Freehills.

#### Leading lawyers

Tony Sparks  
Philippa Stone  
Michael Ziegelaar

### Mallesons Stephen Jaques

"The Mallesons equity capital markets team possesses excellent commercial acumen. The partners make sure everything is clear and really hold your hand and guide you through the process," says one client. "Working with them is more of an exchange rather than just purely instruction." Melbourne partner Craig Semple is commended by another: "Craig is an example of really tireless dedication. He provides absolute unquestioned level of commitment to the table."

The team at Mallesons has participated in a range of equity work in the past 12 months. One example of hybrid work was a \$600 million issue for the National Bank of Australia (Nab) which was completed in September 2009. Headed by Melbourne partner Ian Paterson, the team acted for Nab, Commonwealth Bank, Westpac and ANZ (the *big four* banks), as issuer of the first offshore hybrid Tier I instrument by an Australian bank since the start of the global financial crisis. The instrument is US-dollar denominated and is in the form of perpetual, subordinated capital notes (capital notes) issued by Nab's New York Branch. The deal included a direct issue (non-SPV) structure, while the interest rate structure used a step-up of 50% of the initial credit spread.

Of Paterson, a client notes: "He has an excellent corporate memory, possessing a repository of things that have gone wrong. In working closely together, we view him as one of our own team: an internal rather than external advisory member."

#### Leading lawyers

David Friedlander  
Greg Golding

## Blake Dawson

With a seamless completion of high-profile cases such as the complex Babcock & Brown Infrastructure (BBI) recapitalisation, the equity capital markets (ECM) team at Blake Dawson has been in the thick of the renewed ECM activity in Australia.

The team advised Credit Suisse and Macquarie Capital in the BBI recapitalisation, reducing BBI's debt-to-Ebitda (earnings before interest, taxes, depreciation and amortisation) ratio from 8.3 times to 5.9 times. The BBI transaction, valued at A\$9.5 billion (\$8.31 billion), was completed in October 2009.

Heading up the Blake Dawson team on the deal, top ECM lawyer Sarah Dulhunty has been praised by a client as: "A deserved leader in capital markets work. An all-round performer with the highest quality in technical advice."

Another notable deal for the team these past 12 months was the advising of Oil Search on its A\$895 million placement and A\$40 million share purchase plan. In October 2009, Oil Search announced an institutional placement to raise approximately \$895 million which was fully underwritten by Morgan Stanley and Macquarie.

The deal is an example of the international coordination and counsel available to Blake Dawson when it comes to cross-border transactions. "The team possesses technical excellence, friendly and approachable demeanour, are cost effective and results oriented," says one client about the team's assets.

### Leading lawyers

Elspeth Arnold  
Sarah Dulhunty  
Bill Koeck

## Clayton Utz

Clayton Utz is renowned in the Australian equity capital markets (ECM) for its quality of service, with a client noting that "Clayton Utz is very responsive, particularly good from a pricing perspective".

The development and success of the ECM team at Clayton Utz over the past 12 months has been marred by the tragic passing of firm stalwart Greg James in the first half of 2010. Through the efforts of top lawyers Stuart Byrne and Brendan Groves, the firm is forging onwards and as a client at a leading bank says: "The ECM team at Clayton Utz is very experienced, and though Greg's passing is a loss, there is no great shock to the system."

A landmark case for the team this year has been advising Kathmandu, an Australian and New Zealand travel and adventure clothing retailer, on its November 2009 IPO. The deal

was subject to a substantial level of market attention, given its timing. This was one of the first IPOs after the global financial crisis and marked a turning point for the market as a whole. The deal was valued at A\$340 million (\$297 million).

### Leading lawyers

Stuart Byrne  
Brendan Groves

## Minter Ellison

In the past 12 months, Minter Ellison has been involved in a series of transactions for the Mirvac Group. The total value of deals was A\$2.1 billion (\$1.84 billion).

Under the leadership of partners Stuart Johnson, John Steven and Bart Oude-Vrielink, the most recent transaction consisted of a A\$350 million institutional component with a further A\$150 million for existing shareholders under a share purchase plan, which was completed in April 2010. Another substantial transaction for the group was an accelerated non-renounceable entitlement offer in July 2009 where A\$1.1 billion was raised.

The team's versatility was reflected in its work on a deal for Pacific Brands, which involved 11 foreign jurisdictions. The transaction was valued at a total of A\$256 million, with an institutional placement of A\$30 million, an institutional component of \$135 million and a retail component consisting of \$92 million of an accelerated non-renounceable entitlement offer.

### Leading lawyers

Jeremy Blackshaw  
Bart Oude-Vrielink

## Other ranked firms

The Baker & McKenzie equity capital markets team is led by Frank Castiglia. Among the many transactions successfully completed by the team in the last 12 months, one notable deal was the Centamin Egypt debut that exemplified the global one-stop shop legal capability offered by the Baker & McKenzie office.

The team advised the Australian mining company on its primary listing and the admission of its entire issued ordinary share capital to the main market of the LSE. The deal was valued at A\$2.3 billion. This is only the second time an Australian company had been admitted with a primary listing on the Main Market of the LSE.

Leading lawyers: Frank Castiglia

As one competitor notes, "Corrs Chambers Westgarth has definitely stepped

up its activity and presence in the past 12 months." This is reflected in its move up in this year's rankings.

On the back of the arrival of three new partners Robert Franklyn, Christian Owen and Russell Philip in early 2010, the team has been heavily bolstered and kept busy. The firm advised China Metallurgical Co with regard to all Australian legal issues connected with its recent float on the Shanghai stock exchange and simultaneous share issue on the Hong Kong stock exchange, raising approximately \$5.13 billion to fund worldwide mining and iron ore projects. A client recommends the firm for its "excellent client-oriented approach at a very cost effective price".

Gilbert + Tobin boosted its equity capital markets capability with the hiring of Peter Cook from Mallesons Stephen Jaques in June 2010. One competitor comments: "The hiring of Peter Cook signals Gilbert + Tobin's intentions to vastly expand on its capabilities and move forward swiftly in the coming years."

With a busy portfolio of work completed this year, one particularly notable deal for the team was the completion of a A\$600 million (\$525 million) underwritten placement and accelerated entitlement offer for GrainCorp to fund the acquisition of the United Malt Holdings Group.

Leading lawyers: Peter Cook and Janine Ryan

The equity capital markets team at Norton Rose welcomed partner Derek La Ferla back into the fold in March 2010 after spending the last three years in corporate advisory. A client praises the team: "They are good to work with and very professional. They achieve outcomes in a timely and commercial manner."

This year the team advised AnSteel, a Chinese state-owned enterprise, on its \$162 million placement in Gindalbie Metals. The placement required an expert's report and shareholder approval, as well as Chinese government approvals and Australian regulatory clearances. This transaction was completed in July 2009.

One peer notes this cross-border capability of Norton Rose, especially with regards to "a very significant amount of inbound work from China".

## Other notable firms

Atanaskovic Hartnell has been involved in some high value and high profile deals this year, as evidenced in by its advising of the Ontario Teachers Pension Plan Board in the past 12 months. A recent transaction completed for this client in May 2010 was the underwritten block trade sale of the board's 14% stake in Transurban Group. Led by John

Atanaskovic, this deal was valued at A\$710 million (\$621 million).

Corporate boutique **Chang Pistilli & Simmons** has acted recently for APA Group with regards to its 2010 security purchase plan. At the head of this deal was partner Lance Sacks. The transaction was completed on March 18 2010 and was valued at a total of A\$85 million.

The **Henry Davis York** equity capital markets team counts among its many clients companies such as Everest Capital Management, Odyssey, CreditCorp, Fiducian, InvestorWeb, QSR, Vaccinoma, ECSI, Sunshine Heart, Asia Diversified and Olympus Funds Management.

A client commends the members of the ECM team: "They were all extremely knowledgeable and competent and prompt in their services." One notable transaction was the recapitalisation of Apex Mining in October 2009. The team advised Goldman Sachs (Asia), the majority holder of notes in Apex Mining, in relation to the repurchase of those notes as part of a broader recapitalisation of Apex Mining. The deal was valued at a total of A\$107 million (\$93.6 million).

**HopgoodGanim** has garnered a reputation for a more nuanced equity capital markets expertise. One of the notable transactions completed by its team was advising Stanmore Coal on its initial public offering and listing on the Australian Stock Exchange.

Stanmore Coal's IPO was fully underwritten by Bizzell Capital Partners and RBS Morgans, and raised A\$6 million. The deal was completed in December 2009.

## Capital markets - debt

### Recommended firms

#### Tier 1

Freehills  
Mallesons Stephen Jaques

#### Tier 2

Blake Dawson  
Clayton Utz

#### Tier 3

Allens Arthur Robinson  
Minter Ellison

The debt capital markets (DCM) have made substantial progress in its recovery post-global financial crisis. While there has not been the same kind of volume as seen historically, there is certainly a greater awareness and capability. The main activities in the DCM throughout the year have included government guaranteed issues, hybrid securities, public-private partnership bond financings and corporate restructurings.

Most firms have expressed the fact that through the revival of market appetite, there is now quite a strong pipeline of work with which to draw some confidence. Lawyers have observed increased activity involving convertible notes in the last 12 months. One practitioner believes the market has a good appetite for Australian real estate investment trusts.

The Australian dollar was a key driver in the number and size of kangaroo issues towards the end of 2009 and beginning of 2010. That market hit record levels in January 2010. The corporate debt market has also seen a resurgence of interest, as issuers try and ensure they have diversified their funding sources to the greatest extent possible. There has been a strong and renewed interest in corporate and debt market issuance, particularly into the North American market (Rule 144A and private placement markets) and more recently domestic issuance as alternatives to bank debt funding.

## Freehills

Despite noting a lapse in debt capital markets work across the board, Freehills has maintained a stable supply of work this past year. Though Tessa Hoser left in May 2009 to take up the mantle of general counsel at the Export Finance & Insurance Corporation, the Freehills team is still staffed with professionals such as Patrick Lowden, whom a client rates highly: "Patrick was the point of contact throughout the transaction, who I have always found to be excellent."

The team overall has been highly praised for "having solid knowledge of the financing market, as well as a good eye for detail and searching for commercial outcomes".

Freehills has amassed an extensive list of clients, among which are well regarded blue-chip organisations such as National Australia Bank, Commonwealth Bank, Westpac, ANZ, Deutsche Bank, UBS and Citigroup, to name a few.

The firm has been advising clients regarding the Government Guarantee Scheme (GGS), and acting for ING on the application for the GGS to cover its debt capital markets programmes and on the amendment of programme documentation. Led by Andrew Booth, the team advised ING on its various government guaranteed issues, valued at A\$6.1 billion (\$5.29 billion) in 2009, and A\$3 billion in 2010.

### Leading lawyers

Andrew Booth  
Patrick Lowden  
Lachlan Roots  
Peter Rowe

## Mallesons Stephen Jaques

"Mallesons Stephen Jaques is no doubt a tier one firm in debt capital markets," says one competitor. The team has maintained its position in the market through consistently being involved in high profile deals over the last 12 months. A client notes: "With Mallesons Stephen Jaques, one can always expect quality."

One of the highlights for the past 12 months was the team's involvement in all 41 of the kangaroo issues undertaken in Australia by international organisations, foreign governments and corporations. Among these include issues by Asian Development Bank, Bank Nederlandse Gemeenten, Caisse d'amortissement de la dette sociale (Cades), Council of Europe Development Bank and Rentenbank, to name a few. Partners Ken Astridge and Greg Hammond were both involved with these kangaroo issues, which were valued at A\$18 billion (\$15.6 billion).

Another notable transaction handled by Ken Astridge was a A\$1.5 billion NSW Treasury Corporation wholesale bond issue. The firm acted for the issuer, Tabcorp, and the transaction has been regarded as the largest wholesale debt offering backed by the Commonwealth Guarantee scheme.

### Leading lawyers

Ken Astridge  
Greg Hammond  
Ian Paterson

## Blake Dawson

"Blake Dawson provides solid advice in the segment we work with them on, and are very responsive to our requirements," comments a client. With the promotion of Jamie Ng to partnership in July 2009, the Debt Capital Markets (DCM) team at Blake Dawson has gone from strength to strength. The firm can now name among its list of clients notable market leaders such as ANZ, Bank of Tokyo-Mitsubishi UFJ, BankWest, Commonwealth Bank and Credit Suisse.

Graeme Tucker comes in for praise this year for his strong work, with one client noting him has being "good in both DCM work as well as securitisation".

One recent example of the diverse range of work the firm has been engaged in is an MTN issue for Adelaide Airport. The team, led by Paul Jenkins and Martin Coleman and supported by James Morris, advised ANZ Bank and Westpac as joint lead arrangers and joint lead managers. The team also acted for the Bank of New York as note trustee and paying agent. Valued at A\$235 million (\$204 million), the transaction was completed in April 2010.

Another highlight for the past year saw Paul Jenkins lead a Rule 144A issue into the US for Coca-Cola Amatil. The team advised the issuer and guarantor, Coca-Cola Amatil (Aust), on this \$400 million transaction, which was completed in November 2009.

#### Leading lawyers

Richard Fawcett  
Paul Jenkins  
David Mason  
James Morris  
Jamie Ng  
Bruce Whittaker

### Clayton Utz

Clayton Utz has reinforced its team with the internal promotion of new partner Rohan Mishra. Despite the departure of former partner Ben Sandstad and the tragic passing of Greg James, the team has been able to keep up its level of work, with partners Stuart Byrne and Louise McCoach stepping up to maintain the quality expected by clients.

A landmark deal successfully completed by the team was the Kiwibank bond issuance in October 2009. This was the first ever international bond issue by New Zealand's Kiwibank and involved establishing its A\$1 billion (\$869 million) kangaroo bond programme, under which the client issued A\$250 million New Zealand government guaranteed kangaroo bonds, which was upsized from A\$200 million. This transaction stands out as the first New Zealand government guaranteed bond deal to be issued into the Australian debt capital markets.

Another noteworthy transaction for the Clayton Utz team was its role advising Barrick Gold, a Canadian mining company, on its Australian funding entity Barrick Australia's corporate bond issue.

The deal was valued at a total of \$1.25 billion via a dual tranche issue of \$400 million and \$850 million respectively. One point of focus for this deal was the fact that the notes were issued on an exchangeable basis. This required the client, when it offered the notes, to agree to exchange the notes issued for new notes registered with the Securities and Exchange Commission, which would be freely tradable under US law. This deal was completed in December 2009.

#### Leading lawyers

Stuart Byrne  
Louise McCoach

### Other ranked firms

"Our partner, Theo Kindynis, at Minter Ellison is easy to deal with, responds promptly

to requests for advice and delivers a consistently high standard of service and advice," says a client. The firm has maintained its level of work by continuing to service clients such as the Mirvac Group. One ongoing transaction led by highly regarded partner John Elias involves a MTN issue for the group valued at A\$150 million (\$130 million).

A client recommends Theo Kindynis: "We continue to use Theo due to his high standard of legal expertise, in-depth understanding of our financing documentation and its history, and his consistently high level of customer service."

The team has been busy this year with deals such as advising Australian natural gas distributor Spausnet on its issue of term notes. This was a complex multi-currency issue with cross-border aspects, valued at €500 million. This portion of the transaction was completed in January 2010. Another subsequent term note issue, valued at A\$300 million, was completed in March 2010. Led by partner Theo Kindynis, this transaction illustrates the reach and versatility of the Minter Ellison team.

*Leading lawyers:* Ralph Ayling and John Elias

### Other notable firms

The debt capital markets team at Gilbert + Tobin has been involved in several high profile deals in the last 12 months. One notable example is the advising of the Commonwealth Bank of Australia on the establishment of its \$5 billion Asian Transferable Certificate of Deposit Program, which was led by partner Duncan McGrath.

One client describes the firm's strengths as its "quality of advice, quality of execution, deep understanding of client activities and needs, ability to deliver within tight deadlines, superior market intelligence, personable service due to the relatively smaller size of the firm, transparency of pricing, and commitment to the relationship".

*Leading lawyers:* Duncan McGrath and John Schembri

## Capital markets - structured finance and securitisation

### Recommended firms

Tier 1
Allens Arthur Robinson
Blake Dawson
Clayton Utz
Mallesons Stephen Jaques
Tier 2
Freehills
Tier 3
Henry Davis York
Minter Ellison

From a top-down viewpoint, the appetite for privately-funded structured asset-based financing remains relatively healthy. This has been driven largely by borrowers' willingness to pay healthier margins and financial institutions seeking favourable capital returns from the highly-rated exposures that structured debt transactions can provide.

It is unfortunate that Australia's public securitisation market has been tainted by the excesses and ultimate fate of its offshore counterparts. Government sponsored initiatives such as those started by the Australian Office of Financial Management (AOFM) last year have provided a breath of life. Slow to recover, the market has taken its time to digest the measures taken to shore it up.

However, it is worth pointing out that towards the end of 2009 the Australian securitisation market saw a number of public RMBS transactions successfully completed without the participation of the AOFM, hopefully indicating a permanent improvement in the welfare and fortune of the Australian market.

Luckily, Australia saw little of the reckless behaviour revealed in other overseas securitisation markets. Lending activity in Australia is subject to an advanced regulatory regime and has largely been based on sound lending principles and structures.

Residential lending in Australia is almost exclusively full recourse, interest on a loan for a principal place of residence is not tax deductible and the cultural pride associated with home ownership is strong. Provided fundamental principles of contractual certainty are preserved in Australia, it is believed that the medium-term prospects for a healthy public securitisation market are rosy.

### Allens Arthur Robinson

Allens Arthur Robinson has established an outstanding reputation in the structured finance and securitisation area in Australia.

Clients speak highly of their experience with the firm, with one mentioning: “My experience, though limited, with the firm was very good.”

The team at the firm suffered a considerable loss in the departure of industry leader Andrew Jinks in mid-2010. Jinks leaves a highly capable team though, with partner Tim Lester widely acknowledged as a “particularly strong practitioner” by clients.

The firm was involved in the Genworth Financial Mortgage Insurance matter in relation to its structured investment in 14 securitisation warehouses managed by Westpac. Blake Dawson was opposite the firm representing Genworth Financial Mortgage Insurance on this matter. The investment constituted an indirect interest in a reference portfolio of mortgage loans originated by various Australian banking institutions, credit unions and building societies. This transaction is the first of its type seen in the Australian market. Completed in March 2010, the deal is valued at A\$50 million (\$43.4 million).

#### Leading lawyers

Tim Lester

#### Blake Dawson

“Blake Dawson is very professional, commercial and concise in its advice, prompt in its response and cost conscious in respect of our clients,” says a client. “The partner I deal with, Paul Jenkins, and his associates are very approachable, able to provide advice in a timely manner and responsive to our time constraints. When we transferred some of our current transactions to Blake Dawson, Paul was happy to absorb the costs of getting up to speed with the transaction complexities in a timely manner.” The past year’s performance and highly positive feedback has seen the firm step up a tier into the top bracket of the structured finance and securitisation rankings.

“Blake Dawson provides us with comments on industry developments and brings to our attention any key issues that we might be interested,” offers a client. Jamie Ng has also been described by a client as “one of the up and comers. He picks complex transactions up quickly and is a pleasure to work with”.

The team has been heavily engaged in the market, with involvement in 15 of 28 asset-backed public securitisation deals. Some examples of its work includes Paul Jenkins in the lead acting for Royal Bank of Scotland as lead manager on each of the REDS 2010-1, Swan 2010-1, Apollo 2009-1 and REDS 2009-1 securitisation transactions.

David Mason and Graeme Tucker advised Société Générale on the \$1.2 billion restruc-

ture of the Macquarie Bank Limited Puma Masterfund S-8 Trust, while Jamie Ng advised Bank of America Merrill Lynch in relation to a secondary manager role on an A\$1.8 billion (\$1.56 billion) RMBS issue by Westpac.

Elsewhere, Paul Jenkins and Graeme Tucker advised Perpetual as trustee, security trustee, custodian and trust administrator in the Ozcar ABS Trust 2009-1, initiated under the Australian Government dealership financing stimulus package.

#### Leading lawyers

Paul Jenkins

Jamie Ng

Bruce Whittaker

#### Clayton Utz

The past year has been quite tumultuous for the structured finance and securitisation team at Clayton Utz. With the loss of three partners, Sonia Goumenis, Karolina Popic and Ben Sandstad, there has been doubt expressed by some peers as to the future of this particular area of practice at the firm.

But the retention of the all-rounded expertise provided by partner Louise McCoach, who a client praises as “a very commercial lawyer”, and the capture of industry leading figure Andrew Jinks from Allens Arthur Robinson in August 2010, leads one client to declare: “We believe Clayton Utz are extremely well-positioned for 2011 with the addition of Andrew Jinks, whom we consider to be extremely good.”

The firm acted for a number of clients participating in Australian government-funded securitisation transactions, which were conducted through the Australian Office of Financial Management. The team represented sponsors involved in these transactions which include Bendigo and Adelaide Bank, Credit Union Australia, AMP Bank, Suncorp Metway and Bank of Queensland.

#### Leading lawyers

Andrew Jinks

Louise McCoach

#### Mallesons Stephen Jaques

“Mallesons Stephen Jaques has professional and timely staff that can be relied upon to deliver a quality product within a pre-agreed framework,” asserts a client. As the structured finance and securitisation market picked up pace, the firm maintained its top tier position by retaining a healthy flow of work and maintaining the quality of service its clients expect.

Led by partner Ian Edmonds-Wilson, the team has been praised by a client for its “depth of experience and knowledge, breadth of cov-

erage. The client adds: “There is almost nothing they can’t do.”

One deal of note involved the team acting for National Australia Bank (Nab), which was arranger, lead manager and Class A1R standby facility provider, in ME Bank’s RMBS issue via the SMHL Securitisation Fund 2009-3. Valued at a total of A\$784 million (\$681 million), this deal is particularly noteworthy for being the first Australian RMBS transaction offering a class of redeemable and convertible notes.

#### Leading lawyers

Stuart Fuller

#### Freehills

“Freehills have strong banking and finance capabilities as well as securitisation-specific skill sets, and the service provided by Lachlan Roots as the main securitisation partner with which we deal is excellent,” says a client. This year, the firm has added ANZ and Elders to its list of prominent clients, which includes Westpac, National Australia Bank, ME Bank, Heritage Building Society, Deutsche Bank and Bendigo and Adelaide Bank.

Partner Patrick Lowden was involved in advising on the restructuring of a warehouse facility arrangement provided to a non-bank financial institution for Deutsche Bank. Together with Fiona Smedley, Lowden also acted for Citigroup in advising the issuer in relation to Australian-listed instalment warrants products.

Lachlan Roots took the lead on a number of transactions advising Westpac. One involved advising the bank as the warehouse funding provider to various regional authorised deposit-taking institutions (ADIs) in connection with the regional ADIs’ residential mortgage home loans businesses. Another deal for Westpac involved the bank as senior note subscriber in connection with the securitisation of auto-loan receivables of a luxury car manufacturer.

#### Leading lawyers

Patrick Lowden

Lachlan Roots

#### Other ranked firms

The **Henry Davis York** team was involved in continuing work for Mahogany Capital. It is advising the Australian note trustee in connection with issues arising out of the collapse of Lehman Brothers and flow on implications for a \$125 million retail credit-linked notes issue by an Australian special purpose company, Mahogany Capital.

The deal includes concurrent advice in relation to legal proceedings in both England

and the US. The English litigation matter is being closely observed by the structured credit industry as its outcome could have substantial impact on the value of similar structured notes, estimated to be in excess of \$10 billion, of various Lehman Brothers programs.

“Minter Ellison is a flexible and innovative firm that is quite focused on delivering a value-for-money service to its clients,” says a client. The firm has continued to be heavily engaged in this resurgent market, and has successfully completed a number of notable transactions in the past year.

One matter in progress has seen the Minter Ellison team acting for an Australian bank in the securitisation of a new portfolio of consumer leases for an independent lessor in the Australia and New Zealand market. This transaction was led by partner John Elias, whom competitors unanimously agree is a leading practitioner in Australia, and whom a client recommends as “a very practical and hands-on partner with broad global experience in the UK, Asian and Australian markets.”

*Leading lawyers:* Ralph Ayling and John Elias

### Other notable firms

**Allen & Overy** is expected to be in the thick of the structured finance and securitisation action in the coming year, with the high profile captures of former Clayton Utz partners Jason Denisenko, Sonia Goumenis, and Karolina Popic. Goumenis is praised by a client for “being professional and courteous and providing comprehensive legal insight into the client’s transactions.”

The **Gilbert + Tobin** team has continued to produce quality work which a client praises for “understanding the issues, being able to solve all legal issues, being client focused, providing value for money, meeting deadlines and its anticipation of clients’ needs.”

One sizeable transaction this year saw John Schembri advise a bank syndicate consisting of CBA, BNP Paribas, SMBC, WestLB and Westpac in the corporate and lease financing of Felix Resources. Valued in excess of \$400 million, this deal included syndicated performance bond facilities and the issues arising as a consequence of the takeover announcement during the course of the transaction.

Highly-regarded by both fellow professionals and clients, Schembri has been hailed by a client as “awesome and the best lawyer I have used in all time across all jurisdictions”.

## Banking

### Recommended firms

#### Tier 1

Allens Arthur Robinson  
Freehills  
Mallesons Stephen Jaques

#### Tier 2

Blake Dawson  
Clayton Utz  
Minter Ellison

#### Tier 3

Corrs Chambers Westgarth  
Gilbert + Tobin  
Henry Davis York

#### Tier 4

Arnold Bloch Leibler  
Baker & McKenzie  
Norton Rose

It has been observed by market commentators that a substantial amount of activity in the banking space is centred on debt restructuring, as well as acquisition finance. “It is a testing time in banking,” says one partner.

In the acquisition finance area, though most of the public’s attention has been on large opportunistic acquisitions, particularly of Australian resource companies by foreign interests, private equity has also been active and reenergised after some successful exits via IPOs and trade sales generating activity and renewed confidence in the private equity model.

The easing of global constraints in the debt and equity markets has had a noticeable effect on corporate debt financing in Australia. This renewed ability to raise equity has allowed corporate entities to repair balance sheets gearing to underpin new or refinancing debt.

Some foreign banks have retreated from the Australian corporate debt market and while domestic banks are extending new credit, it is generally limited to well-rated entities and industrials, and solid, established existing customers. The risk of refinancing remains an issue for all corporate entities and is expected to do so for at least the remainder of 2010.

### Allens Arthur Robinson

Allens Arthur Robinson retains its top tier position in the banking ranking after another year of regular involvement in the country’s largest transactions. Big-name partner Philip Cornwell has been praised by a peer as being “indisputably top of the market”. The firm bid farewell to partner Catherine Parr this past year, who left to join the Reserve Bank as an in-house counsel.

The banking team played a part in the Newcastle Coal Infrastructure Group project expansion across the table from Blake Dawson, Clayton Utz and Freehills. The matter at hand in this transaction was the total financing to be procured for the first two stages, which was in the order of A\$3 billion (\$2.6 billion), allocated to three capital tiers including senior debt funding, a mezzanine note issue and a redeemable preference share issue.

The firm acted for Hutchison (trading as 3 in Australia) on the financing of its A\$7 billion merger with Vodafone Australia. This transaction was conducted in conjunction with the M&A elements with regards to documentation and financing. The merger was completed in June 2009.

A notable transaction was the firm’s representation of Felix Resources in the financing of its acquisition by Yanzhou Coal Mining Company, one of China’s leading coal miners. Financial close took place in December 2009 with the transaction valued at A\$3.3 billion.

### Leading lawyers

Philip Cornwell

### Freehills

“Freehills is most definitely the biggest player in Australia,” says a competitor. The firm remains in the top tier of the rankings over the past year, as the performance of its banking team continues to reap rave reviews from both clients and competitors. One client comments: “Best in class would characterise the Freehills Sydney financing team.”

The firm has been involved in a wide array of work, providing quality service in the asset finance area to clients such as Commonwealth Bank of Australia (CBA), Virgin Blue, United Group, ANZ and National Australia Bank.

The team led by Adam Stapledon and John Angus acted for CBA on a number of transactions which included: a \$126 million operating lease facility for Boeing 737 - 800 aircraft; a A\$150 million (\$130 million) leveraged master finance lease of mining equipment for use in the Moorlaben mine; an operating lease to a member of the Brickworks group in respect of a brick production plant in Victoria; and a A\$54 million master finance lease facility to a member of the APN News & Media group in respect of a variety of printing press assets.

Another highlight this year was the firm’s extensive work for Prime Infrastructure Holdings (PIH). Formerly Babcock and Brown Infrastructure, PIH engaged Freehills in advising on its A\$5.1 billion recapitalisation. The deal involved a \$1.5 billion equity raising, the transfer of a \$295 million, 49.9%

economic interest in Dalrymple Bay Coal Terminal, the sale of the client's interest in PD Ports, and the repayment and restructuring of its corporate debt facilities.

The deal also included the partial refinancing and restructuring of the WestNet Rail debt facilities, the restructure of its holdings in AETandD and CSC, simplification of its existing capital structure, as well as a triple stapling and the internalisation of its management. This transaction's size and the complex and diverse range of expertise it required make it a testament to the strength and depth of the Freehills team.

#### **Leading lawyers**

Andrew Booth  
Patrick St John

### **Mallesons Stephen Jaques**

"Mallesons Stephen Jaques is the premier law firm in Australia from my standpoint and it provides amazing client service," says a client, encapsulating the reason why the firm remains in the top tier of the rankings this year. "The people there are committed to going over and above to get the deal done and are able to pull together complex deals with minimal fuss or fanfare. In terms of advice, the key for us is that they understand our business and the issues we face and hence provide legal advice which is technically correct and commercially relevant and applicable."

The team at the firm has been involved in a broad range of work for its many clients over the past 12 months. One substantial transaction in the acquisition finance area was the work in the acquisition by Amcor of parts of Alcan Packaging from Rio Tinto. The acquisition price was estimated at \$2 billion which was funded by an equity raising together with debt financing. The firm acted for the financiers, who provided debt financing of \$1.2 billion, advising on all aspects of the finance documentation and the sale and purchase agreement.

The Alinta Energy Group mandated Scott Gardiner and his team on the debt restructuring of the group, which involved the termination of the management and advisory agreements between the client and Babcock & Brown, as well as the settlement of outstanding loans of A\$445 million (\$386 million) from Babcock & Brown at a substantial discount to face value.

The restructuring also involved the extension, restructure of terms and A\$100 million upsizing of the existing \$2.7 billion external debt facility. This was achieved through the use of novel financing techniques, including the introduction of a contingent payment in-kind interest arrangement and the setting of

financial covenants by references to budget plans and forecasts. The team helped successfully stabilise and simplify the client's debt position and eliminated short-term refinancing risk.

#### **Leading lawyers**

Ken Astridge  
Jeff Clark  
Peter Doyle  
Ian Patterson

### **Blake Dawson**

Blake Dawson has remained strong in the banking market in the past year, promoting Jock O'Shea and Jamie Ng to the partnership in Brisbane and Sydney respectively. With quality service consistent across the board, a client recommends the firm's staff: "They understand their clients very well and also are great subject matter experts who bring tangible and practical advice to a deal. The service level is excellent and they understand timing and deliver as required."

The client continues: "Most of our deals or advice is under time pressure and they have consistently delivered top quality output to meet the deadlines."

The team was involved in the two airport related financings this year. It advised the Commonwealth Bank-led syndicate, which also consisted of ANZ Bank, Westpac and National Australia Bank, on the \$480 million refinancing of Canberra International Airport. The other transaction was with regards to the refinancing of Northern Territory Airports valued at A\$304 million (\$264 million). These deals were led by partner Martin Coleman and were completed in December 2009.

Another example of the range of work engaged in during the last year is its work for GE Capital Corporation, where partner Tim Lipscombe acted in relation to the provision of \$800 million of revolving credit facilities for Viterra for its \$1.6 billion acquisition of ABB Grain by way of a scheme of arrangement.

"He is a fantastic lawyer, thoroughly understands our needs and is fully in touch with the market standards," says a client about Lipscombe. "He is quick to respond and always happy to assist even on short notice. His advice is easy to understand and very commercial."

#### **Leading lawyers**

Martin Coleman  
John Field  
Timothy Lipscombe  
David Mason  
Steve Smith  
Philip Trinca

### **Clayton Utz**

The banking and finance team at Clayton Utz has undergone a year of change. With the defection of partners Angela Flannery, Grant Fuzi and Jason Huinink to the new Australian office of Allen & Overy, the team at the firm has been reinforced with the internal promotions of new partners Matthew Daley, Rohan Mishra and Alexander Schlosser. A further addition to the team is the reunion of Fran Rush with the firm in June 2010, who is rejoining in a consultant capacity.

Despite this upheaval, there is no doubt of the quality of the work, as a client asserts: "We are a demanding organisation and expect quality. Clayton Utz could never do a job that 'just got by', because we would never let them get away with it."

"Clayton Utz is a very professional firm and I would not hesitate to recommend any of the partners with whom I have worked," says another client. "They are experienced and knowledgeable and work hard. They're a safe pair of hands." Paul Gatward in particular is recommended by a client for his "attention to detail, thoroughness, persistence, and problem solving which have been invaluable".

A highlight case for the firm involved partner Paul Gatward acting for Asciano in negotiations with both existing and new syndicate financiers for A\$1.14 billion (\$1 billion) of new debt funding. The deal included revisions to financial covenants that were understood to include lower maximum gearing levels as measured by net debt to Ebitda (earnings before interest, taxes, depreciation and amortisation). The total value of the deal was quoted at \$2 billion and was completed in December 2009.

#### **Leading lawyers**

Graeme Gurney  
Michael Riches

### **Minter Ellison**

With the clout of being one of the largest national firms, Minter Ellison has retained its position in the upper tiers of the rankings this year. With the hire of partner John Brimacombe in March 2009 and no departures in the last 12 months, the team has moved from strength to strength.

Under the leadership of the market-acknowledged professional Daniel Marks, the team advised Mirvac Group on the financing of the acquisition of M-Reit, a listed real-estate investment trust. The nature of the work included successfully negotiating the exit of M-Reit entities from their existing facilities and advising on the migration of those entities into the borrowing structure of the client's A\$2.15 billion (\$1.87 billion)

unsecured syndicated multi-option facilities. This transaction was completed in March 2010.

Another example of the range of work that the team has been involved in was the restructuring of existing debt facilities for Tourism Asset Holdings Limited (TAHL), Australia's largest hotel owner, and its subsidiaries. Partner Tony Berriman took the lead in advising the syndicate of banks, which included Westpac, National Australia Bank, Crédit Agricole, ING and ANZ.

The transaction involved putting in place a new A\$723million senior note facility to replace existing senior and mezzanine facilities. Completed in March 2010 and taking just six weeks to close, the successful completion of this deal is an excellent showcase for the quality of work and breadth of service offered by the firm.

#### Leading lawyers

Theo Kindynis

Daniel Marks

#### Other ranked firms

**Baker & McKenzie** counts among its collection of clients such esteemed names as: Australia & New Zealand Banking Group Limited (ANZ), Credit Suisse, Eureka Funds Management, ING Group and JPMorgan.

The team at the Australian office has elicited praise from many clients, with one noting that: "The lawyers are comprehensive and efficient. Despite different time zones, I will get a timely revert from the lawyers even after midnight their time."

One notable transaction for the firm this year has been the advising of Sims Metal Management, a global leader in metals and electronics recycling, on the normalisation of the terms of the loan facilities provided by Bank of America, Commonwealth Bank of Australia, HSBC, National Australia Bank and Westpac. The aggregate loan amount is estimated to be about A\$1 billion (\$869 million) with Sims Metal Management and its Australian and foreign subsidiaries acting as guarantors.

*Leading lawyers:* Kenneth Gray

**Corrs Chambers Westgarth** is "a national law firm which is increasing its presence noticeably in the market", says a competitor. The past 12 months has seen the banking team at the firm take on a large amount of work for numerous high-profile clients. Its reappointment to the ANZ legal panel and new appointments to the National Australia Bank, Rabobank, ING Bank and Macquarie Bank legal panels are just a few examples of the strength of this firm.

A highlight transaction saw partner Megan O'Rourke advise Woodside on a \$1.1 billion syndicated loan facility involving 26 banks (both Australian and international). Approximately 78% of the capital came from Asian or Asia-based banks, covering such countries as Taiwan, Japan, China and Singapore.

*Leading lawyers:* Shawn Wytenburg

The **Gilbert + Tobin** banking team has grown leaps and bounds in the past year. Acclaimed by both peers and clients for its efficiency, one impressed client recommends the team for its "good market knowledge, and both commercial and swift execution".

The firm's client list has swelled with recent additions, counting leading organisations such as Telstra, Macquarie Bank, Perpetual and Goldman Sachs on its list.

One notable transaction this year saw the firm advise Pacific Equity Partners on the restructuring of an equity bridge debt facility provided by Citibank to the \$4 billion PEP Fund IV. This deal was overseen by partner James Lewis, who a client lists as "one of the best banking lawyers in town".

*Leading lawyers:* John Schembri

Though better known for its exemplary restructuring and insolvency work, the banking team at **Henry Davis York** has been continuing to make a name for itself within the market.

A client was very impressed with the thoroughness of the team, noting: "Henry Davis York was absolutely on the ball, and meticulous in tidying up details."

One notable deal for the firm has been the representation of the senior bank syndicate with regards to the Redcape Property Trust, formerly the Hedley Leisure and Gaming Property Trust. The team acted for the syndicate in relation to the extension and renegotiation of a senior syndicated loan of the trust. Valued at A\$700 million (\$608 million), the deal is still in progress at time of press.

*Leading lawyers:* Alex Mufford

**Norton Rose** has been exceptional in the banking market this year, especially in light of its merger with Deacons Australia in January 2010, marrying the global practice with a well-established national name. The firm enjoys a position on the legal panels of numerous banks and financial institutions. AMP Bank, ANZ, Bankwest, Challenger Financial Services Group, HSBC, Macquarie Bank, NAB and Suncorp are just some of the more notable entities.

The banking team welcomed two new additions in the last 12 months. Partner Charlene Yuen joined from the affiliated Vietnam office in August 2009, and partner Petar Kuessner joined from Mallesons Stephen Jaques in March 2010.

A highlight for the year was acting for Macquarie Bank in relation to its A\$1 billion (\$869 million) acquisition of vehicle-financing receivables for Ford Credit in Australia of Ford Credit's vehicle lease business. This deal involved the financing of the acquisition of receivables, including securitised receivables, and the entering into of interim management agreements under which the portfolio was managed for a period of time by Ford before being fully transferred. This transaction was completed in December 2009.

#### Other notable firms

**Allen & Overy** enters the banking and finance sector with a full-fledged team built from its raid of top tier firms in Australia. Among the high profile partners now at the firm are Angela Flannery, Grant Fuzi, Jason Huinink, and Peter Wilkes of Clayton Utz, and Chris Robertson of Freehills. Their combined experience in the banking field, and specifically project financing aspects have been cited as reasons to pay special attention to this new player in the Australian market.

**Johnson Winter & Slattery** has been stepping up its profile in this market, and on the back of strong client support, is definitely looking forward. A client praises the firm, noting: "Both Phil Laity and Martin Lovell are highly professional, diligent and practical in their approach."

One notable transaction completed in October 2009 was the representation of South East Australia Gas, as agent for the SEA Gas Partnership, on its \$425 million refinancing of the SEA Gas pipeline that runs between Iona, Victoria and Adelaide, South Australia. Partner Phil Laity and senior associate Martin Lovell were the principals on this transaction.

## Mergers and acquisitions

### Recommended firms

#### Tier 1

Allens Arthur Robinson  
Blake Dawson  
Clayton Utz  
Freehills  
Mallesons Stephen Jaques

#### Tier 2

Gilbert + Tobin  
Minter Ellison

#### Tier 3

Baker & McKenzie  
Chang Pistori & Simmons  
Corrs Chambers Westgarth  
Johnson Winter & Slattery  
Norton Rose

#### Tier 4

Arnold Bloch Leibler  
Atanaskovic Hartnell  
DLA Phillips Fox  
Henry Davis York

Though M&A activity is not believed to have reached its previous heights, the Australian corporate/M&A legal market has been active despite the difficult economic conditions globally. Over the last year, numerous large Australian corporates have accessed the capital markets to raise equity which assisted in grounding the market, settling confidence issues and, in particular, improving the ability of companies to consider acquisitions.

Inbound interest has been rampant with activity from both Chinese state-owned enterprises (SOEs) as well as Russian SOEs. It is widely observed that these overseas investors and resources continued to underpin the continuing momentum in M&A activity. The sector itself is still a benchmark that underpins the action in Australian M&A, as observed by the numerous energy-related transactions inundating firms' deal lists.

Consolidation in the financial services industry has continued, including an observed rise in fund mergers and product rationalisations in insurance and superannuation. The marked increase of high-value transactions such as AXA's A\$14 billion (\$12.2 billion) joint bid with National Australia Bank to acquire AXA Asia Pacific Holdings, and to then acquire AXA APH's Asian operations for approximately A\$9.4 billion are examples of this trend.

The nature of the transactions has changed from that of last year as well. "There are fewer distressed acquisitions and a fundamental shift to strategic acquisitions and traditional consolidation," says one partner.

### Allens Arthur Robinson

Allens Arthur Robinson sits atop the rankings after a busy year with constant participation in the leading M&A deals in the market. Clients consistently laud the firm for its exemplary advice and ability in this area.

A landmark deal that the firm was involved in is the establishment of a 50:50 production joint venture (JV) between BHP Billiton and Rio Tinto. The JV will cover both companies' Western Australian iron ore production and exploration assets. It will operate as a cost centre and deliver iron ore to ships designated by BHP Billiton and Rio Tinto to sell independently through their own marketing groups.

Based on the equalisation payment of \$5.8 billion to be paid by BHP Billiton to Rio Tinto, to increase its interest in the JV from 45% to 50%, the implied value of the project is around \$100 billion.

Another notable transaction was the acquisition of Cemex's Australian assets by Holcim, a leading global cement, concrete and aggregates business. This acquisition involved a number of challenging aspects including a very compressed negotiation timeframe and multiple cross-border elements. Partner Kylie Brown was involved in this transaction.

#### Leading lawyers

Ewen Crouch

### Blake Dawson

Blake Dawson retains its position in the M&A rankings this past year, with one client commenting: "Blake Dawson is a top-tier Australian firm with top-tier expertise and an approachable human face. I personally like the client focus and lack of ego among Blake Dawson lawyers."

In April 2010, partner David Williamson left the firm to join BHP Billiton as chief legal counsel. Both peers and clients have acknowledged that this is a substantial loss for the team, but see the firm as highly resilient and capable of weathering this departure.

A client recommends lead partner Ian Williams: "Ian has a very practical and commercial approach to M&A transactions, which we appreciate. Ian is always available, and during key moments of transactions, he effectively becomes part of our internal decision-making team."

The team at Blake Dawson has been at the forefront of M&A development this year. It acted as the lead adviser to Kirin Holdings on its acquisition of the outstanding 53.9% of Lion Nathan it did not already own. On April 27 2009, Kirin Holdings announced that it had reached an agreement with Lion Nathan in relation to the key terms of its proposal. This transaction was finally completed in

October 2009. The landmark deal was labelled as the largest investment by a Japanese company in Australia.

Another transaction that has continued on since last year was the extensively reported joint venture (JV) between BHP Billiton, represented by Blake Dawson, and Rio Tinto. As of December 2009, both parties have signed binding agreements on the JV, with full realisation of the JV expected to happen in the latter half of 2010.

An example of the diverse array of work that the team at Blake Dawson is regularly involved in is the firm's representation of Lihir Gold in relation to Newcrest Mining's \$9.2 billion offer to acquire all shares in it by way of scheme of arrangement. While this deal is still pending, its successful completion could see this transaction being Australia's largest-ever resources takeover.

#### Leading lawyers

Bill Koeck  
Marie McDonald

### Clayton Utz

Clayton Utz is ranked in the top tier on the back of another excellent year in M&A. The firm lost partner Michael Parshall to the new Allen & Overy office in February 2010, but despite this loss clients and peers have expressed confidence in the future of the outstanding team at the firm. M&A head Rod Halstead is highly recommended, and is described by one client as "experienced and wise".

A noteworthy transaction for the firm was acting on the formation of a new Australian-listed company, Seven Group Holdings, which had acquired the Westrac business and had also acquired Seven Network for a scrip-for-scrip exchange through a scheme of arrangement. The team represented Australian Capital Equity and Westrac Holdings in this transaction. Announced in February 2010, this \$1.8 billion-valued deal was completed in April 2010.

A highlight deal for the firm is the representation of AMP in its proposed acquisition of all the shares in AXA Asia Pacific Holdings (AXA APH) with the Asian operations of AXA APH to be sold to AXA. The team is advising AMP on all aspects of the bid including bid documentation and competition approvals. With a decision on the merger pending at time of press, this potentially A\$12 billion affair is overseen by partner Rod Halstead.

#### Leading lawyers

Rod Halstead

## Freehills

Well-established as a premier Australian firm, Freehills retains its place in the top tier in the rankings this year. It has garnered unanimous praise from its clients and respect from peers. Of its Perth office, a client notes that "Freehills is head and shoulders above the rest".

Another client picks out partner Baden Furphy for praise: "He had a good idea of the process and was outstanding. He was definitely the shining star there." Furphy was the lead on the firm's representation of AXA SA on its A\$14 billion (\$12.2 billion) joint bid with National Australia Bank to acquire AXA Asia Pacific Holdings (AXA APH), and to then acquire AXA APH's Asian operations for approximately A\$9.4 billion.

"Rebecca Maslen-Stannage is incredibly professional, conscious of delivering to timelines and commercial in her approach to difficult legal issues," says a client. "She is also adept at managing more difficult and perhaps legally less knowledgeable clients." One of Maslen-Stannage's highlights this year saw her advise Centro Properties Group on its A\$5 billion stabilisation arrangements.

Tony Damian led a team advising Eldorado Gold Corporation in its A\$8 billion merger with Sino Gold Mining - the largest completed Australian scrip deal of 2009. The deal also involved a simultaneous listing of Eldorado Chess depository interests on the Australian Stock Exchange.

"Damian has strategic and incisive advice which was invaluable. The difference it makes to achieving a client's desired outcome is huge," says a client. "His considered but pragmatic approach, as well as being a pleasure to work with, makes him one of the small handful of M&A lawyers in the region that we will use for complex, strategically important transactions." Another client states: "Tony Damian is Australia's leading expert on M&A done through schemes of arrangement and one of the top performers in all kinds of M&A."

The quality of service provided by the firm is without a doubt top-notch and worth every cent, with a client succinctly summing up: "They are not cheap but the quality far outweighs the cost. They would be cheap at twice the price."

### Leading lawyers

Tony Damian  
Baden Furphy  
Rodd Levy  
Rebecca Maslen-Stannage

## Mallesons Stephen Jaques

Mallesons Stephen Jaques offers service of the "highest quality," comments a client. Despite

the loss of Peter Cook in 2010, the top-tier firm retains its position as affirmed by both its peers and clients. Partner Jason Watts has been noted by a peer as being "key to the M&A offering" at the firm.

In the past year, the firm advised Citigroup on the Australian aspects of a A\$2.7 billion (\$2.35 billion) global joint venture with Morgan Stanley. This joint venture combined the two companies' retail broking businesses in the US, Europe and Australasia to form Morgan Stanley Smith Barney.

This deal stands out for its ability to create complex arrangements in a tight timeframe given the volatile financial environment in which it was crafted. This deal was completed in June 2009.

In another example of the cross-border capabilities of its team, the firm advised Greenhill on its \$215 million acquisition of the Caliburn Partnership in April 2010. Greenhill acquired all of the issued shares and other equity rights in Caliburn in return for a combination of common stock, performance based convertible stock and restricted stock units.

Another interesting transaction for the firm was the team's advising of BG Group in relation to its deal to sell liquefied natural gas from its Queensland Curtis project to China National Offshore Oil Corporation (CNOOC), as well as advising BG Group on its sale of an equity investment in the project to CNOOC. The deal was announced in March 2010 and is one of the largest ever gas sales from Australian to Chinese interests.

### Leading lawyers

David Friedlander  
Greg Golding  
Stephen Minns

## Gilbert + Tobin

Gilbert + Tobin's hire of Peter Cook has been hailed by peers and clients as a bold move and could signify a change on the horizon for the firm. A client summarises the appeal of engaging the firm: "It provides boutique attentions with a big firm's capabilities."

Already blessed with quality practitioners such as Garry Besson and Gary Lawler, who a peer refers to as "being the most prominent and having the highest standing in the M&A market", the firm will look to the future with relish and much promise.

A client singles out partner Adam Laura: "He was fantastic. He was pragmatic, affable and has built a steady experienced team. He has great client service and delivery."

The clients adds: "He possesses expertise in his area and is a natural negotiator; I have great confidence in his ability."

One of Laura's highlights this year was advising Westpac on a trust scheme relating to Westpac Office Trust and the acquisition of all the units and management rights in Westpac Office Trust by the Mirvac Property Group. Completed in May 2010, this transaction was valued at A\$1.2 billion (\$1.04 billion).

"Gilbert+Tobin is absolutely outstanding. We always come back to them," says another client. "Compared to other law firms, it is a really fine law firm. The lawyers are very down to earth and very competent and straight forward."

### Leading lawyers

Garry Besson  
Philip Breden  
Gary Lawler  
John Williamson-Noble

## Minter Ellison

By retaining its solid base of big name clients, Minter Ellison has resolutely established its position in the Australian M&A market. "The firm and its office in Melbourne is particularly strong," says a rival partner.

The firm this year has advised TPG Telecom regarding its acquisition of Pipe Networks. This transaction was completed in March 2010 and was valued at A\$373 million (\$324 million).

A highlight for the firm saw John Steven, Bart Oude-Vrielink and Stuart Johnson advise client Mirvac Group on its acquisition of listed Mirvac Real Estate Investment Trust (M-Reit) in October 2009. The transaction was effected via a scheme of arrangement. Mirvac Group paid A\$116.1 million in cash and issued 159 million Mirvac stapled-securities in exchange for all of the units in M-Reit.

A pending deal for the firm is its work advising Zijin Mining Group in its potential A\$545 million acquisition of Indophil Resources.

### Leading lawyers

Bart Oude-Vrielink  
John Steven

## Other ranked firms

Enjoying a reputation as a nuanced and relatively small practice, **Atanaskovic Hartnell** is able to pick and choose its transactions, providing quality service to a wide collection of blue-chip clients and without relying on a handful of big-name organisations.

Atanaskovic Hartnell was engaged by the Ontario Teachers' Pension Plan Board regarding an unsolicited proposal for an acquisition by way of scheme of arrangement of Transurban Group. The implied value of this

transaction has been quoted to be A\$13.8 billion (\$12 billion).

This highly complex and contentious proposed transaction involved negotiations among consortium members over a number of months, culminating in the submission of three unsolicited proposals for a scheme of arrangement.

The **Baker & McKenzie** team acted for Corporate Express Australia on the recommended takeover by Staples, announced on March 17 2010. Staples offered to acquire all issued shares in Corporate Express for A\$1 billion (\$869 million). The Staples offer will be implemented by an off-market takeover.

The offer has been unanimously recommended by the Independent Directors of Corporate Express but is subject to a number of conditions, including confirmation by an independent expert that the offer is fair and reasonable to the non-Staples shareholders, and the approval of the Foreign Investment Review Board.

*Leading lawyers:* Steven Glanz

“**Chang Pistilli & Simmons** is very commercially pragmatic, technically competent and responsive,” notes a client. Recognised by peers as a “quality niche Sydney firm”, this boutique outfit enjoys the distinction of providing quality service at affordable rates and personal attention.

Kevin Lewis is recommended by a client for being “outstanding: both technically and for his good commercial advice”.

One highlight for the team was acting for Babcock & Brown in connection with listed entity, Babcock & Brown Infrastructure (BBI)’s separation from Babcock & Brown and internalisation of its management functions. Partners Kevin Lewis and Jason Mendens were involved in the extensive negotiations and settlements of outstanding management fees and associated costs in Australasia and Europe.

*Leading lawyers:* Mark Pistilli and Danny Simmons

**Corrs Chambers Westgarth** advised Yanzhou Coal on the acquisition of Felix Resources by way of scheme of arrangement. This landmark deal has been cited as the biggest ever Chinese deal in the Australian coal sector.

Interestingly, approval was granted by the Australian Foreign Investment Review Board, making Yanzhou the first state-owned enterprise that was able to acquire 100% of a listed company in Australia.

The deal exemplified the team’s ability to coordinate across various jurisdictions, with disclosures being managed on three stock exchanges: Australia, Shanghai and Hong Kong. The deal was completed in December 2009 and was valued at \$2.94 billion.

*Leading lawyers:* Teresa Handicott, Braddon Jolley and Byron Koster

**Henry Davis York** has built a strong M&A team that is more than just a support function for its vaunted restructuring and insolvency practice. One client in particular recommends the M&A team for its “high level of commitment and responsiveness”.

The team is advising Jupiter Mines in the capital restructuring of Tshipi é Ntle Manganese Mining (Tshipi) where Jupiter Mines will acquire a 49.9% interest in Tshipi for A\$250 million (\$217 million) from Pallinghurst.

**Johnson Winter & Slattery** advised One Equity Partners, which manages \$8 billion in assets and commitments for JPMorgan Chase & Co in direct private-equity transactions, on the Australian aspects of its purchase of first aid supplies manufacturer Johnson & Johnson.

“**Norton Rose** partner Shaun Clyne is very competent. He provides quality advice that is consistent with commercial realities,” says a client. “He works with good turnaround time and develops a strong rapport with clients.”

The client adds: “He provides good value for money and I would recommend him on most public and private M&A transactions.”

In October 2009, the Norton Rose team advised Macquarie Bank in connection with its acquisition of Ford Credit Australia, the Australian lending arm of US auto company Ford Motor Credit Company. Valued at A\$1.2 billion (\$1.04 billion), the portfolio consisted of loans and leases for and including about 60,000 vehicles.

*Leading lawyers:* Shaun Clyne

### Other notable firms

The arrival of **Allen & Overy** in Australia has caught the attention of the entire legal industry in the country, with focus on the corporate partners in particular showing much promise for the coming year. With the hiring of partners such as Meredith Campion, Barry Irwin, Grant Koch, Michael Reede, and Geoff Simpson from Clayton Utz, the M&A capability of the firm is expected to underpin its growth in the coming future.

“**HopgoodGanim**, and partner Brian Moller in particular, offers an excellent mixture of pragmatic yet technically sound advice,” says a client. The Brisbane-based firm provides quality service consistently to a substantial range of clients, some of which are listed on the Australian Stock Exchange.

In June 2009, the team advised on the historic merger of two independent thoroughbred racing clubs, Queensland Turf Club and Brisbane Turf Club, to form one thoroughbred racing club for the Brisbane

Metropolitan area. The transaction required examination of a multitude of issues including competition issues arising from the amalgamation. The total value of the transaction was estimated to be A\$73 million (\$63.5 million).

## Competition

### Recommended firms

#### Tier 1

Blake Dawson  
Freehills  
Gilbert + Tobin  
Mallesons Stephen Jaques

#### Tier 2

Allens Arthur Robinson  
Clayton Utz  
Johnson Winter & Slattery

#### Tier 3

Baker & McKenzie  
Minter Ellison  
Norton Rose

Last year, it was observed that the Rudd Government (now the Gillard Government) strived to develop competition law and policy. Broadly, this approach can be summarised as a renewed drive toward aligning the various components of competition and consumer law more directly with the goal of productivity gains from efficiency. The coming few years are likely to involve further changes in that direction.

The Australian Competition and Consumer Commission (ACCC) has been observed to be more active and “aggressive” by a practitioner in the merger space. One lawyer observes: “The ACCC appears to have placed swift behavioural change as a higher priority than deterrence and punitive outcomes.”

The amendment and expansion of the definition of cartel and creation of criminal sanctions for cartel conduct has been met with confusion from a substantial number of fronts. As one lawyer puts it: “The ACCC is still looking for its first criminal cartel matter. But perhaps as a result of the uncertainty over the meaning of ‘understanding’ and the Australian Securities and Investment Commission’s setbacks in criminal cases, we expect that the first case will involve documentary proof of criminality or direct testimony of a credible whistleblower.”

### Blake Dawson

“Blake Dawson’s lawyers are pretty good,” admits a rival. The competition practice at the firm has been praised by peers for not only its corporate and financial strengths, but also for its standalone quality and capable staff.

On the global front, the team advised Wyeth on Australian competition issues arising from its acquisition of Pfizer, which resulted in a range of complex and innovative remedies to enable the transaction to be cleared. Led by partner Peter Armitage, whom a client “personally highly recommends”, this representation was completed in October 2009 for the issues surrounding the merger, which was valued at \$68 billion.

The team was involved in another cross-border transaction with the inbound activity from Chinese oil and gas producer and distributor, PetroChina. The firm acted for PetroChina on its A\$3.5 billion (\$3.04 billion) joint takeover offer with Royal Dutch Shell for Arrow Energy, which will proceed by a scheme of arrangement and which is subject to shareholder and regulatory approvals. The team’s role included advising in relation to Australian Competition and Consumer Commission (ACCC) clearance of the transaction.

A landmark case for the firm that has been running for the past five years is the team’s representation of BHP Billiton in defending applications by Fortescue Metals Group for access to BHP Billiton’s Pilbara Iron Ore Railway Lines. This transaction is widely regarded as the leading infrastructure access case in Australia.

#### Leading lawyers

Peter Armitage  
Stephen Ridgeway

### Freehills

The Freehills competition practice is headed by partner Paul Hughes, who has been agreed upon by numerous practitioners from other firms as a leading individual in the competition space in Australia. The team promoted Peter McDonald to the partnership in July 2009.

The firm acted for Caltex Australia in seeking Australian Competition and Consumer Commission (ACCC) clearance for its proposed acquisition of Mobil retail sites. The matter involved analysis of complex wholesale and retail fuel markets in a contentious clearance process and was overseen by Hughes.

A continuing engagement for the firm is acting for the Independent State of Papua New Guinea (PNG) in connection with its reform of the information and communication technology (ICT) sector. Having assisted the government in the formulation of a National ICT Policy that is consistent with international best practice and adapted to the circumstances of PNG, the firm has continued to assist the government in the implementation of these reforms.

The firm was responsible for most of the legal and technical input into this legislation, and worked with the state’s local PNG law advisers and other economic and technical experts. The team also managed the extensive consultation process with the industry and general public to ensure that the legislation was relevant to the circumstances in PNG. The success of this continued work could result in effective reform of the ICT sector, which is fundamental to the ongoing social and economic welfare and development of PNG.

#### Leading lawyers

Paul Hughes

### Gilbert + Tobin

Referred to by a peer as having a “leading competition practice”, Gilbert + Tobin’s competition team welcomed the addition of partner Martin Taylor in December 2009 from Freehills. When asked about the firm, one rival agreed that the Sydney-based practice “deserves its place” in the top tier.

The firm is acting as the leading regulatory advisors to Telstra in relation to the Australian government’s A\$43 billion (\$37.4 billion) National Broadband Network (NBN) programme and its associated legislative programme regarding options for the potential functional separation of Telstra. This nationwide programme and related legislation regarding the future shape of Telstra differs from many others globally, as the Australian government has invested a considerably higher amount of taxpayer funding and is also seeking to use regulation to fundamentally change the telecommunications, spectrum and pay TV industries in Australia. This continuing advice could have widespread effects on the future welfare of the NBN.

Another notable transaction for the team was advising Newcastle Port Corporation on trade practice issues arising from the operation of the Port of Newcastle coal terminal. The matter consists of negotiations for the client with Port Waratah Coal Services (PWCS) and Newcastle Coal Infrastructure Group (NCIG), the port terminal operators at the Port of Newcastle, in relation to the development of a long-term solution to address the continuing capacity constraints in the Hunter Valley coal chain. This deal was closed in January 2010.

#### Leading lawyers

Gina Cass Gottlieb

### Mallesons Stephen Jaques

Mallesons Stephen Jaques is regarded as a pre-eminent firm in the country, and its competition practice has garnered support and praise from its peers. At the time of writing, it was announced that Sydney competition partner Dave Poddar will leave the firm to join the Australian office of Allen & Overy following six months of gardening leave.

The team has been heavily involved in merger clearance work in the past year. It acted for AXA Asia Pacific Holdings (AXA APH) in relation to the \$16 billion bids by National Australia Bank and AMP to acquire AXA APH’s Australian and New Zealand businesses and obtaining clearance from the Australian Competition and Consumer Commission (ACCC).

The matter involves consolidation across the Australian financial services and wealth management industries at a time when the ACCC is heavily scrutinising competition in those industries following the global financial crisis and acquisitions by the country’s biggest banks. Partner Caroline Coops took the lead for this matter.

An example of cartel work involved the team acting for British Airways on a class-action suit in Australia, and in relation to an investigation by the Korea Fair Trade Commission and proceedings commenced by the New Zealand Commerce Commission in the High Court of New Zealand. This matter consisted of coordinating British Airways’ response to investigations in the Asia Pacific time zone of an air cargo cartel.

The transaction showcases the firm’s cartel and class-action capability, ability to successfully coordinate responses to cartel investigations in the Asia Pacific time zone, and the competition team’s ability to work closely with elite law firms in Europe and North America.

#### Leading lawyers

Caroline Coops

### Allens Arthur Robinson

Supplemented by its considerable corporate and finance capabilities, the competition practice at Allens Arthur Robinson has developed a solid reputation for quality of service and client management. Partner Wendy Peter is well-respected by both peers and clients, with a client recommending: “She was someone I was impressed with on the team. In fact she impressed me the most out of the capable team.”

A notable transaction for the firm was the acquisition of Pfizer’s Fort Dodge Animal Health Care business in Australia by Virbac, which required Australian Competition and

Consumer Commission (ACCC) approval. The ACCC required the soon-to-be-acquired assets to be divested by Pfizer in connection with its recent acquisition of Wyeth, including its Fort Dodge Animal Health business. The team represented Pfizer in this transaction, which was completed in February 2010.

Other transactions include the representation of Rio Tinto in relation to the Australian Competition Tribunal proceedings between Fortescue Metals Group, BHP Billiton, Rio Tinto and the National Competition Council.

#### Leading lawyers

Wendy Peter

### **Clayton Utz**

Clayton Utz has been recommended by peers as having a solid competition practice to support and smooth its corporate and finance transactions. The team provides quality advice to clients such as Coca-Cola Amatil, Origin, Apple, OzTAM, Novartis/Sandoz, Eli Lilly and Astra Zeneca, to name a few.

A high-profile transaction for the team in the past year saw it acting for Vodafone on competition/merger clearance aspects relating to its merger with Hutchison. Vodafone and Hutchison, two of the largest telecommunications companies in Australia, formed a new entity called Vodafone Hutchison Australia. The Australian Competition and Consumer Commission (ACCC) approved the merger on May 29 2009. Linda Evans was the lead partner involved in this matter.

The team acted for Woolworths in successfully obtaining ACCC clearance of its takeover of Danks, a wholesale supplier to independent hardware stores and owner of three marketing groups made up of independent stores. The ACCC clearance process involved negotiating undertakings to address those concerns within the strict takeover timetable.

Other transactions which the firm was involved in include the representation of Novartis International, a global healthcare company, on the competition issues arising in Australia out of its acquisition of Alcon, and the National Competition Council in respect of the access declaration of BHP Billiton's and Rio Tinto's rail networks in the Pilbara.

#### Leading lawyers

Michael Corrigan

### **Johnson Winter & Slattery**

Peers have commented that "though Johnson Winter & Slattery is a relatively small firm, it has some great competition practitioners."

The competition team at the firm has been strengthened by the hire of Wolfgang Helmann as special counsel in May 2010 from Blake Dawson. "The firm may be the best I've ever worked with," says a client. "They are absolutely the best in competition."

Another client commends the firm for its efficiency: "Value-for-money comes with actual results. The firm saved us enormous amounts of money by understanding the issue and dealing with the issue. It did in six months what a rival firm couldn't in three years."

This year, the team was able to fend off competition from other top tier firms and was reappointed as Qantas Airways' core competition lawyers following a rigorous tender process. The firm is regularly involved in a large amount of work for Qantas, advising on strategic alliances, mergers and joint ventures.

One recent matter involved the Australian Competition and Consumer Commission completing a lengthy investigation and prosecution relating to an illegal global air freight cartel, with aspects continuing in Australia and elsewhere.

The competition team at the firm is advising Qantas Airways on all aspects of this matter as well as acting for the client in civil actions arising from the global investigations and prosecutions. The firm is also assisting in the US, European, Asian and New Zealand proceedings. Dominant competition lawyer Aldo Nicotra is one of the lawyers involved in the matter.

#### Leading lawyers

John Kench

Aldo Nicotra

### **Other ranked firms**

"**Baker & McKenzie** is both very responsive and very skilled," says a client. Peers admire and respect the firm for its global capability and wide range of expertise. Andrew Christopher and Georgina Foster are praised by a client in particular. "I hold both in very high regard for their technical and strategic skills," the client says.

The firm is involved in various transactions that are yet to be completed. One of these involves Christopher and Foster advising the New South Wales Treasury on the competition issues arising in connection with the proposed privatisation of the state's electricity assets. The state government's Electricity Reform Strategy is one of the largest privatisation projects in Australia.

*Leading lawyers:* Andrew Christopher

"After dealing with all the different firms involved in the competition matter, we still think that **Minter Ellison** was the right

choice," says a client. "The team in place is one of if not the best team available."

In early 2010 the firm established two new positions and appointed partner Paul Schoff as head of the Cartels unit and partner Geoff Carter as head of the Mergers unit.

A client singles out Paul Schoff: "He certainly impressed me the most out of the team. He achieved a very good result, and was really the leader on this team. He helped steer us, by standing firm and explaining things, but also adjusting strategy accordingly when needed."

One recent transaction that Carter was the lead on was the advising of Hertz Global Holdings on the Australian aspects of its \$1.3 billion acquisition of Dollar Thrifty Automotive Group. This deal was announced in May 2010 and is at the time of writing unresolved. It is a great example of a global transaction in which the firm is acting as coordinating regional counsel to address competition issues in Australia and New Zealand.

A client details how this is an attribute which sets the firm apart: "The firm's ability is truly international and possesses great ability dealing with clients."

*Leading lawyers:* Paul Schoff

**Norton Rose's** integrated global practice is a strength that is yet to be fully measured following the recent merger with Deacons Australia.

A recent and still unresolved matter underway for the competition team involves partner Calum Henderson acting for Japan Airlines in the Federal Court in a private action alleging a cartel in the provision of air international cargo services against a group of airlines.

This issue has been reported to be the largest private antitrust claim in Australian history. The resolution of this issue could have bearing on the extent to which overseas activities of foreign companies can give rise to liability under Australian competition law.

### **Other notable firms**

**Corrs Chamber Westgarth** provides invaluable competition advice to a notable collection of clients, some of which include BP, Arnott's, Dell, Johnson & Johnson, First Data Corporation and 3M.

One highlight transaction for the firm involved partners Mark McGowan and Richard Flitcroft advising Huntsman Corporation, a global manufacturer and marketer of differentiated chemicals, on competition law issues raised by its proposed \$415 million global acquisition of certain titanium dioxide interests of Tronox Inc, including its interests in a substantial Australian joint venture operation.

The transaction would have made Huntsman the second-largest global manufacturer of titanium-dioxide. The team is engaged by Huntsman on regular issues in relation to continuing discrete competition law issues arising from its Australian interests and projects.

The **HopgoodGanim** team is led by special counsel Brett Bolton. In a highlight case for the year, it acted for Trinity Petroleum Services, a Mobil distributor, in the preparation and lodging of a submission to the Australian Competition and Consumer Commission (ACCC) when it commenced market enquiries following Caltex's application to the ACCC for an informal clearance of its proposed acquisition of Mobil's retail network.

The conclusion of this deal marked a huge reversal in trends, as most applications to the ACCC for informal merger clearances are successful. The opposing views taken by Trinity Petroleum Services and other distributors undoubtedly played a part in the consideration process of the ACCC, which resulted in the failure of Caltex's application. This matter was concluded in December 2009.

## Project finance

Recommended firms	
<b>Tier 1</b>	
Allens Arthur Robinson	
Freehills	
Mallesons Stephen Jaques	
<b>Tier 2</b>	
Blake Dawson	
Clayton Utz	
Minter Ellison	
<b>Tier 3</b>	
Baker & McKenzie	
Corrs Chambers Westgarth	
Gilbert + Tobin	
Norton Rose	

It has been observed by more than one practitioner over the past 12 months that the project finance market is now slowly "starting to see some return to normality". One by-product that remains is a notably lower volume of deals, with one partner noting that "liquidity is gone from the banks".

The introduction of government-backed funding has resulted in what one lawyer calls a "swing back from private to public". The proliferation of public-private partnership (PPP) work is an evident effect as is an increase in government involvement overall. "In response to recent economic conditions, there is a renewed focus by government on achieving value for money in delivering infra-

structure projects," says one lawyer. "Sponsors and financiers need to be flexible and adapt to continually-changing market conditions such that the best value-for-money outcomes can be achieved."

The continued investment in the oil, gas and mining sectors and associated infrastructure development is obviously highly visible and exemplified by the groundbreaking completion of the Papua New Guinea liquefied natural gas project.

As far as trends go, it's increasingly likely that the sources of funding for projects will return to normal, with finance being obtained from bonds as well as the bank debt market, and the participation of super funds and other investments in infrastructure projects as equity investors.

International markets are also noted as likely to grow in importance. "Legal advisers need to adapt and respond to the differing requirements of clients who have participated in the projects market in a limited way over the last 12 months," says a partner.

The introduction of a new Minerals Resource Rent Tax under the Gillard government could dampen the exuberance surrounding the oil and gas, and mining sectors, though it has been announced that it will apply only to iron ore and coal projects and has been heavily modified from the original "super" profits tax put forth earlier.

### Allens Arthur Robinson

Allens Arthur Robinson remains a dominant force in the project finance area. Clients praise the firm, with one noting that it "is a top flight firm of international quality". Another client insists that the reason that the firm is of such quality is that it provides "consistently good advice".

Partners Philip Cornwell and Simon Lynch are very highly regarded in this field. "The partners are always being available," says a client. "They understand the mining business very well. They know what banks require and take a proactive role in negotiating for borrowers."

The highlight of the year is the firm's representation, in conjunction with Sullivan & Cromwell, of the borrower in the landmark Papua New Guinea liquefied natural gas project financing. The \$13 billion project has been reported as the biggest loan facility in history for an oil and gas project, and closed March 2010.

#### Leading lawyers

Philip Cornwell  
Diccon Loxton

### Freehills

Freehills is a preferred firm for project finance matters in Australia due to its depth and breadth. "The firm has great experience and can manage the most complex transactions," says a client. "The experience enables them to provide commercial advice to ensure matters are efficiently managed."

Despite the departure of Richard Gray and Alan Maclean in early 2009 and that of Chris Robertson to Allen & Overy in early 2010, the firm retains its top-tier status on the strength of its project-finance practice and sparkling stream of high-profile deals over the past year.

A notable transaction for the firm was the refinancing of the Hazelwood Power Station. The deal involved a group of 17 banks and the refinancing and restructuring of A\$750 million (\$653 million) of limited recourse debt. The financing is the first refinancing of a coal-fired power asset in the post-carbon world, which included considerable obstacles and challenges particularly in the context of the uncertainty arising from the lack of implementation of a settled emissions trading scheme in Australia. Star partner Brendan Quinn was the team leader on this matter.

A team led by partner Mark Breheny acted for the banks on the provision of A\$750 million of refinancing and capex facilities for the Perth airport. The transaction took place during difficult market conditions which, combined with the number of banks, resulted in lengthy and complex negotiations.

#### Leading lawyers

Brendan Quinn  
Patrick St John

### Mallesons Stephen Jaques

Mallesons Stephen Jaques continues to be involved in the thick of the more notable deals in the project finance market in the country. It provides exemplary service, with one client explaining: "In my experience, Mallesons outperforms most other firms and has a greater depth of expertise and experience servicing all sides of a transaction including sponsors, governments, contractors and financiers. This gives the firm a key insight into the needs and concerns of the different parties."

Among the personnel at the firm, a client singles out partner Jonathan Oldham for praise. "Jonathan Oldham is a relatively young, yet highly competent and experienced practitioner," says the client. "The team I dealt with, led by Jonathan, was highly professional and responsive to my needs and was greatly responsible for the excellent outcome attained."