Doing Business in Australia

3 October 2013

QUESTIONS

Please send questions to infoaus@klgates.com
DOING BUSINESS IN AUSTRALIA

- Australian lifestyle
- Stable economy

Real GDP Growth

Source: Australian Bureau of Statistics
DOING BUSINESS IN AUSTRALIA

- Resources rich country
- Independent court system
- Low levels of corruption
- Highly skilled/educated/multi-lingual workforce
- Asia Pacific region – ideal platform
INBOUND INVESTMENT CHALLENGES

- Considerations
  - Investment may require approval from Foreign Investment Review Board (FIRB)
  - Comply with competition and consumer laws
  - Do not offend anti-bribery and corruption laws

Send questions to infoaus@klgates.com
Project Finance
PROJECT FINANCE

- Foreign investment friendly but requires compliance with regime
- *Foreign Acquisitions and Takeovers Act (FATA)* established Foreign Investment Review Board (FIRB)
- Foreign Investment Policy (public document)
- Reviewed on case by case basis against national interest
- Threshold limits – higher for FTA countries (U.S.)
PROJECT FINANCE

- Main traps:
  - Finance
  - “Urban” real estate
- Complications for mining companies
- Restrictions on foreign ownership of agricultural land
- Financing a project – equity and debt
ENVIRONMENT

- Sophisticated lending environment
- Volatile Australian dollar
- Interest rates higher than other developed countries
- Withholding tax regime
- Joint venture finance
- Globally transportable skill set
FINANCING OPTIONS

- Australian banking industry highly concentrated
- Reduced options for borrowers
- Foreign banks registered in Australia
- Offshore options
Corporate and Governance
BUSINESS STRUCTURES

- Incorporated entities:
  - Private company
  - Public company
- Trusts
- Partnerships
- Joint ventures
- Key issues:
  - Tax advice
  - Limited liability
  - Documentation establishing relationships
ACQUISITIONS

- Acquisition considerations
  - FIRB approval
  - Australian takeovers code
- Complex takeover provisions
- Unacceptable circumstances
- Alternative types of acquisition
- Scheme of arrangement
- Takeovers panel
GOVERNANCE

- Australian Securities Exchange listing
- Two tests
  - Net assets
  - Profits
- Foreign exempt listing
- Continuous disclosure
- Insider trading – serious offence

Send questions to infoaus@klgates.com
Workplace Relations and Safety
EMPLOYMENT LAW

- Regulated working environment
- Important to be aware of minimum standards
- Comprehensive set of laws
- Work hours, wages, leave, notice and severance payments
- Policies, training and awareness
- Workplace investigations

Send questions to infoaus@klgates.com
INDUSTRIAL RELATIONS

- U.S. employers often find Australian laws surprising
- Level of union membership similar to U.S.
- Extensive rights to bargain with employers
- Extensive rights of entry into workplaces
- Unions are involved in most blue collar workplaces
- Attain a level of knowledge about your industry
- A well developed industrial relations strategy
INDUSTRIAL RELATIONS

- Important to have a happy, engaged workforce
- Don’t need to treat unions as the enemy
- Be aware of your legal rights and their legal rights

Send questions to infoaus@klgates.com
WORK HEALTH AND SAFETY

- Federal Government sought to harmonise work health and safety (WHS) laws
- Today we have one set of WHS laws across most Australian states (except VIC and WA)
- Broad set of requirements across all states
- Comply with the higher standards
- Safety is an important legal area in Australia
- Consequences

Send questions to infoaus@klgates.com
WORK HEALTH AND SAFETY

- Regulatory investigations and penalties
- Use experts in safety
- Systems in place for safety
- Manage risks
Competition and Consumer Laws
COMPETITION LAW

- Australia’s competition regulator - Australian Competition and Consumer Commission (ACCC)
- No mandatory merger notification regime
- Obtain competition law advice prior to investment
- Applications can be made to ACCC to clear proposed investments

Send questions to infoaus@klgates.com
COMPETITION LAW

- ACCC will actively investigate and prosecute breach of cartel laws
- ACCC administers competition laws similar to U.S. and European laws in this field
- Penalties:
  - up to AUD10 million per company
  - up to AUD500,000 per individual
- Serious cartel conduct is a crime
CONSUMER LAW

- Australian Consumer Law (2011) prohibits:
  - misleading conduct in trade or commerce
  - misleading representations re good and services
  - unconscionable conduct
  - unfair trading practices
  - certain pricing representations
CONSUMER LAW

- Australian Consumer Law (2011):
  - contains a regime for unfair contract terms
  - establishes statutory consumer guarantees
  - sets out a product safety/product recall regime
  - regulates direct selling practices

- Key considerations:
  - Advertising – must be able to substantiate claims.
  - Penalties of up to AUD1.1 million for companies
  - Infringement notices
BRIBERY AND CORRUPTION

- Australia has anti-bribery and corruption laws
- Businesses need to:
  - Identify key risk areas
  - Implement anti-corruption procedures to deal with bribery risks
- Penalties for corruption are substantial:
  - Companies – up to AUD17 million
  - Individuals – up to AUD1.7 million or 10 years imprisonment
PATENTS

- Innovation Patents:
  - Unique to Australia
  - Relatively new
  - Eight year term
  - Limited to five claims only
  - A lower threshold of inventiveness
  - Quick examination process
  - Relatively inexpensive tool
  - Useful for IT or anything with a time limit

Send questions to infoaus@klgates.com
GREY GOODS

- Grey goods – authorised product arriving through unauthorised channels i.e. counterfeit products, fakes
- Healthy market for grey goods in Australia
- Risks:
  - Biggest risk is damage to brand
  - Loss of value of distribution relationships, including downstream to customers
GREY GOODS / PARALLEL IMPORTS

- Issues for exclusive distributors
- Protection through trade mark portfolio
- Brand owners should tighten up their licence and distribution rights contractually to ensure they’re not giving consent to sell or export outside a specific territory
INTELLECTUAL PROPERTY

- Infringements – strong customs program in Australia
- Amendments to regime in 2013
- Regular seizures for large counterfeit problems
- Federal Court of Australia and Federal Circuit Court
- U.S. v Australia
- No juries in civil matters
INTELLECTUAL PROPERTY

- Successful litigants’ entitlements
- Punitive damages – not as high as the U.S.
- Recent introduction of research exemptions to patent infringement (April 2012)
- Patent office opposition – right to appeal
Tax
TAX

- Corporate Tax Rate:
  - 30% now
  - 28.5% from 1 July 2015
  - 1.5% paid parental leave levy on large companies

- Capital Gains Tax:
  - Only applicable to direct and indirect interests in Australian real property
TAX

- Withholding tax:

<table>
<thead>
<tr>
<th></th>
<th>TREATY</th>
<th>NO TREATY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dividends</td>
<td>15%</td>
<td>30%</td>
</tr>
<tr>
<td>Interest</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Royalties</td>
<td>5, 10 or 15%</td>
<td>30%</td>
</tr>
</tbody>
</table>

- Managed Investment Trusts 15%
- Sale of real property 10% of proceeds
TAX – KEY ISSUES

- Thin capitalisation:
  - Currently 3:1 debt to equity i.e. 75% gearing
  - Proposed 1.5:1 debt to equity i.e. 60% gearing

- Transfer pricing:
  - Law rewritten
  - Contemporaneous economic and legal documentation critical to minimise risk and penalties
TAX – KEY ISSUES

- Sovereign risk:
  - Reducing importance
  - Carbon tax and mining tax to be abolished
  - Favourable tax environment for non-resident investors