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The International Comparative Legal Guide to:

Fintech 2017

1st Edition

A practical cross-border insight into Fintech law

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General Chapter:

Country Question and Answer Chapters:

EDITORIAL

Welcome to the first edition of *The International Comparative Legal Guide to: Fintech*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of fintech.

It is divided into two main sections:

One general chapter. This chapter provides an overview of Artificial Intelligence in Fintech.

Country question and answer chapters. These provide a broad overview of common issues in fintech in 33 jurisdictions.

All chapters are written by leading fintech lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Rob Sumroy and Ben Kingsley of Slaughter and May for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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Chapter 2

Australia

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1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and any notable fintech innovation trends within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications).

Australia has seen a proliferation of active fintech businesses in sectors such as lending, personal finance, asset management and payments.

Insurance technology, or insurtech, has had exponential interest in methods of disrupting the individual sections of the insurance value chain, augmenting the existing processes of underwriting risk and predicting loss, and improving the existing capabilities of insurers, reinsurers, intermediaries and service providers.

As compliance costs increase, there has also been an increased focus on regulatory technology, or regtech, and the opportunities to automate regulatory reporting, manage compliance and ensure clarity regarding how regulation is interpreted. The Australian Securities and Investments Commission (**ASIC**) considers the emergence of regtech will assist in promoting a culture of compliance in financial services firms. It is anticipated compliance staff could have an expanded education focus arising from the efficiency gains regtech provides.

There has also been sustained attention on blockchain and distributed ledger technology (**DLT**). Fintech businesses have begun moving beyond proof-of-concept to formalising actual use cases for distributed ledger technology such as managing supply chains, making cross-border payments, trading derivatives, managing assets and digital currency exchange. The ASIC Chairman recently said that 2017 "will be a critical year for distributed ledger technology in financial services" as DLT solutions will begin to be implemented.

Businesses have also begun exploring new automated service methods, such as robo-advisors, for distributing financial advice in more cost-effective ways.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction?

At the time of writing, there have not been any specific prohibitions or restrictions.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

In terms of equity funding, businesses can seek funds from private investors (e.g., through private placement or initial public offering), venture capitalists, the Australian Government and through crowdfunding.

In March 2017, Parliament enacted the *Corporations Amendment (Crowd-sourced Funding) Act 2017* (Cth). The Act establishes a regulatory framework for crowdsourced equity funding (**CSEF**) to reduce regulatory barriers to investing in small and start-up businesses. Key requirements for accessing the regime include:

- the asset and turnover test (i.e., unlisted public companies with less than AUD$25 million in consolidated gross assets and annual revenue respectively);
- a fundraising cap of AUD$5 million in any 12-month period;
- that CSEF intermediaries hold an Australian financial services licence (**AFSL**) providing authorisation to operate crowd-funding services, comply with gatekeeper obligations such as due diligence on companies making CSEF issues, provide documentation regarding the CSEF offer in a compliant form and that the CSEF platforms meet certain functionality requirements;
- that retail investors in crowd-funding offers have a five day 'cooling off' period after subscribing in the offer; and
- investment caps for retail investors of AUD$10,000 per issuer per 12-month period, and the requirement for investors to provide a risk acknowledgment statement.

The Act also introduced further exemptions for persons operating markets and clearing and settlement facilities by expanding the types of exemptions which may be given from licensing regimes that are otherwise required to operate those facilities. These exemptions will provide a means by which any person providing a platform for secondary trading can seek exemption from more onerous licensing requirements. These amendments creating exemptions commenced on 29 March 2017, with the balance of the CSEF regime expected to take effect in the second half of the year.

The laws are likely to be subject to some reform in the near future as consultation is conducted to consider whether the regime should be made available to proprietary companies. The industry has asked the Government to explore the potential for the existing crowdfunding

framework to extend to debt funding and the Government has previously indicated it intends to consult on a crowdsourced debt funding framework.

Debt financing is less common than equity financing in the Australian fintech sector; however, businesses can approach financial institutions, suppliers and finance companies in regard to debt finance. The Department of Industry, Innovation and Science has found reliance on equity funding is in part because personal savings and personal credit remain a primary source of debt finance for innovative entrepreneurs in Australia.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Incentives for investors

(1) Early stage innovation company incentives

Incentives are available for eligible investments made in start-ups known as Early Stage Innovation Companies (**ESICs**). Broadly, a company is an ESIC if:

a) it has been incorporated for less than three years;

b) it has income of less than AUD$200,000 and expenses of less than AUD$1 million; and

c) it is undertaking an "eligible business" (i.e. a business with scalability, potential for growth and undertaking research and development).

Investments of less than 30% of the equity in an ESIC would generally qualify for a 20% non-refundable tax offset (capped at AUD$200,000 per investor) and a 10-year exemption to capital gains tax (**CGT**).

(2) Eligible venture capital limited partnerships

Fintech investors may be structured as venture capital limited partnerships (**VCLPs**) or early stage venture capital limited partnerships (**ESVCLPs**), and receive favourable tax treatment for venture capital investment.

For VCLPs, benefits include tax exemptions for foreign investors (limited partners) from CGT on their share of profits made by the partnership, and concessional treatment of the fund manager's carried interest in the partnership. For ESVCLPs, income tax exemption applies to both resident and non-resident investors, plus a 10% non-refundable tax offset is available for new capital invested.

Incentives for Fintechs

The R&D Tax Incentive programme is available for entities incurring eligible expenditure on R&D activities, including certain software R&D activities commonly conducted by fintechs.

Claimants under the R&D Tax Incentive may be eligible for:

a) *Most small businesses of less than AUD$20 million aggregated turnover*: a 45% refundable tax offset (i.e. 45c of each dollar spent paid to the company is refundable in lieu of a tax deduction).

b) *Other businesses*: a 40% non-refundable tax offset (i.e. equivalent to a 10% increase in a tax deduction).

Broadly, eligible R&D activities include experimental activities whose outcome cannot be known in advance and are undertaken for the purposes of acquiring new knowledge (known as **core R&D activities**), and supporting activities directly related to core R&D activities (known as **supporting R&D activities**).

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

The Australian Securities Exchange (**ASX**), Australia's primary securities exchange, sets out 20 conditions to be satisfied in rule 1.1 of the ASX Listing Rules Chapter 1. Briefly, these include the entity having at least 300 non-affiliated security holders each holding the value of at least AUD$2,000 and the entity satisfying either the profit test or the assets test.

The profit test requires entities to have conducted the same business activity during the last three financial years, to have an aggregated profit of at least AUD$1 million for the three financial years prior to admission and to have a consolidated profit of at least AUD$500,000 for the 12 months prior to admission.

The assets test requires entities to have net tangible assets of at least AUD$4 million and a market capitalisation of at least AUD$15 million. However, these thresholds vary for investment entities.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

In one of the largest fintech M&A deals in Asia in 2016, financial markets software company, IRESS, purchased Financial Synergy, an Australian wealth and investment management business, for a reported AUD$90 million.

In their IPO, fintech compliance firm Kyckr raised approximately AUD$5 million after listing at an issue price of 20c per share in September 2016. The company's network of corporate data is provided to clients in exchange for a subscription fee. Kyckr provides "know-your-business" services to clients.

Payments company, Afterpay, listed on the ASX for AUD$25 million in May 2016 with an issue price of AUD$1.00 per share. Operating on the basis of no upfront fees or loans basis, Afterpay allows e-commerce customers to "buy now and pay later" in regular instalments.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

Fintech businesses that carry on a financial services business in Australia need to hold an AFSL, or qualify for an exemption. The definitions of financial service and financial product under the *Corporations Act 2001* (Cth) are very broad and will often capture investment, market place lending, crowd funding platforms and other fintech offerings.

Similarly, fintech businesses that carry on a consumer credit business in Australia need to hold an Australian credit licence (**ACL**), or qualify for an exemption.

In December 2016, ASIC released *Regulatory Guide 257: testing fintech products and services without holding an AFS or credit licence*, which details ASIC's framework for fintech businesses to test certain financial services, financial products and credit activities without holding an AFSL or ACL (referred to as the "regulatory sandbox").

Fintech businesses testing products and services without holding an AFSL or ACL must have no more than 100 retail clients, plan to test for no more than 12 months, have a total customer exposure of no more than AUD$5 million, have adequate compensation arrangements, have dispute resolution processes in place, and meet disclosure and conduct requirements.

There are strict eligibility requirements for the services and products that qualify for this licensing exemption. Products included are deposit products with a maximum AUD$10,000 balance, authorised deposit-taking institutions issued payment products with a maximum AUD$10,000 balance, general insurance for personal property and home contents with a maximum of AUD$50,000 insured, liquid investments for listed Australian securities or simple schemes and with a maximum AUD$10,000 exposure, and consumer credit contracts with certain features and a loan size of between AUD$2,001 and AUD$25,000.

In regard to services, fintech companies providing advice and dealing in or distributing products are eligible, but those issuing their own products, lending money to consumers, or operating their own managed investment scheme will not be able to rely on the exemption.

3.2 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested?

In Australia, fintech is a focal point for economic growth and it is generally accepted that policy and reform in the financial services sector will be driven by fintech innovations. The Australian Government and regulators have generally been responsive to facilitating the development of fintech. More broadly there has been the AUD$1.1 billion National Innovation and Science Agenda (**NISA**) promoting commercial risk taking and encompassing tax incentives for early stage investment in fintech companies, changes to the venture capital regime, insolvency law reforms, the establishment of the FinTech Advisory Group to advise the Treasurer and the ASIC Innovation Hub.

The ASIC Innovation Hub is designed to foster innovation that could benefit consumers by helping Australian fintech start-ups navigate the Australian regulatory system. The Innovation Hub provides tailored information and access to informal assistance intended to streamline the licensing process for innovative fintech start-ups.

ASIC has also released *Regulatory Guide 255: providing digital financial product advice to retail clients* which details issues that digital advice providers need to consider generally, during the AFSL application stage and when providing advice. Digital advice is defined by ASIC as being that advice which is produced by algorithms and technology. The regulatory guide is also relevant to situations where digital advice is provided in a hybrid model and involves a human adviser. The guide should be considered by any fintech business that provides digital or hybrid advice, and is considering operating in Australia, to ensure that licensing requirements can be met.

Fintech businesses should also be aware that in March 2017, ASIC released *Information Sheet 219 Evaluating distributed ledger technology* for both existing licensees and new market entrants. The information sheet informs businesses considering operating market infrastructure or providing financial or consumer credit services using DLT of how ASIC will assess whether a proposed DLT solution is compliant with licence conditions. The assessment mechanism in the information sheet can be used to determine whether ASIC is likely to have concerns about the proposed implementation of a DLT solution by a fintech business.

The Australian Transaction Reports and Analysis Centre's (**AUSTRAC**) newly established Fintel Alliance has also announced an innovation hub targeted at improving the fintech sector's relationship with Government and regulators. The hub will also test a regulatory sandbox for fintech businesses to test financial products and services without risking regulatory action or costs.

The Government has also committed AUD$8 million to an Incubator Support Program to assist innovative start-ups by providing funding, mentoring, resources and business network access. The Government is also becoming a fintech "participant" via its "digital transformation office" seeking to provide better access to Government services online and looking to create a digital market place for SMEs and start-ups to deliver digital services to Government.

3.3 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Regulatory hurdles to overcome in order to access Australian customers include satisfaction of requirements relating to carrying on a business in Australia (which includes the requirement to incorporate a local subsidiary or register a branch office) and additional requirements applicable to carrying on a financial services business in Australia such as the requirement to obtain an AFSL or ACL, or satisfaction of conditions to entitle the provider to rely on an exemption. Broadly, this is determined by the extent to which the provider wishes to establish an Australian presence, the types of financial products and services provided, and the type of Australian investors targeted.

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

The *Privacy Act 1988* (Cth) (**the Privacy Act**) regulates the handling of personal information by Australian Government agencies, Australian Capital Territory agencies and private sector organisations with an aggregate group revenue of at least AUD$3 million. The Privacy Act does apply to some businesses, for example credit providers and credit reporting bodies, regardless of turnover. If a fintech business is providing credit or dealing with information related to credit, then the business may be subject to the Privacy Act, regardless of the revenues of the business. Fintech companies are subject to the same legal requirements and regulatory guidance relating to personal information as any other company.

The Privacy Act includes 13 Australian Privacy Principles (**APPs**), which create obligations on the collection, use, disclosure, retention and destruction of personal information. The APPs include:

- open and transparent management of personal information;
- disclosure to a person that their personal information will be collected;
- restrictions on the use and disclosure of personal information;
- obligations to ensure the accuracy of collected personal information; and
- obligations to protect personal information.

The APPs provide for personal information to be de-identified, including to enable information to be disclosed in a form which does not contravene the Privacy Act.

The Office of the Australian Information Commissioner (**OAIC**), which administers the Privacy Act, has published guidance on de-identifying personal information. The guidance describes methods for de-identification, which may include removing or modifying personal identifiers and aggregating information.

However, the application of existing privacy and confidentiality laws to fintech companies is the subject of current discussion and review so developments are expected in this area. The Government has requested the Productivity Commission to consider ways to increase data availability in Australia with a view to boosting innovation, which will be particularly important for fintech innovators.

In particular, the Commission will examine whether big banks should be forced to share more data on customer transactions with fintech companies. The Commission will hand down their final Data Availability and Use report to the Government in March 2017. The Report had not yet been publicly released at the time of writing.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

The Privacy Act has extraterritorial operation and extends to an act undertaken outside Australia and its external territories where there is an 'Australian link' (i.e., where the organisation is an Australian citizen or organisation) or carries on a business in Australia and collects or holds personal information in Australia.

Under the framework for cross-border disclosure of personal information outlined in APP 8 and s 16C of the Privacy Act, APP entities must ensure that overseas recipients handle personal information in accordance with the APPs, and the APP entity is accountable if the overseas recipient mishandles the information. The APP entity must also comply with APP 6, which states that entities must only disclose information for the primary purpose for which it was collected.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

OAIC has a range of enforcement powers, including the power to:

- make a determination requiring the payment of compensation for damages or other remedies, such as the provision of access or the issuance of an apology (enforceable by the Federal Court or Federal Magistrates Court);
- accept enforceable undertakings;
- seek civil penalties of up to, or apply for civil penalty orders of up to AUD$340,000 for individuals and up to AUD$1.7 million for companies; and
- seek an injunction regarding conduct that would contravene the Privacy Act.

The Australian Government also enacted the *Privacy Amendment (Notifiable Data Breaches) Act 2017* (Cth), which creates reporting obligations for businesses when eligible types of data breaches occur. Under the Privacy Act, OAIC carries the power to investigate non-compliance with respect to this obligation and can apply to the court to have civil penalties imposed for non-compliance.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Cyber security regulation has been a key focus given the rapid innovation present in the fintech space and the interplay between fintech products and new technologies.

ASIC also provides some guidance regarding cybersecurity. ASIC published *Report 429: Cyber Resilience – Health Check* and *Report 468: Cyber resilience assessment – ASX Group and Chi-X Australia Pty Ltd* in relation to financial market infrastructure providers and cyber-resilience, expressing ASIC's intention to work to assist other organisations in Australian financial markets to enhance their cyber resilience framework and environment.

In those reports, ASIC provided examples of good practices identified across the financial services industry and some questions board members and senior management of financial organisations should ask when considering their cyber resilience. ASIC also outlined the relevant legal and compliance requirements of different regulated entities. ASIC's Regulatory Guide 255 also particularised the standards and frameworks which providers of digital advice should test their information security arrangements against and nominated frameworks setting out relevant compliance measures which should be in place where cloud computing is relied upon.

As part of the NISA, a Cyber Security Growth Centre has also been set up with industry-led not-for-profit body, Australian Cyber Security Growth Network, responsible for administering the Centre's activities. As part of the strategy, the Government has proposed co-designing national voluntary Cyber Security Guidelines with the private sector to specify good practice in future and introducing national voluntary Cyber Security Governance 'health checks' to enable boards and senior management to better understand their cyber security status.

Beyond this, Australia has ratified the Council of Europe Convention on Cybercrime (the Budapest Convention), which codifies what constitutes a criminal offence in cyberspace and streamlines international cybercrime cooperation between signatory states. Australia's accession was reflected in the passing of the *Cybercrime Legislation Amendment Act 2011* (Cth).

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

To the extent a fintech company provides a designated service under the *Anti-money Laundering and Counter-terrorism Financing Act 2006* (Cth) (**AML/CTF Act**), such as by factoring a receivable, providing a loan, or issuing or selling securities or managed investment scheme interests, the company will be a reporting entity for the purposes of the AML/CTF Act. The company will have obligations to:

- enrol with AUSTRAC;
- conduct due diligence on customers prior to providing any services;
- adopt and maintain an AML/CTF programme; and
- report annually to AUSTRAC and as required on the occurrence of a suspicious matter, a transfer of currency with a value of AUD$10,000 or more, and all international funds transfer instructions.

For fintech businesses engaging in digital currency exchanges, the Attorney-General's office has recently closed consultation on amending the AML/CTF Act to "regulate activities relating to convertible digital currency, particularly activities undertaken by digital currency exchange providers". The Government is aiming to draft legislative proposals later this year.

A fintech company, like any other company, is also required to comply with Australia's anti-bribery legislation, which includes a prohibition on dishonestly providing or offering a benefit to someone with the intention of influencing a Commonwealth public official in the exercise of their duties.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Not at the time of writing, however the Government recently issued a Proposals Paper suggesting the introduction of design and distribution obligations on issuers and distributors of financial products, and a new product intervention power for ASIC, which could impact fintech businesses. Neither of these amendments would necessarily affect fintech businesses, however some fintech businesses will need to comply with the legislation when it is introduced.

In relation to design and distribution obligations, under the proposed recommendations, businesses that fall under the definition of an issuer or distributor must ensure that products meet the needs of its target market and are marketed appropriately.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

The hiring and dismissal of staff in Australia is governed under the *Fair Work Act 2009* (Cth) (**Fair Work Act**).

In relation to hiring, minimum terms and conditions of some employees (including professionals) are governed by modern awards. However, modern awards do not apply to employees earning over a threshold of AUD$138,900 (from 1 July 2016, threshold indexed annually), provided their earnings are guaranteed by agreement with their employer.

To terminate an employee's employment, an employer has to give an employee written notice. There are minimum notice periods dependent on the employee's period of continuous service although the employee's award, employment contract, enterprise agreement or other registered agreement could set out longer minimum notice periods. Notice can also be paid out rather than worked; however, the amount paid to the employee must equal the full amount the employee would have been paid if they worked until the end of the notice period.

For serious misconduct, employers do not need to provide notice of termination; however, the employee must be paid all outstanding entitlements such as payment for time worked or annual leave.

5.2 What, if any, mandatory employment benefits must be provided to staff?

Under the Fair Work Act, minimum entitlements for employees are set out under modern awards and include terms and conditions such as minimum rates of pay and overtime.

Australia also has ten National Employment Standards. Briefly, these include maximum weekly hours, requests for flexible working arrangements, parental leave and related entitlements, annual leave, long service leave, public holidays, notice of termination and redundancy pay, and a fair work information statement.

The Fair Work Act also has some general protection provisions governing a person's workplace rights, freedom of association and workplace discrimination, with remedies available to employees if these provisions are contravened.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

Migrants require working visas via the Department of Immigration and Border Protection (**DIBP**) in order to work in Australia, and each type has its own eligibility requirements. Businesses can nominate or sponsor such visas.

In September 2016, as part of NISA, the DIBP launched an Entrepreneur visa stream as part of the Business Innovation and Investment visa programme. Interested applicants must submit an expression of interest and be nominated by an Australian State or Territory Government.

Eligibility criteria for applicants includes:

- the applicant proposes to undertake an entrepreneurial venture unrelated to residential real estate, labour hire and not involving purchasing an existing business or franchise;
- the applicant must not be older than 55, must have a competent level of English, and have at least 30% interest in their entrepreneurial venture; and
- there must be one or more funding agreements in place for at least AUD$200,000 between the entrepreneur or venture and a third party funding body or bodies.

Successful Entrepreneur visa holders can progress their permanent residency applications by meeting measures of success such as business turnover, employment of Australians and obtaining significant financial backing.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Patent protection is available for certain types of innovations and inventions in Australia. A standard patent provides long-term protection and control over an invention, lasting for up to 20 years from the filing date. The requirements for a standard patent include the invention being new, useful and inventive. An innovation patent is targeted at inventions with short market lives, lasting up to eight years. These quick and relatively inexpensive patents are aimed at protecting inventions that do not meet the inventive threshold, instead requiring that an invention be innovative.

In Australia, provisional applications can also be filed as an inexpensive method of signalling intention to file a full patent application in the future, providing applicants with a priority date. However, filing this application alone does not provide the applicant with patent protection.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

Broadly, the person or business that has developed intellectual property generally owns such intellectual property, subject to any existing or competing rights.

In an employment context, the employer generally owns new intellectual property rights developed in the course of employment, unless the terms of employment contain an effective assignment of such rights to the employee. Contractors, advisors and consultants

generally own new intellectual property rights developed in the course of engagement, unless the terms of engagement contain an effective assignment of such rights to the company.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Options available to protect or enforce intellectual property rights depend on the type of intellectual property.

As an example, software (including source code) is automatically protected under the *Copyright Act 1968* (Cth). An owner may also apply to IP Australia for software to be registered under the *Designs Act 2003* (Cth) or patented under the *Patents Act 1967* (Cth). Software can also be protected contractually through confidentiality agreements between parties.

A standard, innovation or provisional patent must be held to protect or enforce IP rights in Australia. However, Australia is also a party to the Patent Cooperation Treaty (PCT), administered by the World Intellectual Property Organisation. A PCT application is automatically registered as a standard patent application within Australia, but the power to successfully grant patent rights remain with IP Australia.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

In Australia, there are generally four commonly used approaches to monetising IP. These are:

- Assignment: An outright sale of IP, transferring ownership to another person without imposing any performance obligations.
- Licensing: Permission is granted for IP to be used on agreed terms and conditions. There are three types of licence and each come with conditions.
- Franchising: A method of distributing goods and services, where the franchisor owns the IP rights over the marketing system, service method or special product and the franchisee pays for the right to trade under a brand name.
- Spin-off: Where a separate company is established to bring a technology developed by a parent company to the market. IP activities to be carried out for spin-offs include due diligence, confidentiality, employment contracts, assignment agreements and licence agreements.

Broadly, a business can only use (exploit or monetise) IP that the business in fact owns or is entitled to use. Restrictions apply to the use of IP that infringes existing brands, and remedies (typically injunctions and damages) are available where the use of IP infringes the rights of another business.

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