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Australian Corporate Law Update – May 2011

Foreign Investment

Foreign Investment Review Board Gets Attention

Following the rejection of the application by the SGX for the control of the ASX by the FIRB, the FIRB has come under increased scrutiny. A leading local mining magnate, has reportedly claimed that the FIRB appears to exhibit anti-international traits in making its decisions, leading to that magnate choosing to list his assets on the Hong Kong Stock Exchange as opposed to leaving it in Australia. However, we need to realize that the FIRB generally approves most transactions it is asked to deal with. Of course, any rejections it issues receive large amounts of press and criticism though. Some lessons we can

take out of the SGX/ASX cases, when dealing with the FIRB, are that (i) submissions should proactively address why a transaction is not against the national interests of Australia, and why it may even benefit the national interests of Australia (ii) the five national interest issues laid out in the FIRB's policy are not exhaustive, and (iii) more controversially, some areas of the Australian economy may well be considered off-limits for any kind of foreign investment which leads to foreign control of a key asset/industry.

Employment

Queensland Passes Work Healthy and Safety Bill

The Queensland parliament has passed this bill, following three years of national and state cooperation on the harmonization of

workplace health and safety laws. The new laws are due to commence on 1 January 2012. Employers will need to carry out a review of their internal safety systems and make changes so as to comply with this new legislation.

Product Quality and Warranties

Product Warranties and Defects

Under the new Competition and Consumer Regulations, a defects warranty clause must set out the exact procedures for a consumer to claim costs that occurred in making a claim under a warranty. Regulation 90 requires that the following wording be included in relevant product warranties – *"Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."*

Penalties apply for failure to comply with this regulation from 1 January 2012.

Commercial Leasing

Queensland Amends its Retail Shop Leases Act

On 4 April 2011, the Queensland parliament passed amendments to this Act. The amendments apply to leases signed on or after 4 April 2011, and contain significant changes for lessors and lessees. One major change, is that all CPI rent review clauses must allow for the rent to decrease, and not only increase – this change recognizes deflation realities in the economy. Further, often leases include a standard rent review clause, stating that the future rent is to be the higher of the market rent or prior year's rent – this clause is now prohibited. It is recommended that lessors and lessees review their lease documentation to ensure compliance with the amended Act.

Customs

Customs Act and Dumping

Independent Senator, Nick Xenophon, is lobbying for amendments to the Customs Act so as to widen anti-dumping safeguards, allow for faster investigation and handling of dumping cases by Customs and to put the onus of proof on foreign companies to prove that they are acting legally when dumping allegations are raised. The move has received strong support from the unions in Australia and large MNCs in Australia.

This newsletter is intended to provide clients with a summary of major or interesting Australian legal developments. All readers of this newsletter should seek formal legal advice prior to relying on any statements or opinions in this newsletter.