

International Counsel on Foreign Selling Restrictions

July 2009

Baker & McKenzie maintains a database known as the *World Sky Survey for Australian Issuers*, which sets out foreign selling restrictions applicable to Australian issuers of ASX-listed equity securities.

The *World Sky Survey* covers the 21 foreign countries where Australian companies most frequently make equity placements. We engage our colleagues in the 14 countries where Baker & McKenzie practices local securities law. In the other countries, we engage reputable local counsel with securities law expertise.

Our survey is updated formally twice a year. In addition, the contributing securities lawyers are required to notify us whenever there is a change in the relevant law of their country. We also seek advice from local counsel as appropriate on specific transactions.

Countries

The *World Sky Survey* covers the following countries:

- Belgium
- Canada¹
- China
- Denmark
- France
- Germany
- Hong Kong
- Ireland
- Italy
- Japan
- Liechtenstein
- Luxembourg
- Netherlands
- New Zealand
- Norway
- Singapore
- Sweden
- Switzerland
- United Arab Emirates
- United Kingdom
- United States²

¹ British Columbia, Ontario and Quebec provinces only.

² Our role as International Counsel includes US law advice applicable to offers outside the United States in "offshore transactions" in compliance with Regulation S under the US Securities Act of 1933. In addition, as US Counsel we can advise on equity offers to "qualified institutional buyers" in the United States.

Scope of advice

In connection with placements, rights issues, entitlement offers and share purchase plans, we prepare a memorandum (the "Memorandum") that:

- discusses exemptions from prospectus requirements applicable to institutional investors;
- provides foreign selling restriction legends;
- provides representations and warranties to be given by institutional investors; and
- discusses applicable exemptions from prospectus requirements for retail shareholders in relation to rights issues, entitlement offers and share purchase plans for the countries where such exemptions are available.

ASX Listing Rule 7.7.1(a) provides that if an entity proposes a pro rata issue, it must offer the securities to "all holders with registered addresses outside Australia and New Zealand" unless it would be "unreasonable" to do so in a particular place having regard to the following:

- the number of holders in the place where the offer would be made; and
- the number and value of securities the holders would be offered, the cost of complying with the legal requirements, and requirements of a regulatory authority in the place.

While many Australian issuers have historically excluded registered retail shareholders outside Australia and New Zealand, rights issues and entitlement offers of ordinary shares (but not units in a managed investment scheme) can be made to retail shareholders in several countries (subject to any applicable limitation on the number of retail investors permitted under local law) without an unreasonable compliance burden or cost.

For further information, please contact

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