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EDITOR: KATE.GIBBS@REEDBUSINESS.COM.AU | ADVERTISING: AMY.VIVIAN@REEDBUSINESS.COM.AU

18 DECEMBER 2009

ASIC refuses to let AWB case derail

THREE years after commissioner Terence Cole QC released his multi-volume report into the Australian Wheat Board's payment of kickbacks to Iraq, the corporate regulator has been left holding the can. Yesterday, despite extensive setbacks, ASIC looked set to fight on.

The corporate regulator announced yesterday afternoon that it is appealing against a Supreme Court of Victoria decision to halt half of its proceedings against the former Australian Wheat Board managing director, Andrew Lindberg.

ASIC yesterday applied for leave to appeal in the Court of Appeal of the Supreme Court of Victoria in relation to its second civil penalty case against Lindberg.

This follows Justice Robson's decision to permanently stay those proceedings on Wednesday 9 December in the Supreme Court of Victoria.

The second case concerned allegations that Lindberg misled the AWB board about the Tigris transaction, its internal investigation, 'Project Rose', and the UN's Volcker inquiry into the Iraqi oil-for-food scandal.

In halting the case, Justice Robson said this element of ASIC's case against Lindberg would be vexatious and oppres-

sive. He said that to pursue it would bring the administration of justice into disrepute.

It is expected that in its appeal, ASIC will raise what it considers to be the judge's erroneous interpretation of its statement of claim.

In his written decision, Justice Robson suggested Lindberg suffered "strain and stress and humiliation of sitting through the opening", which resulted in "considerable publicity ... that was especially damaging to Lindberg's credit and reputation".

ASIC's first case against Lindberg, meanwhile, is ongoing. It concerns allegations that Lindberg contravened sections of the Corporations Act arising from AWB entering into contracts for the supply of wheat to Iraq.

ASIC alleges Lindberg contravened section 180, which requires company officers to act with care and diligence, and section 181, which requires company officers to discharge their duties in good faith and for a proper purpose.

ASIC commenced civil penalty proceedings in the Supreme Court of Victoria against six former directors and officers of AWB in December 2007.

The matter will return to court today.

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>> local news

Brisbane firms make promotions in construction practice

BRISBANE law firm HopgoodGanim Lawyers has announced two promotions within its construction, infrastructure and major projects practice.

The two new senior associates, Michelle Hall and Peter Lamont, advise principals and contractors on construction law, contract negotiation and dispute resolution.

The promotions follow the appointment of two new partners earlier this month.

According to HopgoodGanim's managing partner Bruce Humphrys, the firm's recent promotions recognise the consistent commitment and performance these practitioners have shown, despite the effects of the global financial crisis.

"We're proud to be able to recognise and reward these staff members for their outstanding performance, even during difficult times, through these much deserved promotions."

The promotions will come into effect on 1 January 2010.



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Biggest M&A deals, and the law firms that worked on them, revealed

>> DEALS

IN an exclusive report with mergermarket, The New Lawyer's top 15 M&A deals rankings reveals which Australian law firms worked on the biggest deals of the year.

Allens Arthur Robinson worked on 7 of the top 15, as did Freehills, while Blake Dawson worked on 4 and Mallesons Stephen Jaques worked on 3. Other firms featuring in the top 15 deals include Gilbert +Tobin, Johnson Winter & Slattery, Baker & McKenzie, Clayton Utz and Corrs Chambers Westgarth.

The list of deals, ranging from the BHP Billiton and Rio Tinto's signing of a binding agreement on combining their vast iron ore operations in Western Australia. The mining giants said the agreement was aimed at savings worth an estimated 10 billion US dollars.

For the law firms involved on the deal, including Allens Arthur Robinson, Blake Dawson and Freehills, as well as international firms Freshfields

Bruckhaus Deringer, Linklaters and Slaughter and May, the deal was not only the biggest of the year, it was the biggest ever involving an Australian company. The deal, announced on 5 December, was valued at A\$58,000 million, making it the largest on The New Lawyer and mergermarket's top 15 deals of the year.

While no other deal came close in terms of value this year, Australia some relatively large M&A involving energy and resources companies, experts said.

Paul Quinn, executive partner of Allens Arthur Robinson's corporate practice, said yesterday the results show that Australia has been ranking well against its global counterparts in mergers and acquisitions in the past year.

"The year has been good," said Quinn. "It's been mixed. We certainly haven't had the volume of deals we had a couple of years ago, but ... in relation to Australia, you'll see the Australian deals sit pretty strong relative to the rest of the world."

Quinn said Australia features well in the M&A rankings. He said he understood that Australia was sitting in the top five globally in M&A.

Ranking second in the top 15 deals of the year comes the announced Chinalco deal with longtime rival BHP Billiton. Australia shocked China in June when it abruptly spurned the \$20 billion investment. The deal included Allens Arthur Robinson, another Australian firm Johnson Winter & Slattery, and acting for Chinalco was Mallesons Stephen Jaques and other international firms.

According to Quinn, law firms are all looking for those big deals. "The strategy is to be involved in as many of the key deals going on that you can be. [Lawyers are] particularly interested in the key high profile deal," he said.

But law firms have to be in it for the long term if they want to get on the key panels, Quinn said. And that comes down to relationships. Clients will base which firms from their panels

they will use on the depth of the relationships they have, he said.

"You've strengthened and built that [relationship], he said. You want to be their principal strategic adviser on these types of deals," Quinn said.

Coming up in 2010, Quinn predicts more energy and resources work in M&A, like Australia saw this year. He expects there to be more consolidation in the energy and resources market. "It's an area that is fairly hot at the moment."

Quinn also predicts there will be continued Chinese interest in investing in the resources sector next year.

The top 15 deals of the year can be found here.

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Top 15 Australian announced deals

For the year to date 13 December 2009



ANNOUNCEMENT DATE	TARGET COMPANY	SECTOR	TARGET/SELLER LEGAL ADVISER	BIDDER COMPANY	BIDDER LEGAL ADVISOR	DEAL VALUE (\$M)
5 December 2009	BHP Billiton (Western Australian iron ore assets); and Rio Tinto Plc (Western Australian iron ore assets)	Energy, Mining & Utilities	Advising seller: Allens Arthur Robinson; Blake Dawson; Freehills; Freshfields Bruckhaus Deringer; Linklaters; Slaughter and May	Rio Tinto/BHP Billiton (Joint Venture)		58,000
12 February 2009	Rio Tinto (stakes in nine mining assets)	Energy, Mining & Utilities	Advising seller: Allens Arthur Robinson; Fried Frank Harris Shriver & Jacobson; Johnson Winter & Slattery (Advising Credit Suisse; Morgan Stanley); Linklaters; Wachtell, Lipton, Rosen & Katz	Aluminum Corporation of China	Chiomenti Studio Legale; Clifford Chance; Commerce and Finance Law Offices; Mallesons Stephen Jaques; Simpson Thacher & Bartlett	11,838
14 September 2009	eircm Holdings Limited	TMT	Arthur Cox; Ashurst; Gilbert + Tobin; Linklaters	Singapore Technologies Telemedia Pte Ltd	Mallesons Stephen Jaques; Matheson Ormsby Prentice	5,768
11 May 2009	Lion Nathan Limited (53.87% stake)	Consumer	Mallesons Stephen Jaques	Kirin Holdings Company Limited	Blake Dawson; Simpson Grierson	4,009
13 August 2009	Felix Resources Limited	Energy, Mining & Utilities	Allens Arthur Robinson	Yanzhou Coal Mining Company Ltd	Baker & McKenzie; Corrs Chambers Westgarth; King & Wood	2,568
16 February 2009	OZ Minerals Limited	Energy, Mining & Utilities	Freehills	China Minmetals Non-Ferrous Metals Co Ltd	Blake Dawson	2,393
18 August 2009	Alcan Packaging (majority of businesses)	Industrials and Chemicals	Advising seller: Freshfields Bruckhaus Deringer; Linklaters; Ogilvy Renault; Sullivan & Cromwell	Amcor Limited	Allens Arthur Robinson; Davies Ward Phillips & Vineberg; Gianni, Origoni, Grippo & Partners; SJ Berwin	2,025
19 May 2009	ABB Grain Ltd	Business Services	Johnson Winter & Slattery; Morgan Lewis & Bockius; Stikeman Elliott	Viterra Inc	Freehills; Torys	1,695
15 June 2009	Cemex Australia Pty Ltd	Construction	Advising seller: Allens Arthur Robinson	Holcim Limited	Gilbert + Tobin; Homburger; Linklaters	1,606
25 September 2009	ING Australia Limited (51% stake); and ING New Zealand Limited (51% stake)	Financial Services	Advising seller: Chapman Tripp; Clayton Utz	Australia and New Zealand Banking Group Limited	Blake Dawson	1,526
26 August 2009	Sino Gold Mining Limited (80.20% stake)	Energy, Mining & Utilities	Allens Arthur Robinson; Cassels Brock & Blackwell; Dorsey & Whitney	Eldorado Gold Corporation	Fasken Martineau; Freehills; Linklaters; Paul Weiss Rifkind Wharton & Garrison	1,496
14 April 2009	OZ Minerals (certain assets excluding Prominent Hill and Martabe)	Energy, Mining & Utilities	Advising seller: Freehills	China Minmetals Non-Ferrous Metals Co Ltd	Blake Dawson; McCarthy Tetrault	1,386
27 January 2009	Boddington Gold Mine Joint Venture (33.33% stake)	Energy, Mining & Utilities	Advising seller: Allens Arthur Robinson; Shearman & Sterling	Newmont Mining Corporation	Freehills; Goodmans; Wachtell, Lipton, Rosen & Katz; Watsons Lawyers; White & Case	990
30 November 2009	Energy Developments Limited	Energy, Mining & Utilities	Baker & McKenzie; Freehills	Greenspark Power Holdings Ltd	Gilbert + Tobin	789
12 March 2009	Schweppes Holdings Pty Ltd	Consumer	Advising Seller: Freehills; Shearman & Sterling	Asahi Breweries Ltd	Baker & McKenzie	776

NOTES: Based on announced deals, including lapsed and withdrawn bids. Based on dominant geography of either the target, bidder or seller being Australia. Activities excluded from table include property transactions and restructurings where the ultimate shareholders' interests are not changed. **Source:** mergermarket

COMMENT & DEBATE

Copenhagen: Does it really matter after all?



Rebecca Hoare

>> COMMENT & DEBATE

PRIME Minister Rudd has touched down in Copenhagen amidst high drama, emotion and a great deal of uncertainty about what realistically can be achieved by the end of the week during the high level political negotiations.

From Australia, we have all been following the ups and downs of the Conference. The recent draft text released by the UN highlights the significant areas of disagreement on critical matters such as long-term emission reduction targets and the level of funding for developing countries to assist in mitigation and adaptation measures.

While the events unfolding on the Copenhagen stage are capturing the attention of the world, one big question remains – will this really affect business in Australia? Does it really matter whether a legally binding agreement is reached?

The answers to those questions are 'yes' and 'no'. But then, I'm a lawyer and we have to say that.

In the short term, without a legally binding agreement, there is no firm global commitment to emissions reduction targets. Nor is there clarity about the "rules which allow carbon markets to grow", as the Minister for Climate Change, Penny Wong stated in a recent doorstep interview in Copenhagen. In these circumstances, there is a lack of certainty in the private sector about where and when to direct investment, particularly



*Whatever happens in the final hours of the Copenhagen climate change meetings, does it really matter whether a legally binding agreement is reached? Deacons partner **Rebecca Hoare**, who works in the climate change practice of the firm's Brisbane office, writes.*

investment into emissions reduction technology and projects.

This will result in missed investment opportunities, because there will be no clear carbon price and no certainty about, for example, the types of new or enhanced flexible mechanisms that form part of any post-Kyoto deal. In a recent survey carried out by Norton Rose entitled Hopes for Copenhagen, 95.6 per cent of respondents said they saw business opportunities from the push to cut emissions. The survey found that "investments in new green technologies, the growing portfolio of renewable energy systems and the countless

offset deals, project financings or emissions trading transactions, all present potential revenue streams". A deal at Copenhagen would provide greater certainty to allow this investment to continue.

However, there is a disconnect between what is happening domestically in relation to climate change compared to what is happening at the global level. While the Government has foreshadowed reintroducing its Carbon Pollution Reduction Scheme legislation in February 2010, the Coalition has clearly stated it will vote it down again. Therefore, the future of an emissions trading scheme in

Does it really matter whether a legally binding agreement is reached? 'Yes' and 'no'. But then, I'm a lawyer and we have to say that

Australia is unclear. So regardless of the outcome of Copenhagen, uncertainty continues to pervade Australian investment decisions and long term financial planning.

It is also the case that any failure at Copenhagen also delays our ability to abate climate change and address the impacts of climate change. Almost three quarters of respondents to the Norton Rose survey believed that an unsuccessful outcome at Copenhagen will cause major problems in addressing climate change in the years to come. There is widespread concern about the economic impact of failing to act in the long term. The message from participants was clear – the sooner climate change can be regulated with a clear structure, the better it is for business.

So yes, the outcome at Copenhagen will be important for Australian business. However, until there is clear policy and action at a domestic level, the impacts of any deal (or absence of a deal) may not be felt immediately.

Rebecca Hoare is a partner at law firm Deacons and member of its climate change practice. Deacons and Norton Rose will merge on 1 January.

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