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Regulation of corporate finance activity in Australia

Peter Doyle
Mallesons Stephen Jaques
Sydney

This article briefly reviews the most significant changes, over the last 12 to 24 months, in Australian corporate finance legislation.

International Accounting Standards

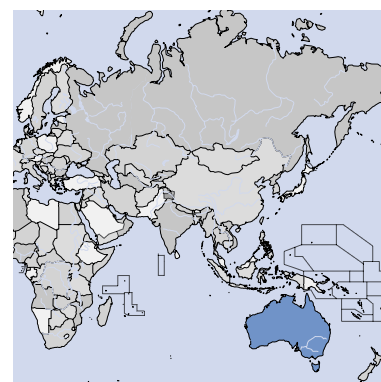
It is anticipated that, on or after January 1 2005, Australia will adopt the International Accounting Standards (IAS) for disclosing entities required to prepare financial reports under chapter 2M.3 of the Corporations Act (these include public companies, large proprietary companies and registered managed investment schemes).

Key areas of change resulting from adoption of the IAS include:

- Certain financial instruments classified as equity will be re-classified as debt. Coupon payments on such instruments, classified as dividends, will consequently be reclassified as interest expense.
- Under IAS 39, all financial assets and liabilities will need to be accounted for at fair value. From January 1 2004, previously off-balance-sheet transactions such as debt factoring and securitization will need to be recognized on balance sheet unless they meet the strict derecognition rules in IAS 39.
- Adoption of IAS 38 means that certain intangible assets on a company's balance sheet may have to be derecognized or written down to cost, including brand names, mastheads and internally generated goodwill. Intangibles with useful lives will also be required to be amortized over their useful lives, normally no longer than 20 years. Goodwill will not have to be amortized but will be subject to strict impairment testing requirements.
- The new International Financial Reporting Standards require the recognition of employee shares/options as expenses.

From a corporate finance perspective, the main impact of adoption of IAS is in respect of financial ratios and covenants in corporate debt facilities.

Most debt facility documents require the borrower to prepare accounts in accordance with generally accepted accounting principles (Gaap) applicable from time to time. Adoption of the IAS may mean that compliance by a corporate borrower with its financial ratios and covenants in debt facility agreements (commonly used for pricing, setting conditions precedent, as events of default and as triggers for lockups and cash sweeps) is at risk, even if the underlying financial wellbeing of the borrower is unchanged. Borrowers will need to be proactive and manage this issue with their financiers.



Tax consolidation

Recent amendments to the Income Tax Assessment Act 1997 (Cwlth) (ITAA) allow for the tax consolidation of corporate groups, from July 1 2002, with the transition period ending on July 1 2004. Under the new system the ultimate Australian holding company (the Parent) of a corporate group may decide to consolidate the tax treatment of its wholly owned subsidiaries. Once this decision is made, it is irreversible and automatically binds all eligible wholly owned subsidiaries within the group.

The Parent will be primarily liable for the group's income tax liability. If it fails to meet this liability, each subsidiary within the group will be jointly and severally liable for the entire group's liability, unless:

- (a) the group's liability is covered by a valid tax sharing agreement (TSA), in which case if the Parent defaults, each subsidiary is only liable for the amount allocated to it under the TSA; or
- (b) the particular subsidiary is prohibited under Australian law from incurring the liability.

Tax consolidation raises a number of issues for corporate finance transactions. A particular concern arises in the case of wholly owned special purpose vehicles (SPVs) that are used by a corporate group as a borrower, or asset owner, for a specific transaction (such as a structured finance or project finance transaction). If the corporate group has been tax consolidated, such an SPV may need to be ring-fenced from the tax liabilities of the group, or a covenant package may need to be designed whereby the parent is required to implement a valid TSA before consolidating the group or indemnify the SPV for any standalone tax losses used by the consolidated group.

Other recent tax law changes relevant to corporate finance are the new debt/equity rules in Division 974 of the ITAA (which determine whether an interest is treated as debt or equity for tax purposes) and the new thin-capitalization rules in Division 820 of the ITAA (which determine the level of debt which a project can carry before deductibility of interest is denied).

Clerp 9

The Clerp 9 bill came into law in July 2004. The Clerp 9 bill is predominantly focused on corporate governance improvement initiatives.

Under the Clerp 9 legislation, auditors will be required to make an annual declaration of their independence. A company's annual report will also be required to disclose the fees paid to its auditors as well as fees paid for non-audit services and a statement by the directors as to whether those services affect auditor independence.

The bill also amends the Australian Securities and Investments Commission Act 2001 (Cwlth) to establish the Auditing and Assurance Standards Board, and empowers it to issue audit standards that will be given the force of law.

The remuneration of a listed company's directors and top officers and the company's policies for executive remuneration will be required to be disclosed in a separate and clearly identified remuneration report section of the annual directors' report. Shareholders will have an opportunity to vote on a resolution to

adopt the remuneration packages as disclosed at the company's annual general meeting, but this vote will not be binding on the directors.

Directors' reports will also be required to include an operating and financial review of the company (that is, a management discussion and analysis).

Code of Banking Practice

Banks may now adopt the new Code of Banking Practice. The code applies to all banking services that are to be provided to individuals and small-business customers. There is a concern that SPVs in a corporate group may be caught within the definition of small business. Steps need to be taken to ensure that, when acting for a bank in a structured finance or project finance transaction with an SPV, the operation of the Code is excluded.

Banking

Recommended firms

Allens Arthur Robinson

Freehills

Mallesons Stephen Jaques

Blake Dawson Waldron

Clayton Utz

Minter Ellison

Baker & McKenzie

Corrs Chambers Westgarth

Gadens

Henry Davis York

Allens Arthur Robinson

Allens Arthur Robinson's superlative banking and finance department remains the team to beat in the Australian market, advising a long roster of blue-chip local and global retail and investment banks, including CSFB, ANZ, Westpac and HSBC. The firm also acts for big corporates, such as Amcor, BHP Billiton, Brambles, Ford, Fosters, News Corp and Rio Tinto. Phillip Cornwell and Diccon Loxton are highly recommended by peers and clients for their technical abilities and experience advising on the most complex transactions.

Leading lawyers

David Clifford
Phillip Cornwell
Diccon Loxton



IFLR Regional Law Firm of the Year

"...Mallesons Stephen Jaques won IFLR's Regional Law Firm of the Year award. Many of Asia's leading financial institutions and other market players have applauded the Australian firm's push in corporate, banking, finance and capital markets work across the region."

IFLR MEDIA STATEMENT, 12 MARCH 2004

During 2004 the firm has won:

- IFLR Regional Law Firm of the Year, 2003
- IFLR National Law Firm of the Year, Australia, 2003
- Law Firm of the Year, Australasia, Chambers Awards, 2004
- Best Financial Law Firm, FinancaAsia Australian Achievement Awards, 2004
- Recommended Law Firm for Australia, Asiamoney Magazine, 2004
- Five categories for Australia, Asiamoney Magazine, 2004

Mallesons Stephen Jaques is a leading commercial law firm with a focus on Asia Pacific. We have offices in all major Australian business centres, Hong Kong, Beijing, Shanghai and London.

Our firm assists major corporations and financial institutions with their complex legal work in Asia Pacific. We are recognised for our ability to combine consistently rigorous analysis with astute judgment, giving our clients a competitive edge.

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MALLESONS STEPHEN JAQUES

GOING BEYOND

Freehills

Freehills' 23-partner banking and finance team remains in the top tier principally on the strength of its ongoing dominance in the acquisition finance market for both top corporates as well as domestic and international investment banks. The firm represented Burns Philip, for example, on the financing for its A\$2.2 billion (\$1.6 billion) hostile takeover of Goodman Fielder, requiring debt capital raisings in Australia, New Zealand and the US. Freehills also recently acted for UBS and Deutsche Bank as the arrangers of IAG's A\$2.6 billion leveraged acquisition of rival CGU Insurance. Other highlights included representing property group Westfield trust on an A\$850 million sale of unsecured notes and call options.

Key contact partners

Mark Rigotti
John Schembri
Peter Stawell

Leading lawyers

John Angus
Mark Breheny
Mark Rigotti

Mallesons Stephen Jaques

Mallesons' banking and finance group outpaces most of its Australian rivals both in terms of deal volume and team size, with well-respected lawyers such as John Stumbles, John Hambly and Peter Doyle leading a 23-partner practice. With a solid client base in Australia, the group has been actively expanding its international presence in recent years, particularly in Asia.

Recent deal highlights include advising Diversified Utility & Energy Trusts (Duet), which is managed by AMP Henderson, as lender of subordinated loans of \$184 million, \$143 million and \$80 million respectively to United Energy, Multinet Gas Partnership and Alinta Gas Networks. The firm acted for Credit Suisse First Boston (CSFB) as the financial and M&A advisor to Burns Philp in relation to the A\$2.2 billion (\$1.56 billion) leveraged takeover of Goodman Fielder. Mallesons also acted for CSFB and various financiers in relation to financing the takeover and refinancing of the existing indebtedness of Burns Philp and Goodman Fielder. The financing involved secured, unsecured and subordinated bank debt facilities in Australia and the US and issues into the capital markets in the US and New Zealand. Initially, the bank debt financing involved an A\$1.35 billion acquisition bridge facility, which was subsequently refinanced by a A\$1.4 billion term and revolving facility in the Australian market. David Olsson leads the firm's highly respected financial services practice.

Key contact partners

Greg Hammond
David Olsson
Rowan Russell

Leading lawyers

Peter Doyle
John Hambly
John Kelly
Ian Paterson
John Stumbles

Blake Dawson Waldron

Martin Coleman heads up Blake Dawson Waldron's 19-partner banking and finance group, overseeing lawyers in Brisbane, Canberra and Perth in addition to Sydney and Melbourne. The firm's expanding client list ranges from large corporates such as GE, Qantas and Air Services Australia to leading international retail and investment banks such as ANZ Bank, ABN AMRO, Rothschild and St George Bank.

Over the past two years, the firm has been involved in several of the biggest deals in the region, including advising Alinta on a \$4 billion syndicated loan, as part of its disposal of its Australian assets, and acting for the banking syndicate in financing the construction of a new terminal at Adelaide Airport. Blakes also recently represented APN News & Media in connection with a A\$850 million (\$605 million) refinancing facility. John Field, who led the APN deal for the firm, remains one of the biggest names in the market.

Key contact partners

Martin Coleman
Richard Fawcett
Bruce Whittaker

Leading lawyers

Martin Coleman
John Field
Bruce Whittaker

Clayton Utz

Clayton Utz's banking and financial services group is best known for its securitization and asset finance expertise, although it continues to build on its increasingly visible bank regulatory practice. This past year, for example, the firm acted for the Reserve Bank of Australia in the preparation and implementation of the legal reform of Australia's credit card system, which was challenged by Visa and MasterCard. Clayton Utz also recently advised the Queensland government on developing a new integrated ticketing system for various bus and rail networks throughout New South Wales.

On the asset finance side, the firm acted for the banking syndicate on the A\$1.9 billion (\$1.35 billion) financing for Epic Energy's purchase of the Dampier to Bunbury Natural Gas Pipeline. Other clients include Commonwealth Bank of Australia, JP Morgan Chase Bank and AMP Capital Investors.

Key contact partners

Grant Fuzi
Graeme Gurney
Brian Salter

Leading lawyers

Clive Craven
Graeme Gurney
Steven Klimt
Brian Salter

Minter Ellison

While arguably not as strong as some of Minter Ellison's other practice groups, the 15-partner finance team continues to claim more than its fair share of mid-market and big-ticket acquisition finance deals. This past year, for example, the firm acted for private equity sponsor CVC Asia Pacific on the A\$750 million (\$534 million) financing of Mayne's hospital business, the largest management buyout in Australia in 2003. Minter Ellison also advised the banking syndicate on the A\$700 million secured multi-option financing of the Multiplex Property Trust, listed on the Australian stock exchange. Other clients include Westpac Banking Corporation, ANZ, Macquarie Bank and ABN AMRO.

Key contact partners

Tony Berriman
Peter Nadalin
Keith Rovers

Capital markets (debt)

Recommended firms

Allens Arthur Robinson

Mallesons Stephen Jaques

Blake Dawson Waldron

Clayton Utz

Freehills

Minter Ellison

Baker & McKenzie

Corrs Chambers Westgarth

Deacons

Gadens

Gilbert + Tobin

Phillips Fox

Allens Arthur Robinson

Allens Arthur Robinson returns to the top of the debt table this year on the strength of its superb performance in an increasingly competitive market. Partners Robert Cornish and Mark Kidston lead an experienced team, with particular expertise in sophisticated products and offerings. Clients include Westpac, General Electric Capital, Rio Tinto, ANZ and St George Bank.

Leading lawyers

Robert Cornish
Mark Kidston

Mallesons Stephen Jaques

Mallesons' six-partner capital markets team "leads the field in deal size and market penetration," according to one rival. The firm regularly acts for clients such as National Australia Bank, UBS, Macquarie Bank, Insurance Australia Group and AMP on all types of debt offering, and has helped to pioneer products such as *kangaroo bonds* – Australian dollar-denominated bonds issued in Australia by foreign issuers. Mallesons has advised the arrangers and issuers in connection with the establishment of almost every programme for this type of securities, including offerings for issuers in the UK, the US, Germany, Canada and Scotland.

Recent highlights include representing National Australia Bank on a £400 million (\$735.5 million) Tier I capital offering, implementing a US issuance structure that uses a new exchange mechanism instead of the customary convertible debenture structure. Mallesons also recently represented NRMA Insurance on a \$240 million private placement offering in the US, the first private placement in the US by an Australian insurer.

Key contact partners

Greg Hammond
David Olsson
Rowan Russell

Leading lawyers

Greg Hammond
David Olsson
Rowan Russell

Blake Dawson Waldron

Blake Dawson Waldron's debt capital markets practice works on a steady volume of offerings for both issuers and arrangers, serving blue-chip clients such as Qantas, TD Securities, TEN Group, ANZ and AWB. Richard Fawcett and Bruce Whittaker were both singled out for praise by their peers, with Fawcett described as "extremely capable and confident."

The firm has acted on a number of complex offerings over the past year, including a \$1.1 billion Tier I offering by ANZ and a \$450 million Rule 144A issue by national airline Qantas. Other highlights include representing TD Securities and Citigroup as joint arrangers of a \$200 million medium-term note issue by the European Company for the Financing of Railroad Stock (Eurofima) and advising Middle Eastern bank ECD on A\$200 million (\$142 million) medium-term note and TD programmes.

Key contact partners

Richard Fawcett
David Mason
Bruce Whittaker

Leading lawyers

Richard Fawcett
David Mason

Clayton Utz

Clayton Utz's aggressive capital markets practice continues to win more than its fair share of mandates on the more complex, sophisticated debt offerings to come to market, especially in the structured product sector. Recent highlights include representing financial services group Orix Corporation on a new \$5 billion euro medium-term note programme and National Australia Bank, as arranger and liquidity provider, in relation to a A\$450 million (\$319 million) note issuance by AMP, secured by mortgages over the assets over a number of AMP trusts. The firm also represented Holcim Finance, as the issuer, on a A\$500 million debt issuance programme. Other clients include Boral, Commonwealth Bank of Australia, TCNZ and Dexia Municipal Agency. Practice head Brian Salter is frequently cited as one of the leading lawyers in the capital markets.

Key contact partners

Ninian Lewis
Trevor Robinson
Brian Salter

Leading lawyer

Brian Salter

Freehills

While better known for its superlative equity practice, Freehills also does a steady volume of debt deals for a blue-chip client list that includes Members Equity, Babcock & Brown, National Australia Bank and the NSW and Victoria Treasury Corporations. Partners Andrew Booth and Nicholas Grambas are highly rated, as are debt specialists Richard Gray and Mark Rigotti.

This past year, the firm has advised National Australia Bank, Barclays Capital and Citicorp as the arrangers of Citipower's A\$1 billion (\$712.6 million) credit-wrapped medium-term note programme, and represented Barclays Capital on the establishment of a \$20 million euro commercial paper programme by Barclays Bank.

Key contact partners

Andrew Booth
Mark Rigotti
Peter Rowe

Leading lawyers

Andrew Booth
Nicholas Grambas
Richard Gray
Mark Rigotti

Minter Ellison

While having slipped a bit in the rankings over the past few years, Minter Ellison's debt practice continues to act on high-profile domestic and international transactions for a core group of clients, including Toronto-Dominion Bank, BMW Australia Finance, and Nestlé's Australian operations. The firm has had a busy 12 months, representing Affinity Health on its issue of A\$125 million (\$89 million) subordinated secured notes and acting for Leighton Holdings on a A\$200 million hybrid offering of convertible unsecured subordinated notes, thought by many to be one of the deals of the year in the sector.

Key contact partners

Ralph Ayling
Tony Berriman
Sebastian Hempel

Leading lawyers

Ralph Ayling
Sebastian Hempel

Capital markets (equity)

Recommended firms

Allens Arthur Robinson

Freehills

Mallesons Stephen Jaques

Blake Dawson Waldron

Clayton Utz

Minter Ellison

Baker & McKenzie

Corrs Chambers Westgarth

Gilbert + Tobin

Allens Arthur Robinson

Allens Arthur Robinson retains its place at the top of the equity tables despite the sluggish market and increasing competition from rival firms, particularly Freehills. Led by stand-out lawyers Andrew Clarke and Jon North, the firm has acted for either the issuer or the underwriters on the lion's share of equity offerings in 2003 to 2004, including representing Virgin Blue on its initial public offering on the Australian stock exchange, and ALE Property Group and Galileo Shopping America Trust on their recent floats. Allens also recently advised the underwriters on equity capital offerings by Repco, Multiplex, Invocare, HHG and AMP.

Leading lawyers

Andrew Clarke
Michael Greig
Jon North

Freehills

Freehills seems to have capitalized on the recent rebound in the Australian equity market more than any other law firm. In 2003 the firm acted for either the vendor, issuer or lead manager on six of the 10 largest initial public offerings to come to market, including Pacific Brands, Multiplex and Virgin Atlantic's Australian airline, Virgin Blue. Freehills also advised on a series of landmark hybrid deals, including an innovative unsecured note and call option offering by Westfield Trust and ANZ's \$750 million Steps issue.

Freehills partner Philippa Stone remains one of the leading names in the Australian equity market, with colleagues Michael Ziegelaar and Richard Loveridge also highly recommended.

Key contact partners

Richard Loveridge
Philippa Stone
Michael Ziegelaar

Leading lawyers

Richard Loveridge
Philippa Stone
Michael Ziegelaar

Mallesons Stephen Jaques

Mallesons' capital markets team had a superb year in the equity markets, advising its core financial institution clients on a cluster of complex, high-profile offerings. In one of the highest-profile deals of the past year, Mallesons acted for the borrower on the A\$415 million (\$295.5 million) non-recourse financing provided by Macquarie Bank and others to the Powers Trust, a listed sub-trust of Duet. This transaction involved debt and equity financing, the most interesting equity aspects being the use of a two-tiered equity structure, with stapled equity offered out of Duet to private equity investors and a listed hybrid interest (which was a debt-like security) offered out of the Powers Trust to fixed income investors, and a structure that facilitated the subsequent listing of Duet on the Australian stock exchange – with the Powers Trust being exchangeable into Duet securities on a future initial public offering (IPO).

Other work saw Mallesons acting for Xstrata in its acquisition of MIM Holdings, achieved through equity raisings, advising the joint global coordinators of the IPO of shares in Promina by Royal & Sun Alliance, which raised approximately \$2 billion in a global offering involving Australia, New Zealand and institutions in the US and the rest of the world, and representing National Australia Bank in relation to its £400 million (\$736.6 million) offer of trust preferred securities through National Capital Trust 1, the first hybrid equity Tier I capital instrument issued by an Australian ADI in the UK market.

Stand-out partners David Friedlander and Greg Golding lead a deep and experienced team.

Key contact partners

David Friedlander
Greg Golding
Stephen Minns

Leading lawyers

Peter Cook
David Friedlander
Greg Golding
Susan Hilliard
Alison Lansley
Stephen Minns

Blake Dawson Waldron

Blake Dawson Waldron's equity practice grew considerably last year with the hire of partner Leigh Warnick from Mallesons Stephen Jaques in June 2003 and of three new associates (all with UK magic circle experience) during the latter part of 2003.

Twenty-five partners and 38 associates now handle equity work for the firm, which over the past year has advised ANZ on its A\$3.6 billion (\$2.6 billion) secondary offering by way of a rights issue and a \$1.1 billion hybrid offering to fund its acquisition of the National Bank of New Zealand. This was Australia's largest ever rights issue, and also set a market precedent in obtaining relief from the Australian stock exchange to allow for a shortened timetable for a rights issue and in implementing a so-called mop-up facility to deliver value to those shareholders who neither exercised nor took up their rights.

Blake Dawson also acted for Macquarie and Goldman Sachs JB Were on beverage group Fosters' A\$809.7 million spin-off of Australia Leisure and Hospitality Group. Other highlights include advising Macquarie, as global coordinator, on the initial public offering of ALE Property Group and acting for UBS and Goldman Sachs JP Were on a conditional rights issue of so-called stapled securities by the Australand Property Group.

Key contact partners

Elsbeth Arnold
Sarah Dulhunty
Bill Koeck

Leading lawyers

Roger Davies
Sarah Dulhunty
Bill Koeck

Clayton Utz

Better known for its market-leading securitization and debt practices, Clayton Utz also acts on a range of equity deals, from initial public offerings and rights issues to more complex hybrid offerings. Recent highlights include representing Morgan Stanley and Citigroup as joint lead managers of ANZ's A\$3.6 billion (\$2.6 billion) rights issue in connection with its acquisition of the National Bank of New Zealand and advising Brickworks Limited on an A\$165 million preference share offering and spin-off of its investment portfolio. Clayton Utz also recently represented international mining and exploration company Oxiana limited on a A\$189 million renounceable rights issue through a prospectus.

Key contact partners

Penny Grau
Greg James
William Moncrieff

Leading lawyers

Greg James
Charles Rosedale

Minter Ellison

Minter Ellison's 32-partner corporate group continues to advise prominent clients such as Ivanhoe Mines, Duke Energy and the Bank of Queensland on all types of equity deals, with particular expertise in more sophisticated products and offerings. This past year, for example, the firm represented Great Southern Plantations on the public funding of A\$55 million (\$39.1 million) through the issuance of transferable reset exchange securities. Minter Ellison also recently advised the Australian Leisure & Hospitality Group on all legal aspects of its spin-off from the Fosters Group, as well as IncomePlus on its initial A\$50 million float on the Australian stock exchange.

Key contact partners

Sebastian Hempel
Bart Oude-Vrielink
John Steven

Leading lawyers

Leigh Brown
James Phillips
John Steven

Capital markets (structured finance)

Recommended firms

Allens Arthur Robinson

Clayton Utz

Mallesons Stephen Jaques

Blake Dawson Waldron

Freehills

Minter Ellison

Corrs Chambers Westgarth

Henry Davis York

Allens Arthur Robinson

One of the top firms in almost every area of capital markets work, Allens Arthur Robinson boasts a particularly strong securitization practice. Led by Mark Wormell and Andrew Jinks, the team frequently acts on cutting-edge deals for its large stable of clients, including Westpac, SG Australia and

BT Australia. Between 2002 and 2003, the firm worked on around 50% of the securitization deals rated by Standard & Poor's, including six out of seven commercial mortgage-backed securitizations and a significant proportion of the synthetic deals. Among numerous other firsts, Allens Arthur Robinson worked on the first true auto securitization in Australia, and the first aircraft, corporate loan and credit card deals.

Leading lawyers

Matthew Allchurch
Andrew Jinks
Mark Wormell

Clayton Utz

Along with Allens Arthur Robinson, Clayton Utz's nine-partner securitization team is the dominant team in the market. Partner Brian Salter is consistently cited as one of the leading lights of Australian securitization, with rising star Ninian Lewis, recently returned from a secondment at the New York office of Skadden Arps Slate Meagher & Flom, as his heir apparent.

In 2003 the firm again acted on a steady stream of innovative transactions, advising Commonwealth Bank of Australia on a A\$177.5 million (\$126.2 million) credit-linked note issue and Credit Union Services Corporation Australia on the first Australian deal securitizing a pool of so-called low-doc mortgage loans. Clayton Utz also acted for Suncorp Metway on several UK-listed euro-market securitizations of residential mortgages. Other regular clients include Macquarie Bank Limited, State Street Capital and ABN AMRO.

Key contact partners

Ninian Lewis
Trevor Robinson
Brian Salter

Leading lawyers

Ninian Lewis
Brian Salter

Mallesons Stephen Jaques

Well known for its expertise in the mortgage-backed sector, Mallesons continues to win market share on sophisticated offerings for an expanding roster of clients. The firm recently advised AMP Capital Investors and Quay 62, for example, on the securitization of equity investments in trusts holding interests in six super-regional shopping malls, a first for the market. In December, Mallesons acted for Deutsche Bank on a new funding structure for Deutsche Bank's Australian securitization conduits, allowing funds to be raised in the more liquid US and European markets without disclosure to the investors in the Australian assets or structure.

The securitization practice's other big clients include Australia and New Zealand Banking Group, National Australia Bank, Liberty Financial and HVB Bank. Partner Stuart Fuller was named by his peers as one of the leading players in the market, along with fellow partner Berkeley Cox and derivatives expert Scott Farrell.

Key contact partners

Berkeley Cox
Scott Farrell
Stuart Fuller

Leading lawyers

Berkeley Cox
Scott Farrell

Blake Dawson Waldron

Bruce Whittaker leads a 5-partner team that has rebounded nicely after losing securitization expert Fred Pucci to the Australian stock exchange in mid-2003, advising long-term clients such as JP Morgan, Royal Bank of Canada, the Bank of New York and grain company AWB Limited on a wide range of structured transactions. Hiring partner Andrew Barclay from Mallesons in July 2003 also helped to boost the practice's numbers and depth of experience.

This past year the firm acted for AWB, as the issuer, on its A\$4 billion (\$2.8 billion) whole business securitization, as well as Macquarie Bank, as the arranger and underwriter, on a A\$330 million pub securitization. In addition to Whittaker, partners Tessa Hoser and David Mason are well respected by the market.

Key contact partners

Tessa Hoser
David Mason
Bruce Whittaker

Leading lawyers

Tessa Hoser
David Mason
Bruce Whittaker

Freehills

Freehills continues to win mandates on jumbo securitization deals, particularly in the mortgage-backed sector. In 2003, the firm acted on some of the largest residential mortgage-backed securitizations (RMBS) in Australia, advising ME Portfolio, as the issuer, on a \$1 billion home loan securitization and Barclays Capital and JP Morgan, as the dealers, on the securitization of several of Interstar's RMBS issues. The firm also advised Members Equity on the rebranding of its national mutual home loans programme, which necessitated the creation and funding of a new mortgage-backed origination trust for the remodelled programme.

Key contact partners

Richard Gray
Patrick Lowden
Peter Rowe

Leading lawyer

Peter Rowe

Insolvency and restructuring**Recommended firms**

Blake Dawson Waldron

Henry Davis York

Minter Ellison

Allens Arthur Robinson

Clayton Utz

Freehills

Mallesons Stephen Jaques

Arnold Bloch Leibler

Kemp Strang

Corrs Chambers Westgarth

Fisher Jeffries

Piper Alderman

Blake Dawson Waldron

Blake Dawson Waldron's top-tier bankruptcy practice traditionally has a hand in most of the region's most complex insolvencies, and its work over the past year is no exception. The firm recently advised ANZ Bank in connection with its exposure to the restructuring of Parmalat's Australian and Chinese operations, and acted for KPMG as the administrator on the high-profile liquidation of Pan Pharmaceuticals. Other key clients include National Express, HSBC, PriceWaterhouseCoopers and mining company Rio Tinto.

Partner Richard Fisher, the firm's chairman, remains one of the leading figures in the market, while colleagues James Marshall and Sydney-based Ray Mainsbridge continue to expand the firm's sterling client list.

Key contact partners

Richard Fisher
Ray Mainsbridge
James Marshall

Leading lawyers

Richard Fisher
Ray Mainsbridge

Henry Davis York

With nine partners and 25 associates, Henry Davis York has one of the largest insolvency departments in Australia. Led by the "superb" John Martin, the group acts for leading insolvency practitioners such as Ernst & Young and KPMG Corporate Recovery as well as large Australian banks such as Commonwealth Bank of Australia, National Australia Bank and Westpac Banking Corporation.

This past year, the firm acted for Westpac on restructurings of both HIH, one of Australia's largest insurers, and Dutch industrial conglomerate Hagemeyer. Henry Davis York also recently advised Ernst & Young, as the liquidator, on restructuring failed Australian insurer HIH. In addition to Martin, partners John Evans and Philip Crawford are also highly respected.

Key contact partners

Philip Crawford
John Evans
John Martin

Leading lawyers

Philip Crawford
John Evans
John Martin

Minter Ellison

While strong in other areas, Minter Ellison's insolvency practice is without question one of the firm's showpiece departments. Acting principally on behalf of creditors, the group has been involved in many of the biggest restructurings in recent years, including Ansett Airlines, Western Metals Group and the New South Wales Grain Board.

Led by partners Michael Hughes and Brendon Watkins, the group has had another busy year, advising more than 5,000 members of the Pharmacy Guild of Australia in connection with the collapse of Pan Pharmaceuticals and acting for the receivers and creditors of one of Australia's largest winemakers, Reynolds Wines. Other recent clients include PriceWaterhouseCoopers, KPMG, Ernst & Young and ANZ Bank.

Key contact partners

Garry Hamilton
Michael Hughes
Brendon Watkins

Leading lawyers

Michael Hughes
Brendon Watkins

Allens Arthur Robinson

Allens Arthur Robinson's dominance in other areas of the financial markets has led to the development of a highly respected, if small, insolvency team, led by insurance specialist Michael Quinlan. Clients range from leading Australian banks such as ANZ, Macquarie and Suncorp Metway to global players such as HSBC, JP Morgan and Dresdner Bank.

Recent highlights include representing Allianz' Australian unit on the HIH liquidation and acting for Ferrier Hodgson as the administrators of the Coogi group of companies.

Key contact partner

Geoff Rankin

Leading lawyer

Michael Quinlan

Clayton Utz

Clayton Utz's 16-partner insolvency group works mostly on behalf of liquidators and administrators in financial restructurings, led by "leading light" David Cowling.

Having worked on most of the major insolvencies in recent years, including one.Tel, Pasminco, and Ansett Airlines, the firm remains involved in many of the largest, most complex cases. This past year the firm advised the administrator on the insolvency of the Carlovers carwash chain, as well as on the liquidation of Mudgee Abattoir, the government-owned cattle sale operation. Clayton Utz also represented some of the financiers of Epic Energy on the A\$1.8 billion (\$1.3 billion) restructuring of the financing of the Dampier to Bunbury Natural Gas Pipeline.

Key contact partners

David Cowling
Christopher Dale
Karen O'Flynn

Leading lawyer

David Cowling

Freehills

Freehills runs its well-respected insolvency practice out of its formidable litigation group, serving clients such as Air New Zealand, Deloitte & Touche, Ernst & Young, and Lloyds of London. Recent high-profile engagements include representing 20 banks, including National Australia Bank, Westpac, Lloyds and SG Australia, in defending claims by companies in the insolvent Bell Group. Freehills is also acting for the receivers of telecommunications network Nextgen, which became insolvent last year. The firm also has a small but important role on the HIH restructuring as well, advising the underwriters of the directors' and officers' liability policy of the HIH Group.

Key contact partners

Philip Hoser
Konrad de Kerloy
Alan Mitchell

Mallesons Stephen Jaques

John Stumbles and Linda Johnson are the leading figures within Mallesons' strong, creditor-focused insolvency team. Having played leading roles on some of the largest workouts in recent years, including Ansett Airlines, Pasminco, and HIH, the firm remained busy this year, advising the National Australia Bank, as receiver and manager, on the liquidation of the contracting and earthmoving business Pollock Group, as well as acting for several Australian banks on the workout for the Parmalat Group of Companies.

Mallesons continues to advise the administrators of one of insurance company Allstate's joint ventures on the financial restructuring of a large underground gold mine in Tasmania. Other recent clients include KPMG, Ferrier Hodgson and Westpac Institutional Bank.

Key contact partners

Linda Johnson
Philip Pan

Leading lawyers

Brahma Dharmananda
Linda Johnson
John Stumbles

Mergers and acquisitions

Recommended firms

Allens Arthur Robinson

Freehills

Mallesons Stephen Jaques

Blake Dawson Waldron

Clayton Utz

Gilbert + Tobin

Atanaskovic Hartnell

Minter Ellison

Arnold Bloch Leibler

Baker & McKenzie

Corrs Chambers Westgarth

Allens Arthur Robinson

Allens Arthur Robinson remains perched at the top of the M&A table, despite losing standout partner Tim Bednall to Mallesons Stephen Jaques in April. His former colleagues Andrew Clarke, Jon Webster and Guy Alexander continue to lead an outstanding practice group that works on headline domestic deals as well as the more complex pan-Asian-Pacific transactions.

Recent highlights include representing Tabcorp on its A\$2.15 billion (\$1.53 billion) merger with rival gaming company TAB and representing JBWere on its merger with leading global investment banking house Goldman Sachs to create a new Australian investment banking and securities firm, Goldman Sachs JBWere. Allens also advised MIM in relation to the acquisition of all MIM shares by Xstrata.

Leading lawyers

Guy Alexander
Andrew Clarke
Jon Webster

Freehills

Freehills' deep and experienced M&A group is without a doubt one of the teams to beat in the Australian market, regularly topping the league tables on both volume and value of deals closed in recent years. The firm has had another strong year in 2003 to 2004 advising on almost every big deal announced, from gaming and wagering company Tabcorp's A\$2.15 billion (\$1.53 billion) bid for rival TAB to the sale of the Loy Yang power station in Victoria.

Freehills also advised on DCA's friendly merger with radiology company MIA and the News Corporation on its sale of a 9% of its ordinary voting shares to Liberty Media Corporation. Braddon Jolley and Mike Ferraro are highly recommended by the market.

Key contact partner

Braddon Jolley

Leading lawyers

Mike Ferraro
Braddon Jolley

Mallesons Stephen Jaques

After losing star partner Tony Bancroft to Goldman Sachs last winter, Mallesons scored a major coup in April by bringing in Allens Arthur Robinson's former head of M&A Tim Bednall, thought by many to be one of the top corporate lawyers in Australia, to head up the team.

Bednall will add to a practice that already advises a number of leading corporates in the region, including General Motors, Telstra Corporation, National Australia Bank and Insurance Australia Bank. Recently, the firm acted for beverage company Lion Nathan on its purchase of a controlling

stake in a large Chinese brewery. The firm also advised on the A\$10 billion (\$7.1 billion) demerger of AMP, one of Australia's largest companies, into two separate regional businesses, each listed on two separate stock exchanges.

In addition to Bednall, Nicola Wakefield Evans, David Friedlander and Greg Golding are highly recommended by peers and clients.

Key contact partners

Tim Bednall
Belinda Gibson
Jonathan Hamer

Leading lawyers

Tim Bednall
Nicola Wakefield Evans
David Friedlander
Greg Golding
Alison Lansley

Blake Dawson Waldron

Building on last year's outstanding performance, Blake Dawson had another solid year in the M&A market in 2003 to 2004. Highlights include acting for Australia and New Zealand Banking Group (ANZ) in relation to its A\$4.9 billion (\$3.5 billion) acquisition of The National Bank of New Zealand, making ANZ the largest bank in New Zealand, and representing agribusiness AWB on its A\$825 million purchase of Landmark's rural services business.

Partners Roger Davies and Marie McDonald were singled out by their peers, with McDonald labelled "one of the strongest players in Melbourne."

Key contact partner

David Williamson

Leading lawyers

Roger Davies
Bill Koeck
Marie McDonald

Clayton Utz

While perhaps not the firm's strongest practice group, Clayton Utz's M&A team, led by the highly respected Rod Halstead, wins its share of big-ticket mandates, mostly for corporate clients such as Bank West, Bupa, Constellation Brands and the Mayne Group.

The firm advised Mayne, a leading healthcare company, on the A\$813 million (\$578.54 million) sale of its hospitals unit to an international private equity consortium, and represented Bank West on its A\$1.05 billion takeover by a subsidiary of global banking group HSBC. Clayton Utz also acted for Liberty Media on its acquisition of just over 9% of the ordinary voting shares of The News Corporation.

Key contact partners

Max Casen
Rod Halstead
Darryl McDonough

Leading lawyers

John Elliott
Rod Halstead

Gilbert + Tobin

Although best known for its work in digital economy deals, Gilbert + Tobin continues to advise on some of the biggest M&A deals in Australia, despite its smaller size and geographic reach than many rival firms. The past 12 months was no exception, with the firm working on two big transactions for Challenger Financial Services Group, including the A\$1.2 billion (\$853.5 million) merger of CPH Investment Corp and Challenger International.

Gary Lawler and Garry Besson are “very well respected by the market, challenging the big guys in some sectors.”

Key contact partners

Garry Besson
Gary Lawler

Leading lawyers

Garry Besson
Gary Lawler

Project finance**Recommended firms**

Allens Arthur Robinson

Freehills

Mallesons Stephen Jaques

Blake Dawson Waldron

Clayton Utz

Minter Ellison

Baker & McKenzie

Corrs Chambers Westgarth

Deacons

Phillips Fox

Allens Arthur Robinson

As in most other practice areas, Allens Arthur Robinson remains one of the dominant forces in project finance. In recent years the firm has acted on almost every headline project in the region, including the Cross City Tunnel and Snowy Hydro projects, and Aquila Energy’s exit from its Australian operations, known as Project Shearwater. AAR also acted for the joint lead arrangers on the A\$1.5 billion (\$1.1 billion) financing of the Western Sydney Orbital Motorway, the Victorian Department of Infrastructure on the financing of the A\$700 million Spencer Street Station Precinct and for the senior debt financiers on Southern Cross Airports Corporation’s A\$5.6 billion purchase of Sydney Airport.

Leading lawyers

Andrew Boxall
Phillip Cornwell
Diccon Loxton
Alan Maxton
Stephen Spargo

Freehills

Freehills’ 14-partner project finance team continues to be involved in many of Australia’s biggest transactions, advising lenders as well as corporates and project sponsors. The firm represented Westpac, as the lender, on the Telfer Gas Pipeline in western Australia and Transurban, as the sponsor, on the Western Sydney Orbital. Freehills also acted for ABN AMRO, as debt arranger and underwriter, on the Lane Cove Tunnel project in Sydney. Star players Patrick St John, Nicholas Grambas and Bill Napier lead an experienced team of lawyers.

Key contact partners

John Curtis
Patrick St John

Leading lawyers

John Curtis
Nicholas Grambas
Bill Napier
Patrick St John

Mallesons Stephen Jaques

Mallesons’ top-tier project finance group, led by Peter Doyle and Tony Holland, frequently acts on behalf of financing groups on many of the region’s most complex infrastructure and energy projects. This past year, for example, the firm advised Hastings Fund Management on the first renewable energy public-to-private partnership project in New South Wales, a landmark deal for the New South Wales government.

Mallesons also acted for Babcock & Brown on the development and financing of a wind farm at South Australia’s

Lake Bonney, the first fully project financed wind farm in Australia, and advised WestLink Motorway Partnership on the \$2.2 billion Western Sydney Orbital, the largest project financing completed in Australia in 2003. Other clients include ABN AMRO, the National Australia Bank, Deutsche Bank and Macquarie Bank.

Key contact partners

Peter Doyle
Tony Holland

Leading lawyers

Peter Doyle
Scott Gardiner
Tony Holland
Mark Upfold

Blake Dawson Waldron

Blake Dawson Waldron's 17-partner project finance group has had another impressive year, acting on some of the year's biggest deals and continuing to expand its market-leading public-to-private partnership project (PPP) practice.

Highlights of the year include advising Alinta on its assumption of managerial and operating control of Aquila's Australian energy assets, and representing the successful bidding consortium on financing the purchase of the Sydney Basin airports from the Australian government. Blake Dawson Waldron also advised the government of New South Wales on the PPP financing for the construction of the Long Bay Prison & Forensic Hospital, a landmark deal for the state.

Key contact partners

Geoff Daley
Joanne Evans
John Field

Leading lawyers

Joanne Evans
Cam Johnston

Clayton Utz

Recognized principally for its work on behalf of the government on public-to-private partnership (PPP) projects, Clayton Utz also represents project sponsor and financing entities such as the National Australia Bank, Commonwealth Bank of Australia and Grant Samuel. Appointments this year include acting for the Roads and Traffic Authority of New South Wales on the \$1.5 billion Lane Cove Tunnel Project, completing Sydney's orbital road network, and representing the Victorian government on its project for the provision of two new correctional facilities. Clayton Utz also advised the Australian Railroad Group on the A\$320 million (\$227.5 million) refinancing of facilities used to privatize the Western Australian government's freight rail business.

Key contact partners

Grant Fuzi
John Shirbin
Quentin Solomon

Leading lawyers

Michael Riches
John Shirbin

Minter Ellison

Despite having a smaller team than some of its peer firms, Minter Ellison continues to win more than its share of project finance mandates, largely out of the firm's Melbourne office. Led by Peter Machin and Andrew Venables, the firm was particularly active in the mining sector last year, advising Sedimentary Holdings Limited on a A\$600 million (\$426.5 million) project loan and gold hedging facility for the Cracow Gold Project and Oxiana, as the sponsor, on its \$235 million financing of the Khanong Copper Project in Seppon province, Laos. Minter Ellison also played a key role in the Lane Cove Tunnel financing, acting for the Lane Tunnel Consortium on its successful A\$1.2 billion bid to the Roads and Traffic Authority of New South Wales. The firm's leading real estate project finance practice is based out its Sydney office.

Key contact partners

Peter Machin
Andrew Venables

Leading lawyer

Peter Machin