



HERBERT  
SMITH  
FREEHILLS

# DOING BUSINESS IN AUSTRALIA

**CORPORATE REGULATORS**





## Chapter 2

# Corporate Regulators

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In Australia, the registration, control and management of companies is regulated by various federal authorities.

### **Australian Securities and Investments Commission (ASIC)**

The Australian Securities and Investments Commission (ASIC) is responsible for the general administration of the *Corporations Act 2001* (Cth) (**Corporations Act**). The Corporations Act is the primary law regulating the registration, control and management of companies. This covers Australian companies and foreign companies that are registered in Australia.

ASIC is also responsible for regulating financial markets and providers of financial services and financial products (including granting relevant licences and monitoring compliance with licence conditions) and responsible for supervision of trading on Australia's domestic licensed financial markets, including the Australian Securities Exchange. ASIC monitors compliance with the market integrity rules and is able to issue infringement notices and accept enforceable undertakings through the Markets Disciplinary Panel.

More information about ASIC can be found at [www.asic.gov.au](http://www.asic.gov.au).

### **Australian Securities Exchange (ASX)**

The Australian Securities Exchange (ASX) is one of the world's top 10 listed exchange groups (measured by its market capitalisation).

The activities of the ASX span primary and secondary market services, central counterparty risk transfer, and securities settlement for both the equities and fixed income markets. It functions as a market operator, clearing house and payments system facilitator. It monitors and enforces compliance with its operating rules, promotes standards of corporate governance among Australia's listed companies and helps to educate retail investors.

The ASX administers the ASX Listing Rules which set out, among other things, requirements for

admission to list on the ASX and removal from the official list, continuous disclosure of information to the public, the rights that may be attached to the securities of a listed company, security holder approval for certain transactions and reorganisations of an entity's capital. The ASX is also responsible for administering the ASX Settlement Operating Rules which are the rules governing the settlement process for the ASX's markets, and offers clearing services by way of ASX Clearing Corporation Limited.

In enforcing the ASX Listing Rules, the ASX can suspend a listed entity and/or delist a listed entity from the official list. The ASX may also request corrective action to be taken, or refer a breach to ASIC for it to consider imposing a sanction. With respect to the ASX market participants, the ASX conducts investigations and imposes sanctions for any breaches of the ASX Operating Rules. The ASX is obliged by the Corporations Act to refer certain matters to ASIC for further investigation. The ASX does not have power to enforce the provisions of the Corporations Act. However, it works closely with ASIC in relation to ASIC's supervision of Australian listed entities under that Act.

ASX Trade24 provides a facility for trading of futures and options on the interest rate, equity, currency contracts and commodity markets. The ASX Trade24 operating rules regulate the behaviour of ASX Trade24 participants in their relationships with the ASX, their clients and other participants.

The Australian Government has licensed Chi-X Australia, a part of Chi-X Global, to operate in Australia and compete with the ASX in trading listed shares and providing financial services to retail and wholesale clients.

More information about the ASX can be found at [www.asx.com.au](http://www.asx.com.au), and about Chi-X at [www.chi-x.com/australia](http://www.chi-x.com/australia).

## **Takeovers Panel**

The Takeovers Panel is the primary dispute resolution body determining disputes concerning takeovers and other corporate control transactions. It is a peer review body. It consists of part-time members drawn predominantly from takeovers practitioners (for example, bankers, lawyers and accountants) and Australia's business community. The objectives of the Takeovers Panel are to reduce tactical litigation in takeovers, reduce the costs of takeovers and support the purposes of the takeovers legislation. The Takeovers Panel is the main forum for resolving disputes about takeovers until the takeover bid period has ended.

The Takeovers Panel has wide powers to make orders to remedy or prevent unacceptable circumstances in relation to takeover bids.

There are currently two Herbert Smith Freehills lawyers on the Takeovers Panel: Sydney-based partners Rebecca Maslen-Stannage and Philippa Stone.

Further details on the Takeovers Panel can be found at [www.takeovers.gov.au](http://www.takeovers.gov.au).

## **Australian Competition and Consumer Commission (ACCC)**

The Australian Competition and Consumer Commission (**ACCC**) is a statutory authority responsible for ensuring that companies comply with the federal competition, fair trading and consumer protection laws. This includes enforcing the anti-competitive practices, mergers and acquisitions, industry codes, product safety and price monitoring sections of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

The ACCC is able to take legal action when it believes provisions of the CCA have been breached by a company. It has investigative powers to compel an individual or corporation to provide information about a suspected breach. The ACCC is able to issue various kinds of notices (such as infringement, substantiation and public warning notices in relation to consumer protection breaches), impose pecuniary penalties and enforce undertakings given to it.

More information about the ACCC can be found in Chapter 12 of this publication, 'Competition principles', and at [www.accc.gov.au](http://www.accc.gov.au).

## **Foreign Investment Review Board (FIRB)**

The Foreign Investment Review Board (**FIRB**) is an advisory body that provides foreign investment policy advice to the Australian Government. The FIRB examines proposals by foreign interests who wish to undertake direct investment in Australia and makes recommendations to the federal Treasurer on whether those proposals are suitable for approval under the government's foreign investment policy. The Treasurer is ultimately responsible for making decisions on these proposals. The FIRB also provides information and guidelines, both in Australia and overseas, about the government's foreign investment policy and monitors compliance with such policy.

The FIRB is discussed in more detail in Chapter 10 of this publication, 'Foreign Investment Regulation'.

More information about the FIRB can be found at [www.firb.gov.au](http://www.firb.gov.au).

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