

HERBERT SMITH FREEHILLS ADVISES AUSTRALIAN GOVERNMENT ON KEY TRANSACTION TO SUPPORT NAVAL SHIPBUILDING

14 December 2018 | Australia, Asia Pacific
Deals and cases

Herbert Smith Freehills has advised the Australian Government on the transfer of ASC Shipbuilding to BAE Systems Australia. The transfer enables ASC Shipbuilding to play an enduring role in Australia's A\$89 billion Continuous Shipbuilding Plan.

Prior to the transfer, ASC Shipbuilding was part of the ASC Group – Australia's government-owned submarine sustainment and naval shipbuilding company.

BAE Systems' "Type 26" design has been selected as the base design for Australia's new fleet of Hunter Class Frigates. ASC Shipbuilding will construct the fleet as a subsidiary of BAE Systems.

The Australian Government has retained a "Sovereign Share" in ASC Shipbuilding which carries rights designed to protect Australia's national interest in relation to ASC Shipbuilding. The use of non-economic shares to protect the national interest is unusual in Australia, but overseas examples include the UK Government's "Golden Share" in BAE Systems itself and the former "Kiwi Share" in Telecom New Zealand.

The Australian Government also has a call option to buy ASC Shipbuilding back at the conclusion of the Hunter Class Frigates program to support the construction of the next Class of Australian surface warships.

The Herbert Smith Freehills team was led by partner [Natalie Bryce](#), assisted by senior associate Francine Kinkade and employment specialist Heidi Fairhall. Expert input in relation to the Sovereign Share arrangements was provided by Herbert Smith Freehills' Head Office Advisory Team, led by partner [Priscilla Bryans](#) and senior associate Garth Riddell.

Natalie Bryce said: "This was a complex transaction delivered in a tight timeframe. It was announced on 29 June and completed on 14 December. We were very conscious of the need to support the Government's deadlines for commencing construction on the Hunter Class Frigates and delighted to achieve completion on schedule before the end of 2018."

"This project is a great example of our ability to combine transactional, governance and government expertise to deliver innovative solutions."

The transaction was a continuation of Herbert Smith Freehills' work in support of the Australian Government's reform of ASC Group and its assets to position for the next wave of investment in naval shipbuilding. In 2017 the firm assisted with the creation of a new Government Business Enterprise, Australian Naval Infrastructure, which is now redeveloping the Osborne naval shipbuilding precinct in South Australia.

The separation and transfer of ASC Shipbuilding was managed by the Department of Finance in consultation with the Department of Defence. The Herbert Smith Freehills team worked closely with an Ashurst team led by Steve McKinney (which acted for Defence). BAE Systems Australia was represented by Allens and ASC Group was represented by Baker McKenzie.

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