Deloitte.

Independent expert reports

Are you prepared?

Contents

1. Who we are

We have deep experience in preparing IERs for large, contentious and complex transactions

The valuation team at Deloitte in Australia is a national, specialist team of approximately 50 practitioners. We specialise in the provision of valuation advice related to mergers, acquisitions, disposals, restructurings and other transactions.

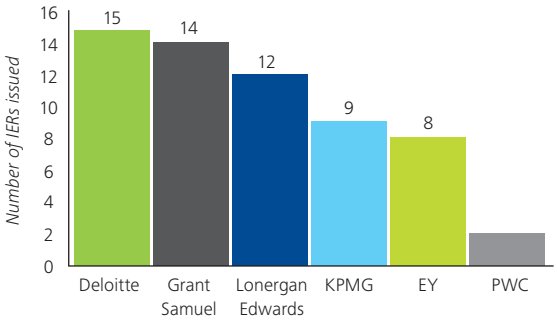
We have significant experience in advising clients and their shareholders on complex transactions that require the commercial application of proven methods.

We are able to draw upon subject matter experts within Deloitte, including actuarial, economic and tax specialists as well as access to the international network of Deloitte member firms which includes approximately 800 specialist valuation practitioners.

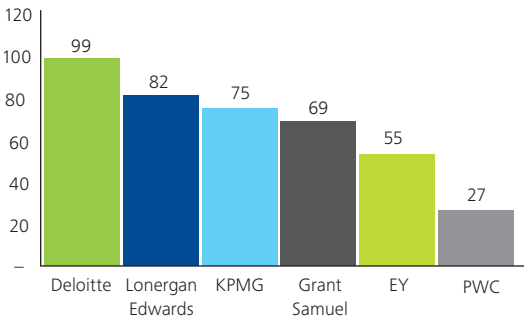
Our services include a wide range of valuation advice for commercial and compliance purposes including: independent export reports (IERs) as well as valuations for mergers and acquisitions (M&A) and strategic purposes, dispute resolution, compliance and a range of other purposes.

We have a well known 'brand' in preparing IERs. In 2011 and since 2006 we have prepared more IERs than any of our major competitors according to Connect4 as set out below.

IERs issued for the 12 months ended 31 December 2011



IERs issued for the five years ended 31 December 2011



We also have deep experience in preparing IERs for large, contentious and complex transactions. For example we acted as independent expert for six of the top 15 transactions since 2009 where an IER was commissioned.

Given the recent ASIC scrutiny and institutional shareholder activism in respect of M&A transactions, IERs are becoming increasingly important for boards and other stakeholders.

We are very experienced in dealing with issues raised by ASIC and are familiar with current focus areas of ASIC, boards and other stakeholders.

Our experience provides us with the market knowledge that is vital to ensuring our approach and processes are technically and commercially robust to ensure that directors, management and advisers can adequately discharge their responsibilities within desired timelines.

We have significant experience in advising clients and their shareholders on complex transactions

2. What is an IER?

IERs are often voluntarily commissioned to provide an independent assessment of a transaction

Overview

An IER provides impartial and credible advice to securityholders on the merits of a particular transaction. It should be presented clearly and concisely and contain an evaluation of the transaction contemplated including an assessment of the fairness of the consideration (in most cases) as well as an independent assessment of other commercial implications to securityholders of the transaction proceeding or not proceeding.

Contents of an IER

Typically an IER will include:

- A summary of the relevant terms of the proposed transaction (or reference to the more detailed description of the terms in the transaction documentation prepared by the company)
- A description and basis for the legal requirement(s) for the IER (if applicable)
- Relevant analysis of the key business and value drivers and prospects for the businesses involved and the industries in which they operate
- Depending on the nature of the opinion required, a fundamental valuation of the target company (and potentially the bidder in merger transactions and/or those involving scrip consideration)
- An assessment of the fairness (if applicable/required) of the transaction as well as consideration of other relevant advantages and disadvantages of the transaction to securityholders
- An opinion as to whether the contemplated transaction is fair and reasonable to, or in the best interests of, securityholders as a whole or, in certain circumstances, defined non-associated securityholders.

In certain situations where it may provide more useful information to securityholders there may be a short-form IER which is included in the documentation sent to securityholders as well as a more long-form report which contains additional, more technical or detailed information available on request or accessible online on the target's website.

Legislative considerations

IERs are often required in respect of a *Corporations Act 2001* (Corporations Act) requirement in order to protect minority investors, in particular where there is a potential conflict of interest for their board or individual directors.

However, IERs are often voluntarily commissioned by the board of directors of the target company (or sometimes the acquirer) to provide an independent assessment of the proposal(s) being considered, particularly for large and/or contentious transactions.

Experts and IERs are regulated by ASIC through ASIC Regulatory Guide 111: *Content of expert reports* (RG 111) and Regulatory Guide 112: *Independence of experts* (RG 112) which were re-issued in March 2011. Whilst RG 111 and RG 112 specifically pertain to IERs required in a regulatory context, the principles are expected to be applied to IERs commissioned for other purposes (such as voluntarily commissioned).

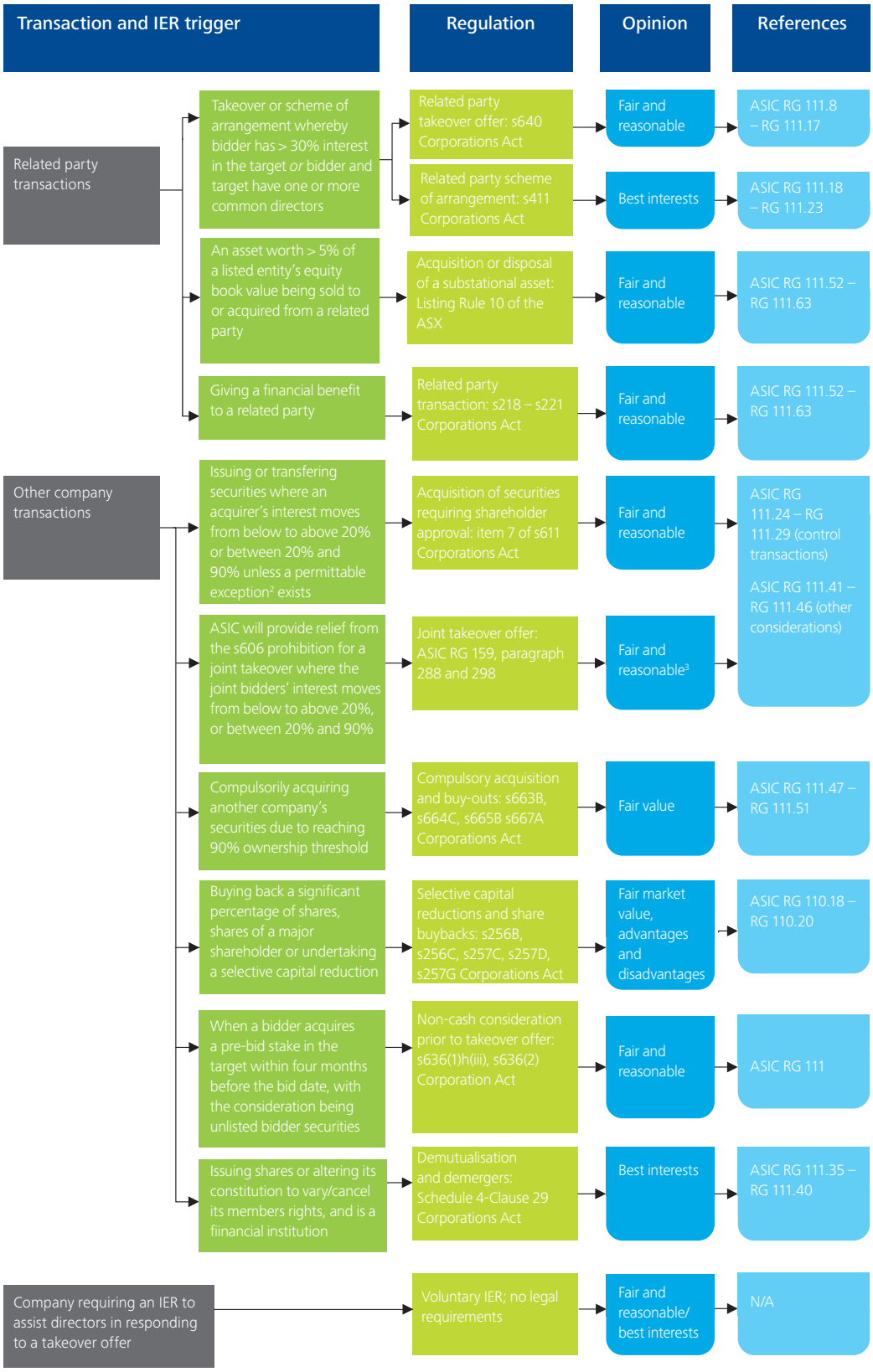
In addition, Regulatory Guide 76: *Related party transactions* (RG 76) issued in March 2011 provides guidance for experts and commissioning parties in respect of the information to be provided to securityholders for related party transactions, including evaluation of these transactions by independent experts where applicable.

3. When is an IER required?

Deloitte example
Gloucester Coal/ Macarthur Coal

In December 2009 we prepared an IER advising whether Macarthur Coal's proposed takeover offer for Gloucester Coal was fair and reasonable to minority shareholders. We were also asked to opine on whether there were any collateral benefits flowing to Noble Group as a result of the separate transactions between Noble Group and Macarthur Coal that were not available to minority shareholders of Gloucester Coal.

Typical scenarios of when an IER is required are set out below.



Notes:

1. Chapter 6 of the Corporations Act extends this guidance to include listed managed investment schemes as well as listed bodies that are not companies.

2. Permitable exceptions include acqusition of up to 3% in 6 month intervals (i.e. 'creep' rules), pro-rata rights issues, etc.)

3. Where existing shares are transferred (rather than issued), the expert is required to conclude whether or not the advantages outweigh the disadvantages of the transaction rather than whether the transaction is fair and reasonable.

4. Evaluation considerations

Deloitte example
Jetset TravelWorld and Stella Travel

We prepared an IER in relation to the $300 million merger of equals between Jetset Travelworld Limited and Stella Travel Services to create a leading integrated travel services group. As a result of the transaction one shareholder increased its economic interest in Jetset from below the 20% threshold to above 20% without making a full takeover offer and therefore required Jetset shareholder approval in accordance with item 7 of Section 611.

We assessed this transaction as a merger of equals (ie. nil control premium merger).

Introduction

The basis of valuation and approach to the evaluation varies depending on whether the transaction is in substance a takeover offer, merger or some other form of control or non-control transaction.

Technical guidance

RG 111 provides guidance for experts in evaluating different types of transactions, however, it is not prescriptive and the basis of evaluation selected by the expert must reflect the specific circumstances of each transaction.

Some common considerations are set out below:

Opinion	Key considerations
Fairness	• An offer is 'fair' where the value of consideration is at least equal to the value of the securities subject to the offer. The comparison must also consider the value of any non-cash consideration (such as scrip in the acquirer) in order to compare it to the value of the securities the subject of the offer • Any special value of the 'target' to a particular 'bidder' (i.e. synergies that are not available to other bidders) should not be included in the fairness assessment. However, these synergies may be considered in the assessment of reasonableness • The fair market value of the target securities should be determined on the basis of a knowledgeable and willing, but not anxious, seller *that is able to consider alternative options* to the bid. In particular: – Any impact of potential financial distress of the target should be ignored in the assessment of fairness *However this can be considered in the assessment of reasonableness* – Funding requirements (such as a dilutive equity raising) for a target that is not in financial distress should generally be taken into account when determining the fair value of target securities *For example capital that is required to develop a project* • For control transactions (as defined by RG 111) other than 'mergers of equal' transactions, comparison of value is made assuming 100% interest in the target, therefore a premium for control will need to be considered • For true 'merger of equal' transactions: – The fairness assessment typically compares the relative value contribution of each party *on a minority basis* (i.e. there is no assumption of full control required as is the case under typical takeover transactions) – Relevant considerations in assessing whether this applies include the nature of the businesses, the relative size of the businesses and management and board composition post-transaction • In the context of compulsory acquisitions, fair value determination may require the allocation of the fair value of the entity to each class of securities, and among the securities in each class (excluding any premia or discounts).

Deloitte example
Consolidated Media Holdings

In 2010 we prepared an IER in relation to the on-market buy-back of up to 11.9% of the ordinary shares of Consolidated Media Holdings Limited in order to assist shareholders in their assessment of whether or not to approve or participate in the proposed buy-back.

There was no legal requirement for this IER. Our work included evaluation of other alternative means of returning capital to shareholders, control implications as well as tax implications for shareholders.

Opinion	Key considerations
Reasonableness	• For schemes and related party takeovers an offer that is deemed to be fair is considered to be reasonable in accordance with RG 111 • An offer that is not fair may be deemed reasonable by virtue of other reasons why target securityholders should accept the offer. For control transactions additional considerations may include: – The bidder's pre-existing voting power in securities in the target (i.e. does effective control already exist?, etc.) – Other significant security holding blocks in the target – The liquidity of the market in the target's securities – Any synergies or special value of the target to the bidder – The likely market price of the target's securities if the offer is unsuccessful – The value to an alternative bidder and likelihood of an alternative offer being made • For non-control transactions, such as transactions amongst shareholders, buybacks, selective capital reductions and certain other transactions requiring shareholder approval, the expert should also consider: – Whether a control premium is being paid to other securityholders (to the extent that not all securityholders are participating in the transaction) – Whether or not practical control is transferred as a consequence of the transaction • To the extent reasonably practicable, and where it can do so with sufficient precision to assist securityholders, the expert should quantify the reasonableness factors it considers to be material • For demerger and demutualisation transactions the expert must consider: – Whether a fundamental valuation of the target is a critical component for members to consider. Often, in particular for demutualisation transactions, the evaluation is largely qualitative (i.e. assessing whether the advantages outweigh the disadvantages). – Whether the transaction materially prejudices the company's ability to pay its creditors – For demerger transactions the extent of any market re-rating is a relevant consideration which may or may not be capable of being quantified.
In the best interests	• The legislative test for schemes of arrangement differs from that applicable to a Chapter 6 takeover bid and requires a best interests opinion • Directors may request a 'best interests' opinion for transactions that may not otherwise require such an opinion in order to assist them in satisfying their fiduciary obligations • Similar analysis to a fair and reasonable opinion is required in that: – If the expert concludes that the transaction is fair and reasonable then it would be considered to be in the best interests as well – If the expert concludes that the transaction is neither fair nor reasonable then it would be considered not to be in the best interests • If an expert concludes that the proposal is 'not fair but reasonable' it is open to the expert as to whether the scheme is 'in the best interests' of the members. Typically this assessment would have regard to the alternatives available to members and the implications if the proposal does not proceed.

Deloitte example
Transfield Services Infrastructure fund

We prepared an IER in relation to the offer from Ratchaburi Electricity Generating Holding PCL to acquire a 56.2% interest in the securities of Transfield Services Infrastructure Fund other than those held by Transfield Services Limited.

This IER was prepared pursuant to Section 411.

Opinion	Key considerations
Other related party transactions	• RG 76 clarifies ASIC's policy intent on evaluating related party transactions, in particular that ASIC expects an expert to conclude on whether the transaction is 'fair and reasonable' rather than an analysis of the advantages and disadvantages of the transaction which was utilised for some transactions prior to the issuance of RG 76 • Where the proposed transaction consists of an asset acquisition by the entity (such as that required by ASX Listing Rule 10), it is 'fair' if the value of the financial benefit being offered by the entity to the related party is equal to or less than the value of the assets being acquired • In valuing the financial benefit given and the consideration received by the entity, an expert should take into account all material terms of the proposed transaction (including any ongoing management or other arrangements) • Experts may also be required to opine as to whether any related party is receiving any collateral benefit(s) as a consequence of the proposal • When deciding whether a proposed transaction is 'reasonable', according to RG 111.62, factors that an expert might consider include: – The financial situation and solvency of the entity – Opportunity costs – The alternative options available to the entity and the likelihood of those options occurring – The entity's bargaining position – Whether there is selective treatment of any security holder, particularly the related party – Any special value of the transaction to the purchaser – The liquidity of the market in the entity's securities.

5. Who is independent?

It is critical for the expert to be independent of the transaction and to maintain independence throughout the assignment

Overview

RG 112 provides guidance to assist commissioning parties and experts in considering whether a potential expert is independent. In some cases experts have had to resign from their role of preparing an IER as a result of identifying independence conflicts subsequent to their appointment. It is therefore critical for engaging parties and experts to perform an assessment of actual or perceived conflicts of interest prior to being commissioned.

Technical guidance

Some of the relevant requirements of RG 112 to consider prior to being commissioned include:

- The independent expert must be both independent and be perceived to be independent from the first approach until the final report is published. The report should disclose all relevant relationships with the target and/or the acquirer which may be perceived to present a conflict of interest for the expert
- Key considerations for the expert to consider prior to being commissioned include:
  - Confirmation that the expert is not a related party (i.e. officer of the commissioning party or an interested party, substantial creditor, etc.)
  - Whether the expert has a financial interest in the outcome of the proposal on which the expert is providing an opinion. This includes advisory or other work that the expert (or the expert's firm) may be undertaking in relation to the transaction which may result in a fee contingent on the outcome of the proposal
  - Whether the expert (or the expert's firm) may have participated in strategic planning work for any party with an interest in the outcome of the proposal on which the expert is providing an opinion
- Being the auditor of the target or the acquirer is not an explicit conflict of interest for the expert in accordance with RG112, however, in practice there would only be limited instances in which the main accounting firms would prepare an IER for an audit client.

It is also critical for the expert to maintain independence throughout the assignment. To ensure compliance with RG 112, the expert and the party commissioning an IER should ensure the following protocols are in place to avoid any perception that the independence of the expert is impaired during the process:

- The client should not reject an expert after discussing their approach to evaluating the transaction
- The client or its advisors should not instruct the expert on how to evaluate the transaction
- The expert should not be present at any meetings formulating the proposal on which the expert opines
- The expert should not provide any opinion on value or on any aspects of the transaction until the terms of the transaction are final
- After a full draft copy of an expert report has been provided to a commissioning party or its advisers, any alteration of the report made at the suggestion of the commissioning party or its advisers which affects an expert's analysis of the transaction or the expert's conclusions, should be clearly and prominently disclosed in the report. This disclosure should include an explanation of the changes, the reasons why the expert considered the changes appropriate and the significance of the changes to the expert's opinion.

6. Engaging with the expert prior to the transaction

Deloitte example
BHP Billiton/Rio Tinto/ Chinalco

Over the course of 2008 and 2009 we were engaged by Rio Tinto to conduct familiarisation exercises in respect of the US$150 billion takeover offer by BHP Billiton, US$12.3 billion asset acquisition and US$7.2 billion convertible bond transaction with Chinalco. IERs were not issued as neither transaction reached a stage of completion. Our assignment involved extensive valuation analysis of Rio Tinto's operations including major global businesses in Iron Ore, Copper, Aluminium, Coal, Uranium, Diamonds and Industrial Minerals as well as in depth analysis of the relevant commercial aspects of these transactions.

In certain situations, particularly where a takeover offer is expected or may be received, the board of the target company may wish to brief an independent expert to commence a familiarisation exercise in order to expedite the IER process in the event an offer is received enabling a quicker response to meet statutory or desired timelines.

The use of a familiarisation process may be particularly relevant in situations where the target's operations are of a particularly complex nature, such as energy and resources operations and may require the use of a subject matter expert which may make meeting statutory response times to a bidder's statement challenging, or if the structure of the proposed transaction is expected to be particularly complex.

A familiarisation exercise:

- Reduces the time pressures on the target in issuing the target's statement or explanatory memorandum once a formal proposal is received
- Enables the expert to commence work on aspects of the IER prior to the statutory timeframes being triggered. These aspects of work usually include research into the target's operations, industry and valuation elements such as comparable company analysis
- Affords the expert the opportunity to identify any issues or further work that may be required in the absence of the time pressures posed by the typical statutory and commercial deadlines.

Maintaining independence through the familiarisation process is crucial. As a consequence, there will be elements of an expert's work that will not be disclosed to the target in order to maintain independence.

If, at the conclusion of the familiarisation exercise or anytime thereafter, an expert is asked to prepare an IER, the additional work required, and the timeline may be reduced.

7. Information requirements, disclosure and timing

Deloitte example
National Hire Group

In 2011 we prepared an IER for National Hire Group in respect of the off-market takeover offer from Seven Group. Since Seven Group and its associates held an existing 66.2% interest in National Hire Group prior to the offer, an IER was required pursuant to Section 640 of the Corporations Act opining on whether the takeover offer was fair and reasonable to securityholders of National Hire Group excluding Seven Group and its associates.

Information

When an IER is being formulated the expert should have access to information equivalent to that of an auditor. This therefore means an expert can request almost any information from the company.

Typical information requirements for an IER include:

- Historical actual and pro-forma financial information
- Projected financial information
- Business plans/strategy papers
- Draft transaction documentation
- Discussions with management/board.

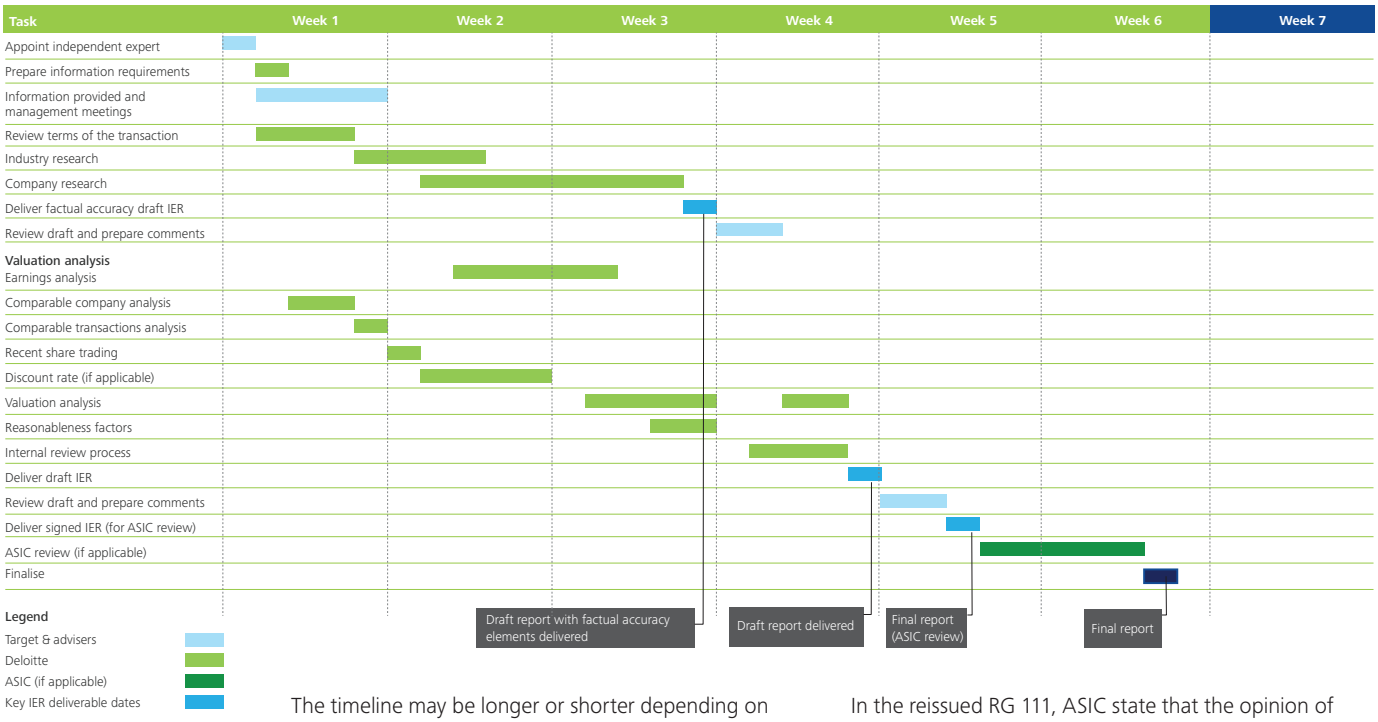
Dislosure

An expert has discretion about the information that is ultimately disclosed in the IER. However:

- The expert should disclose sufficient information for a competent professional (i.e. another expert, professional adviser or institutional investor) to replicate the expert's work and assess the valuation
- The expert may withhold disclosure of 'commercially sensitive information' (such as pricing, customer data, etc.)
- The IER may refer to other information in the document as opposed to repeating it, although the IER needs to be able to be a stand alone document.

Timing

An IER typically takes between four and six weeks to complete, from time of initial engagement through to finalisation and printing of the report. A typical timeline is set out below:



The timeline may be longer or shorter depending on the complexity of the transaction, nature of assets/businesses being valued, the extent of any involvement of technical or other experts and the general transaction timetable (hostile vs friendly bid).

For example, for mining projects, technical mining experts are typically sub-contracted to assist the expert in assessing the technical operational assumptions utilised in the discounted cash flow analysis.

In the reissued RG 111, ASIC state that the opinion of the expert should not generally be released ahead of the final report as this is considered to be potentially misleading as the basis for the conclusions drawn by the expert will not be available. To the extent that it is desirable to release the opinion of the expert upon announcement of the transaction, any ASIC review period should be considered.

Our experience

We have prepared IERs for some of the largest and most high profile transactions in Australia

Seven/WesTrac

IER in relation to the $3.4 billion merger via schemes of arrangement of Seven Network Limited and WesTrac Holdings Pty Limited which included a comprehensive valuation of the publishing and online assets of Seven Media Group.

Rural Press/Fairfax

IER providing an opinion on whether the merger between Rural Press and Fairfax to form an integrated Australasian metropolitan, regional and rural print and digital media business was in the best interests of the Rural Press securityholders.

Macquarie

We have prepared a number of IERs for Macquarie including:

- $10 billion sale of Macquarie Cash Management Trust's assets to Macquarie Group
- Schemes involving the $1.7 billion acquisition of Macquarie Communications Infrastructure Group and its manager by CPPIB
- $0.9 billion privatisation of Macquarie Capital Alliance Group.

Arrow Energy

IER in relation to the proposed demerger by way of a scheme of arrangement of its international business and certain Australian assets into a new company to be named Dart Energy Ltd.

As part of this acquisition we also prepared an IER in relation to the acqusition of the remaining assets in Arrow Energy post-demerger by a company jointly owned by Royal Dutch Shell plc and PetroChina Company Limited.

Felix Resources

IER in relation to the $2.5 billion offer by Yanzhou Coal Mining Company Limited to acquire 100% of Felix Resources Limited.

Eircom

IER in relation to the $6.4 billion acquisition of Eircom Holdings Limited by STT Communications Ltd and Emerald Communications via a scheme of arrangement.

ING Industrial Fund

IER in relation to the takeover offer of all of the units in ING Industrial Fund by a consortium including Goodman Group.

UNiTAB/Tattersalls

We prepared two IERs in relation to both the merger with Tattersall's and the attempted takeover offer by Tabcorp.

Challenger

We have prepared a number of IERs for Challenger including:

- The $0.8 billion acquisition of Challenger Kenedix Japan Trust by Challenger Life for cash consideration via a trust scheme of arrangement
- The $0.5 billion acquisition of Challenger High Yield Fund by Challenger Life for cash consideration via a trust scheme of arrangement.

Mirvac

IER in relation to the $1.0 billion acquisition of Mirvac Real Estate Investment Trust by Mirvac Group for scrip consideration via a trust scheme of arrangement.

ConnectEast

IER in relation to the $2.2 billion takeover offer for ConnectEast by Horizon Roads, a new investment vehicle managed by CP2.

Tishman Speyer Office Fund

IER to assess whether the proposed sale of the underlying assets of the fund to a related party, the winding up of the fund and distribution of the proceeds was fair and reasonable to unitholders.

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