

# The IPO Roadmap



Date: 2022

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# Part A

# Introduction

# About this booklet

This booklet is designed to be a plain-English, high-level roadmap of the listing or initial public offering (**IPO**) process on the Australian Securities Exchange (**ASX**).

This is not a comprehensive guide to the listing process; there are many details which should be included in a deep-dive of the IPO process, such as the various issues to consider after listing (for example, your continuous disclosure obligations).

However, in this booklet, we hope to give private companies (whether based in Australia or overseas) that are considering embarking on the road to an IPO on ASX, a user-friendly map to assist with planning that journey.

This booklet is set out in three parts:

- **Part A** provides some context to the listing process and the state of the market.
- **Part B** delves into five key steps along the IPO journey: choosing your team, preparing to IPO, conducting due diligence and preparing the disclosure document, selling the offer to the public, and the listing.
- **Part C** introduces Hamilton Locke and our credentials.





# The decision to list

## The IPO Race

The decision to conduct an initial public offering is a seminal event in the life cycle of a growth company.

The process from that decision point to a public listing is a significant commitment. It requires careful preparation, the right support team and commitment to the outcome.

Becoming listed is as much about preparing to be listed, as it is about the process of listing. Many of the decisions made around company and float structure, governance, capital raising, sell-down and executive and employee performance incentive plans must be made with a view to the long term success of the business as a listed entity.

Many of the issues that are critical in the process of becoming listed, such as prospectus liability, due diligence and verification, financial forecasting and independent experts reports, are less important in the longer term than strategy, governance, management and reporting systems that determine success once listed.



# The decision to list

The decision to list should be a strategic one and the timing and pricing of listing a tactical one.

The market is not static. There is almost always investor appetite for good businesses with strong growth prospects, but the price at which a float can be sold and the likely secondary market after listing will fluctuate over time depending on the state of the general economy, investor sentiment, the availability of other investment opportunities and other things.

The decision on when to list needs to take into account the state of the IPO market and potential investor appetite as well as the needs of the company for access to capital.

Guidance on the tactical decision of when to list and how to price the float will come from an experienced corporate adviser, which is covered later in this roadmap.

## Strategic



Deciding to list

## Tactical



Timing & Pricing

# The decision to list

## Strategic and tactical decision

### Opportunities

#### ACCESS TO CAPITAL

Capital growth opportunities that arise from access to funds

#### VISIBILITY

Listing exposes the company to a broader audience which can assist expansion efforts, particularly in global markets

#### LIQUIDITY

Existing stakeholders get an opportunity to realise the value of their investment in the company

#### ALIGNMENT OF INTERESTS

Listing can align company and employee goals through employee incentives

### Challenges

#### ASX FEES

There are fees for both the initial listing and for ongoing listing

#### REGULATION

ASX Listing Rules and the Corporations Act increase periodic reporting, continuous disclosure and corporate governance requirements

#### CLAIMS & INVESTOR RELATIONS

Shareholder claims over disclosure and governance are more prevalent and management need to spend considerable time communicating with investors

#### VOLATILITY

After listing, a company's share price is exposed to volatile financial markets, heightened media scrutiny and short sellers



# The Australian landscape

## The economy

- Australia has a strong economy, set to become the **12<sup>th</sup> largest in the world in 2023** with a GDP of approx. US\$1.8 trillion<sup>1</sup>.
- Australia's real GDP is forecast to grow by around 4.2% in 2022 and to reach around A\$2.4 trillion in 2023<sup>2</sup>.
- Australia is home to just 0.3% of the world's population, but accounts for 1.7% of the global economy<sup>3</sup>.

1. IMF  
2. IMF  
3. IMF



## The market

- ASX has over **2,300 listed entities**, spread across all industry sectors and a range of geographical regions.
- ASX is the world's **17<sup>th</sup> largest stock market** by market capitalisation of listed entities.
- **ASX is supported by a robust regulatory environment** and is overseen by the Australian Securities and Investments Commission (ASIC).





# FAQ

## What business is suitable to float?

The best business to float has a track record of profitable growth, a strong management team and a need for access to capital to continue to maintain its growth trajectory.

## What is the minimum size?

ASX requires a business to be a minimum size before it will admit it to its official list. It must either meet the 'profit test' (at least \$1m profit over the last 3 years and at least \$500k profit in the last 12 months) or the 'assets test' (minimum \$4m NTA or \$15m market cap, and working capital of at least \$1.5m). There are a number of other requirements for listing.

## What will it cost?

Initial listing fees range from \$45,000 to over \$570,000 and annual listing fees range from \$14,141 to a maximum of \$475,000. Both fees are dependent on the value of securities quoted on ASX, as at listing date and 31 May, respectively. As a rough guide, other costs are likely to be:

- 10% of funds raised (for IPOs < \$50 million), and
- 5% of funds raised (for IPOs >\$50 million).

## How long will it take?

Most companies tend to complete the IPO process in 18 to 19 weeks. The length of time to list depends on a number of factors including the size and complexity of the company, any need for pre-float restructuring, the interest received from investors and any complexity arising from the preparation of the financial statements and financial forecasts.

## How is the offer price determined?

The company will work with its lead manager to determine demand for its offer. Pricing will typically involve a series of market soundings followed by a book build process whereby investor appetite is assessed and commitments obtained. The book build might occur before the general offer opens (a front-end book build) or towards the end of the general offer period (a back-end book build).





# Part B

# **IPO Roadmap**

# Pathway to IPO

All companies go through the following phases in the IPO process.  
Each step will be considered further in this booklet.



# Choosing your core team

## Team selection

The process to listing involves a significant amount of work and it is important that you have the right advisers in place to support your management team.

Selecting your core advisers as soon as possible is the most effective way to identify issues early and properly plan the process. In preparing for an IPO, a company will typically appoint the following advisers.

### CORPORATE ADVISER

The corporate adviser is responsible for managing the timetable, marketing, drafting the bulk of the prospectus and the pricing of the IPO.

### LEGAL ADVISER

The legal advisers are responsible for conducting legal due diligence, drafting agreements relating to the IPO (such as the underwriting agreement), conducting and overseeing the due diligence process and drafting parts of the prospectus.

Based on ASIC Report 484, ASIC will be more comfortable with an IPO that has a professional legal adviser advising the company.

### ACCOUNTANTS

The investigating accountants are involved in undertaking financial due diligence. They will produce an independent limited assurance report on the financials (historical and forecast, where relevant) for inclusion in the prospectus and deliver a sign-off on the due diligence process.

### MANAGEMENT

To oversee the process internally, the company will often delegate the responsibilities of running the IPO process to a sub-committee of the board and several key members of management with sufficient seniority. These representatives will often become involved in preparing the prospectus. This is a time consuming task that may take several months.

### UNDERWRITER / LEAD MANAGER

The underwriter (who is also often the corporate adviser) markets the securities on offer. The underwriter assesses market demand, assists in pricing and conducts the book build process and retail offer. The underwriter also takes risk if there is insufficient market demand for all the shares on offer.



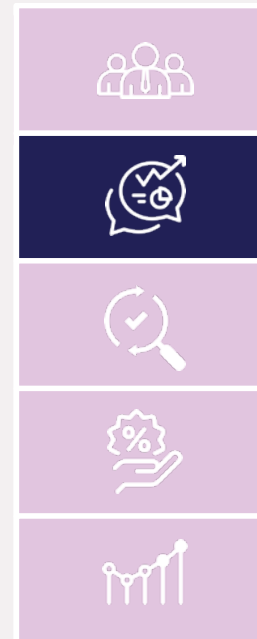
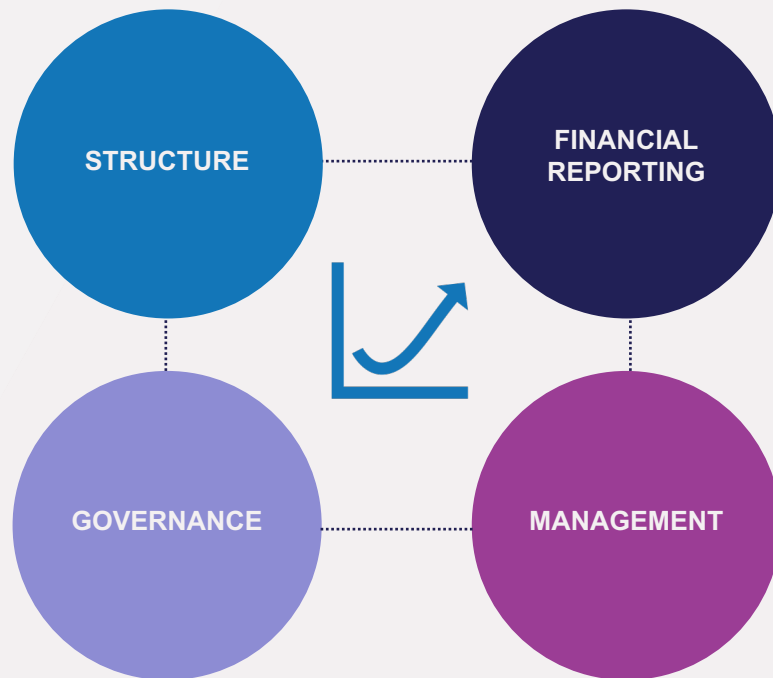


# Preparation

## Early considerations

There are a number of matters that will require consideration and likely adjustments for a company in transition from a private company to a listed company.

In most cases these are matters of system and process and the earlier these matters are addressed and bedded down the better.



# Preparation

## Team selection

	Overview	Considerations
<b>Structure</b>	A company's operations and structure must be appropriate for a listed company. That often means separating the operations, assets and finances from the existing owners. The simpler the capital and corporate structure the better.	<ul style="list-style-type: none"> <li>• Public company (with an appropriate constitution).</li> <li>• Terminate existing shareholder arrangements.</li> <li>• Appropriate tax structure.</li> <li>• Appropriate form of securities.</li> <li>• Transfer of assets.</li> </ul>
<b>Financial Reporting</b>	For many companies an IPO will require an upgrade in systems for financial reporting and planning to comply with ASX listing rules and Australian GAAP accounting practices. Investors will also want to see a history of strong financial reporting and a financial plan, as well as robust forecasting and budgeting capabilities.	<ul style="list-style-type: none"> <li>• Restructure the balance sheet of the company to make it more attractive for potential investors.</li> <li>• Can the company comply with rules for ongoing disclosure and transparency?</li> <li>• Can the company produce accurate and comprehensive information for the board?</li> </ul>
<b>Governance</b>	The ASX Listing Rules require listed companies to either adopt the <i>Corporate Governance Principles and Recommendations</i> of the ASX Corporate Governance Council or provide an explanation why any of the recommendations were not adopted. This will typically require the implementation of a more robust governance framework.	<ul style="list-style-type: none"> <li>• Adopt corporate governance best practice in policies and procedures to deal with the increased disclosure requirements and governance requirements.</li> <li>• Establish appropriate board structure.</li> <li>• Document material contracts.</li> <li>• Satisfy ASX that each of the directors, CEO and CFO is of good fame and character.</li> </ul>
<b>Management</b>	<p>The process of going (and remaining) public is time consuming. The company needs to ensure that the day-to-day operations of the company are not neglected.</p> <p>Additionally, an IPO requires a behavioural change on the part of officers and openness, transparency and reporting are key aspects of the new role.</p>	<ul style="list-style-type: none"> <li>• Consider any skills gaps at senior management and board level and make new appointments as necessary.</li> <li>• Can the company respond appropriately to shareholder and investor demands?</li> <li>• How will you prioritise the IPO and day-to-day operations?</li> </ul>



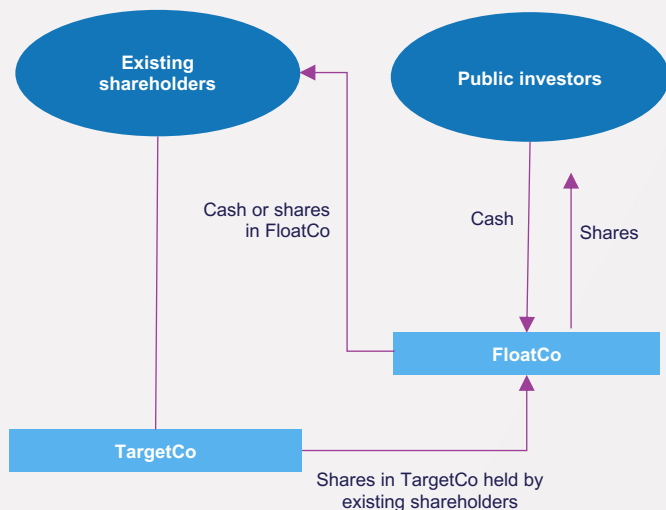


# Preparation

## Sell down structures

A FloatCo or 'Top Hat' structure and SaleCo or 'sidecar' structure are typically used to facilitate the sale of shares by existing shareholders in the IPO by ensuring that they are shielded from prospectus liability by not selling shares directly to the public under the IPO.

### Top Hat / FloatCo structure



### Common steps in a Top Hat sell down

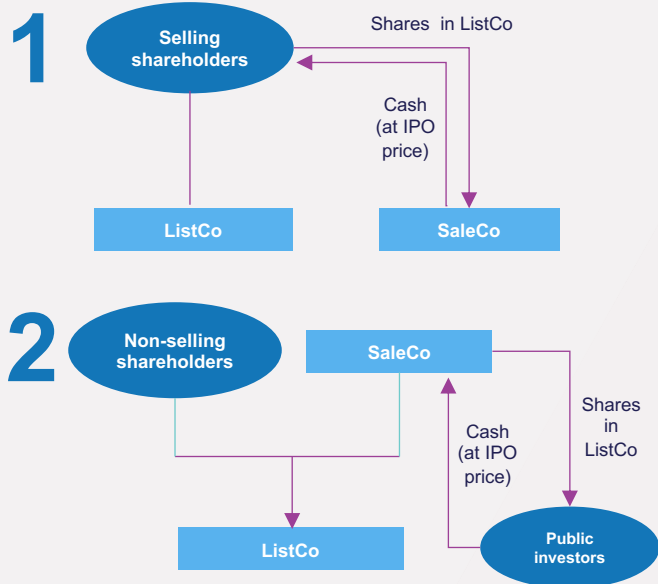
- 1 Establish a new company ('**FloatCo**') which lists on ASX and issues shares to the public, subject to completion of the transactions below. The directors of FloatCo are the same directors of TargetCo.
- 2 The shareholders of TargetCo, which is the company and owns the business that is actually being listed, enter into a Share Purchase Agreement with FloatCo to sell their shares in TargetCo to FloatCo for cash and/or shares in FloatCo.
- 3 FloatCo buys all the shares in TargetCo from the existing shareholders by:
  - using funds raised in the IPO to pay cash to shareholders that are selling down; and/or
  - Issuing shares in FloatCo to shareholders who are not selling down.
- 4 FloatCo owns 100% of TargetCo.
- 5 The existing shareholders of TargetCo are able to sell down shares in TargetCo into the IPO while being shielded by FloatCo from prospectus liability.



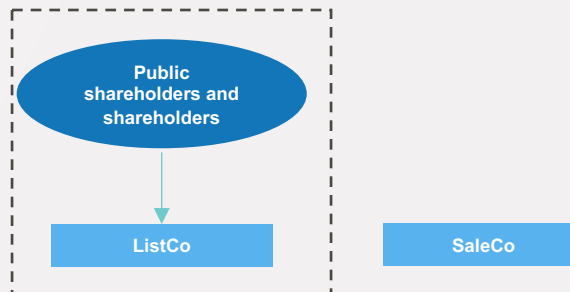
# Preparation

## Sell down structures

### Sidecar / SaleCo structure



**3**



#### Common steps in a sidecar sell down

1	Establish a special purpose vehicle ('SaleCo'). The directors of SaleCo are directors of ListCo, which is the company being listed on ASX.	4	On the IPO, SaleCo buys ListCo shares from the selling shareholders of ListCo at the IPO offer price.
2	SaleCo enters into a Share Purchase Agreement with the selling shareholders of ListCo to acquire their shares in ListCo at the IPO offer price.	5	SaleCo then immediately on-sells those shares in ListCo to the public at the same IPO offer price. ListCo is then owned by the public and any existing shareholders who did not sell down.
3	The prospectus for the IPO is jointly issued by ListCo and SaleCo.	6	SaleCo can be wound up.



# Preparation

## Listing a foreign company

There are two pathways available to a foreign company wishing to list on ASX:

### FOREIGN EXEMPT LISTING

- A foreign entity that is already listed on another reputable stock exchange can list on ASX without having to comply with most of the ASX Listing Rules (unlike a standard ASX Listing).
- This dual listing avenue is available to large foreign entities which meet high profit or assets based tests, and they must be subject to and comply with the listing rules of their overseas exchange.
- There is a special exemption for entities listed on the New Zealand Stock Exchange which have entry requirements similar to a standard ASX Listing.

### STANDARD ASX LISTING

- A foreign company can list on ASX as its primary exchange by going through the same process and satisfying the same tests and criteria as any Australian company looking to float on ASX as an ASX Listing.
- The foreign company must be registered as a foreign company carrying on business in Australia.

In May 2022  
There were:

48 foreign companies  
listed under the **ASX  
Foreign Exempt Listing**  
category.

111 foreign companies  
listed as standard **ASX  
Listings**.

Source: ASX



Trades on ASX are settled through the electronic CHESSE system. However, the shares of some foreign ASX-listed companies cannot be settled through CHESSE. To address this problem, depository receipts are issued for trading on ASX. These are CHESSE Depository Interests and give the holder a beneficial interest in the underlying shares of that foreign company.



# Preparation

## Key listing criteria

A company must satisfy various criteria set out in ASX Listing Rules before it can be listed on ASX. The key criteria include:

<b>Spread</b>	The company must have at least 300 non-affiliated security holders, each of which holds a minimum parcel of shares that are not subject to escrow restrictions with a value of at least \$2,000. Note that ASX has discretion to require a certain minimum number of Australian-based shareholders.		
<b>Minimum issue price</b>	Securities issued under the prospectus must have a minimum issue price of 20 cents.		
<b>Free float</b>	The company must have a free float at the time of admission of at least 20% (being securities that are not subject to escrow restrictions and are held by non-affiliated / non-related shareholders).		
<b>Audited accounts</b>	<p>The company will be required to disclose to ASX certain audited accounts based on whether admission is sought under the profit test or assets test, and provision of a reviewed pro forma statement of financial position.</p> <table> <tr> <td> <b>Profit test</b> <ul style="list-style-type: none"> <li>Audited accounts of the company for the last 3 full financial years.</li> <li>Audit or reviewed accounts for the last half year if the last full financial year ended more than six months and 75 days before the listing application date.</li> <li>If the company acquired (or proposes to acquire with its listing) another entity or business in the last 3 years, audited accounts of that entity or business (to the extent their results have not been consolidated into the audited accounts of the company), and (if applicable) audited or reviewed accounts for the most recent half year.</li> <li>Pro forma statement of financial position reviewed by auditor or independent accountant (unless ASX agrees otherwise).</li> </ul> </td><td> <b>Assets test</b> <ul style="list-style-type: none"> <li>Audited accounts for the last 2 full financial years.</li> <li>Audited accounts for the last half year if the last full financial year ended more than six months and 75 days before the listing application date.</li> <li>If the company acquired (or proposes to acquire with its listing) another entity or business, that is 'significant' in the context of the company, audited accounts for the last 2 full financial years for that entity or business, and (if applicable) audited or reviewed accounts for the most recent half year.</li> <li>Pro forma statement of financial position reviewed by an auditor or independent accountant (unless ASX agrees otherwise).</li> </ul> </td></tr> </table>	<b>Profit test</b> <ul style="list-style-type: none"> <li>Audited accounts of the company for the last 3 full financial years.</li> <li>Audit or reviewed accounts for the last half year if the last full financial year ended more than six months and 75 days before the listing application date.</li> <li>If the company acquired (or proposes to acquire with its listing) another entity or business in the last 3 years, audited accounts of that entity or business (to the extent their results have not been consolidated into the audited accounts of the company), and (if applicable) audited or reviewed accounts for the most recent half year.</li> <li>Pro forma statement of financial position reviewed by auditor or independent accountant (unless ASX agrees otherwise).</li> </ul>	<b>Assets test</b> <ul style="list-style-type: none"> <li>Audited accounts for the last 2 full financial years.</li> <li>Audited accounts for the last half year if the last full financial year ended more than six months and 75 days before the listing application date.</li> <li>If the company acquired (or proposes to acquire with its listing) another entity or business, that is 'significant' in the context of the company, audited accounts for the last 2 full financial years for that entity or business, and (if applicable) audited or reviewed accounts for the most recent half year.</li> <li>Pro forma statement of financial position reviewed by an auditor or independent accountant (unless ASX agrees otherwise).</li> </ul>
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# Preparation

## Key listing criteria continued

To be admitted to the official list of ASX a company must satisfy either the profit test or the assets test. Both tests require the company to satisfy certain criteria, including the provision of certain audited accounts and a reviewed pro forma statement of financial position.

### PROFIT TEST

- The company must have conducted the same main business activity for the last 3 full financial years.
- The company must be a going concern or the successor of a going concern.
- At least \$1 million aggregated profit from continuing operations for past 3 full financial years.
- At least \$500,000 consolidated profit from continuing operations for the 12 months to a date no more than 2 months before the date of the listing application.
- A statement in the prospectus confirming that the directors have made enquiries and nothing has come to their attention to suggest that the entity is not continuing to earn profit from continuing operations up to the date of the prospectus.

### ASSETS TEST

- At least \$4 million net tangible assets (after deducting the costs of fund raising); or
- A market capitalisation of at least \$15 million.
- \$1.5 million in working capital (current assets less current liabilities - as shown in the reviewed pro forma statement of financial position).
- Less than half the company's total tangible assets (after raising any funds) must be in cash or a form readily convertible to cash, or the company must have commitments consistent with its business objectives to spend at least half of its cash and assets readily convertible to cash.
- Statements in the prospectus:
  - of the objectives the entity is seeking to achieve from its listing and any capital raising undertaken; and
  - that the company has sufficient working capital to carry out its stated objectives.



# Preparation

## Escrow

There may be shares which are subject to escrow (and become 'restricted securities'), either as a result of a mandatory escrow imposed by ASX in accordance with the Listing Rules, or a voluntary escrow required by a lead manager/underwriter.

### MANDATORY ESCROW

Mandatory escrow is a restriction that may be imposed by ASX on the ability of certain shareholders of the company to sell a number of their shares for a period of time.

- Mandatory escrow only applies to listings admitted under the 'Assets Test'. There is no mandatory escrow where a company is admitted under the 'Profit Test'.
- The rationale for ASX imposed escrow is to prevent founders or related parties from exiting as shareholders straight after the IPO and making a profit before the company has built up a post-IPO track record.
- The parties who are usually subject to ASX imposed escrow are related parties, promoters and their associates, seed capitalists, vendors of "classified assets", and certain professional advisers and consultants. ASX may grant relief to mandatory escrow in certain circumstances.
- Mandatory escrow usually applies for either 24 months or up to 12 months, depending on the shareholders relationship with the company, how they acquired their shares and the price paid for those shares.

- The number of shares to be escrowed is determined by the 'cash formula', which factors in the discount (if any) received by the shareholder to the offer price of the shares under the IPO.

### VOLUNTARY ESCROW

Voluntary escrow is imposed by the lead manager/underwriter.

The purpose behind voluntary escrow is to assist the lead manager/underwriter with marketing the IPO so that it can assure investors that major shareholders, including strategic shareholders, will not sell down immediately after the IPO which can adversely affect the share price.

**Mandatory escrow only applies to listings under the 'Assets Test'. There is no mandatory escrow where a company lists under the 'Profit Test'.**





# Preparation

## ASX discretion to reject application

Even if an applicant can complete all the preparation work and satisfy the various criteria for listing, it is important to understand that ASX has an **absolute discretion** to reject a listing application if it does not consider that the applicants' structure and operations are appropriate for a listed entity.

ASX has amended the ASX Listing Rules and updated ASX Guidance Note 1 *Applying for Admission – ASX Listings* to emphasise that ASX has an **absolute discretion** in deciding whether to admit an entity and quote its securities.

ASX has outlined some examples where it may exercise this discretion:

- where it has concerns that the applicant's structure, business, financial condition, governance arrangements, board or management may not be suitable for a listed entity; or
- where the applicant is established, or its main business operations are in an emerging or developing market and ASX has concerns about the regulatory environment or business ethics in that market.

For this reason, it is important to engage with ASX early to introduce the business that is seeking to list.



ASX has used this discretion to reject at least 120 applicants from listing since 2016.  
(Source: ASX)



# Due diligence and disclosure

## Disclosure requirements

The Corporations Act requires a company seeking to raise funds through the offer of securities to issue a disclosure document called a prospectus which must be lodged with ASIC. The ASX Listing Rules require the prospectus and additional documents to be given to ASX for its consideration in assessing the listing application.

### GENERAL INFORMATION REQUIREMENTS

A full prospectus must contain all the information about the company that investors and their professional advisers would reasonably require to make an informed assessment of the:

- assets and liabilities, financial position and performance, profits, losses, and prospects of the company, and
- rights attaching to the securities being offered.

ASIC Regulatory Guide 228 offers guidance on ASIC's expectations regarding the content of prospectuses.

### SPECIFIC DISCLOSURE REQUIREMENTS

There is also certain prescribed information which must be included in a prospectus such as:

- terms and conditions of the offer,
- the nature and extent of the interests held by any directors, advisors, promoters or underwriters of the company, and
- the amount of any benefit anyone has given or agreed to pay or give to a director to induce them to become a director of the company, or for services provided by advisors, promoters or underwriters in connection with the offer of the securities.



# Due diligence and disclosure

## Reasonableness, knowledge and public information

The disclosure requirements are qualified so that a prospectus will only have to include the information based on the following:

**Reasonableness** - disclosure is only required to the extent which it is reasonable for investors and their professional advisors to expect to find the information in a prospectus.

**Knowledge** - the information must only be included if a 'relevant person' (which includes the company, a director, proposed director, underwriter or expert) actually knows the information or in the circumstances, ought reasonably to have obtained the information by making inquiries.

**Public Information** – in deciding what information should be included, regard must be had to:

- the nature of the securities and the body issuing the securities,
- the matters that likely investors may reasonably be expected to know, and professional advisors.



# Due diligence and disclosure

## Disclosure requirements

### Liability

One effect of the disclosure requirements is that each relevant person faces potential liability regarding information actually known, or which ought reasonably to have been obtained by making enquiries.

As the standard includes information that ought reasonably to have been known, wilful ignorance will not be enough for a relevant person to avoid liability. Given this requirement, **it is important to establish a due diligence process** to ensure that reasonable enquiries are made.

### Due diligence and defences

A person may have a defence to liability under section 728 and 729 of the Corporations Act if they can establish they:

- made all inquiries (if any) that were reasonable in the circumstances, and

- after doing so, believed on reasonable grounds that the statement was not misleading or deceptive, or that there was no omission from the prospectus in relation to the matter, or can establish they placed reasonable reliance on information given to them:
  - if the person is a body - someone other than a director, employee or agent of the body, or
  - if the person is an individual - someone other than an employee or agent of the individual.

Because of this defence, a person potentially liable may be able to rely on information provided to them by someone else as part of the due diligence process.

However, there are other statutory grounds of both criminal and civil liability that arise from making or publishing false or misleading statements in connection with the securities of a company, many of which do not have statutory defences.



# Due diligence and disclosure

## Contravention of disclosure requirements

The key prohibition in the disclosure obligations is section 728 of the Corporations Act.

A person must not offer securities under a prospectus if:

- there is a misleading or deceptive statement in the prospectus or in the application form,
- there is an omission from the prospectus of information that must be included, or
- a new circumstance has arisen since the prospectus was lodged that would have been required to be disclosed under the general disclosure.

A person will be taken to make a misleading statement about a future matter if the person did not have reasonable grounds for making the statement (see below on financial forecasts).

Section 729 of the Corporations Act states that a person who suffers loss or damage because of an offer of securities under a disclosure document that contravenes subsection 728(1) may recover the amount of the loss or damage from the person potentially liable to the extent of their liability. This is so even if the person did not commit, and was not involved in, the contravention.



# Due diligence and disclosure

## Who has prospectus liability?

### These people...

### are liable for loss or damage caused by...

The person making the offer	any contravention of section 728 in relation to the prospectus
Each director of the body making the offer	any contravention of section 728 in relation to the prospectus
A person named in the prospectus with their consent as a proposed director of the body whose securities are being offered	any contravention of section 728 in relation to the prospectus
An underwriter to the issue or same named in the prospectus (with their consent)	any contravention of section 728 in relation to the prospectus
A person named in the disclosure document with their consent as having made a statement: <ul style="list-style-type: none"><li>▪ that is included in the disclosure document, or</li><li>▪ on which a statement made in the disclosure document is based</li></ul>	the inclusion of the statement in the prospectus
A person who contravenes, or is involved in the contravention of, subsection 728(1)	that contravention





# Liability regime for forecasts

## Financial forecasts – investigating accountant's report

The underwriter or lead manager will often advise a company that financial forecasts are necessary in order to generate demand for shares in the institutional market. Without a forecast demonstrating business growth, it is more difficult to articulate an investment thesis for professional investors around pricing for that growth.

Market practice is to appoint an investigating accountant to review and opine on the financial forecasts to establish a reasonable basis for making those future statements. The length of the forecast, the predictability of the revenue and costs of the business and the availability of audited numbers will all impact on the timetable for preparation of the investigating accountant's report.



The onus of proof for statements in a prospectus as to future matters is reversed.

Under section 728(2) *“A person is taken to make a misleading statement about a future matter ... if they do not have reasonable grounds for making the statement”*

A person commits an offence if the misleading statement is *“materially adverse from the point of view of an investor.”* (section 728(3)).



# Due diligence and disclosure

## Objectives of due diligence

To rely on the due diligence defences, an appropriate and focussed due diligence process should be established and rigorously followed. The process should be focussed on the identification of material issues relating to the company and its business, assets and liabilities. The primary objectives of the due diligence are:

- to ensure that the prospectus complies with the disclosure requirements and does not contain a false, misleading or deceptive statement, or omit any information,
- there are reasonable grounds for making statements about future matters (such as forecasts and projections), and
- after lodgement, ensure a process is in place to identify any new matters which arise that would require additional disclosure.



# Due diligence and disclosure

## Process for verification / due diligence

1	<b>Review and scoping</b>	<p><b>DDC:</b> Establish a due diligence committee, agree scope, action plan and materiality level for due diligence process and delegate tasks to reporting persons</p> <p><b>Board:</b> Approve due diligence planning memorandum</p> <p><b>Legal Advisers:</b> Develop due diligence checklists, develop directors, senior management and corporate questionnaires and advise on the Australian legal requirements for the prospectus and the due diligence process</p>
2	<b>Detailed inquiry</b>	<p><b>DDC:</b> Regularly hold due diligence committee meetings to identify and track material issues, have them adequately investigated, and oversee the recording of the due diligence process in appropriate documentation</p> <p><b>Management:</b> Respond to directors and management questionnaires, make commercial and financial enquiries and provide source information for review by the due diligence committee and experts</p> <p><b>Reporting Persons (accountants, legal advisers and experts):</b> Commence legal, accounting and tax reviews and identify key issues, review and comment on drafts of the prospectus</p> <p><b>Corporate Adviser:</b> Draft prospectus with input from management, accountants, legal advisers and experts</p>
3	<b>Verification &amp; sign-offs</b>	<p><b>DDC:</b> Oversee verification of prospectus</p> <p><b>Management:</b> Provide sign-offs on identified issues and due diligence process conducted</p> <p><b>Reporting Persons:</b> Provide DD report on any investigations it has been required to undertake and provide required sign-offs</p> <p><b>Legal Adviser:</b> Assist in verification of prospectus</p>
4	<b>Approval &amp; lodgement</b>	<p><b>DDC:</b> Provide DDC report to the board, and for the benefit of each member and their representative</p> <p><b>Board:</b> Approve prospectus</p>
5	<b>Continuing due diligence</b>	<p><b>DDC:</b> Monitor circumstances after lodgement of prospectus and consider need for a supplementary or replacement prospectus and hold final DDC meeting</p> <p><b>Reporting Persons:</b> Provide any additional sign-offs</p>



# Due diligence and disclosure

## Directors requirements

ASIC issued a report in July 2016 (called Report 484) which found that the involvement of directors in many IPO processes is superficial and a 'box ticking' and directors were not turning their mind to the key due diligence issues or taking an active involvement in identifying risks.

ASIC's recommendations on effective due diligence coming out of that report include requirements on directors to ensure that:

- ✓ substance takes precedence over form and the company needs to show documentation that proves the company and its advisers carried out a thorough and investigative due diligence process;
- ✓ directors take responsibility for ensuring a robust due diligence process;
- ✓ apply an independent mind to the due diligence process and directors need to assess the completeness, accuracy and reliability of all statements in the prospectus;
- ✓ directors engage in robust dialogue with management and expert advisers in the due diligence process; and
- ✓ directors need to ensure that all issues that are red-flagged are followed up and resolved.



Download the report here: <https://download.asic.gov.au/media/3935850/rep484-published-14-july-2016.pdf>



# The offer

## Marketing the offer

The company will, with its corporate adviser, devise a strategy for how the IPO will be structured, priced and marketed. The company can make a combination of offers to different types of investors. Common offers include:

**Retail offer:** An offer to the public generally

**Wholesale / institutional offer:** An offer to sophisticated or professional investors

**Broker offer:** An offer through a broker to retail clients

**Priority offer:** An offer to specific people in priority (for example employees, Chairman's list)



# The offer

## Pricing

The investment bank or stockbroker managing the offer will usually provide advice on an appropriate price structure. As an inducement, the offer price is often set at a price that will result in solid performance in the secondary market after the listing. Common pricing structures include:

**FIXED PRICE OFFER:** This is a common approach for smaller IPOs, and are often underwritten. Under a fixed price offer, the price is fixed in the prospectus. However, a draft prospectus is sometimes issued to assess demand and provide an indication of an appropriate price. Typically the underwriter will fill the institutional book before the commencement of the offer period to mitigate its risk and enable confidence around the price of the retail component of the offer (called a 'front end book build').

**OPEN PRICE OFFER:** Usually used for larger listings that require a longer period to build institutional support for the offer. Typically the offer period will have two components:

- a retail offer period – which runs for a period (approximately three weeks) and provides a fixed price, and
- an institutional offer period – which runs for up to one week, usually on the basis of a price range specified in the prospectus (called a 'back end book build' process). The institutions provide commitments of the number of shares they are likely to subscribe for, and the price they are prepared to pay.

## Advertising

There are strict restrictions on advertising an IPO before the prospectus is lodged with ASIC. This is directed at protecting retail investors, to ensure they have all information contained in the full prospectus. Certain marketing activities can be undertaken to sophisticated and professional investors. Once the prospectus is lodged, the marketing restrictions largely fall away. Typically leading up to the opening of the offer and after the offer opens, management of the company together with the corporate adviser will engage in road show presentations to key investor groups.



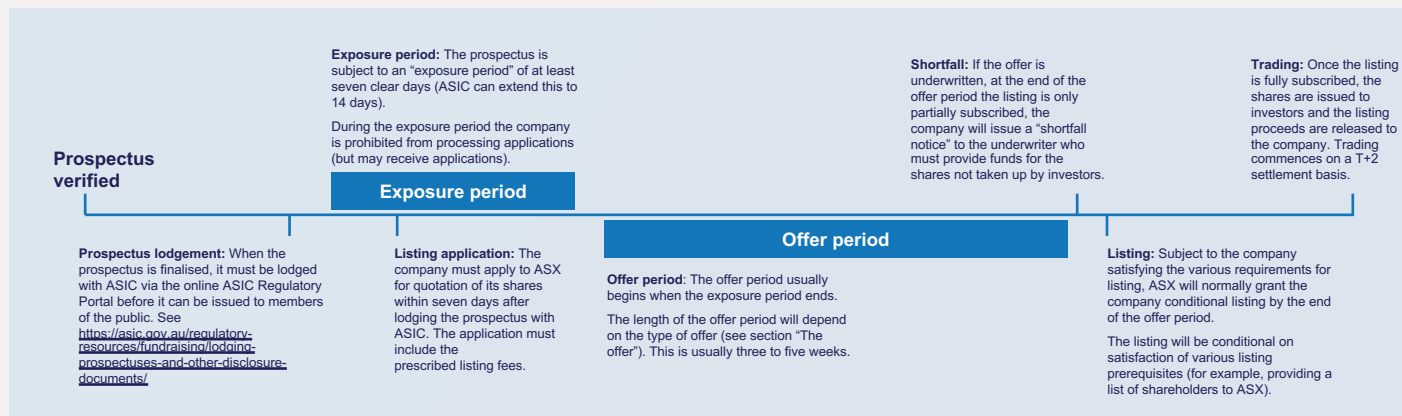


# Listing

## Timetable once prospectus has been verified

ASX requires **four to six weeks** to consider a listing application and notify the applicant of its decision on whether or not to admit the applicant, from the time the completed Appendix 1A – *ASX Listing Application*, prospectus and all other required supporting documents are lodged with ASX.

ASX may agree to a fast-track process where it reviews a listing application based on a draft Appendix 1A and prospectus, and draft or final copies of all other supporting documents lodged with ASX (no less than 4 weeks before lodgement of the final Appendix 1A and prospectus). By doing this, listing may occur approximately two weeks after lodgement of the final documents with ASX. This means the offer can be launched within a week of the offer becoming public knowledge, rather than four to six weeks using the traditional process.





# Part C

## About Hamilton Locke

# About Hamilton Locke

As Australia's fastest growing law firm, Hamilton Locke is a law firm with a difference. We are focused on transforming the traditional approach to corporate and commercial legal counsel. We react quickly to change while continuously driving maximum value for clients, and we hire and develop the best talent from across the globe. By making use of modern systems and technology, our team is freed up from bureaucracy and administration to really focus on doing what they do best – solving complex client problems.

With our main offices in Sydney, Melbourne, Brisbane and Perth, our clients are located across Australia and internationally. We are able to look after our clients, no matter where they are located, in an efficient and seamless manner.

We are also consistently recognised by clients and leading legal research publications for our legal expertise and service. We have been recognised as one of Australia's top 40 law firms by the *Australian Financial Review*. We have also received over 80 awards and recognitions, including *MergerMarket*, *Doyle's*, *Australasian Lawyer*, *Best Lawyers*, *Chambers and Partners*, and *Legal 500*.



We are true industry experts focused on solving complex client problems. We create an environment that attracts and retains the best legal experts who work smart and have interests aligned with clients.



We have invested in state-of-the art systems, including automation, process mapping and outsourcing to deliver the most efficient and effective service and create products tailored to the unique needs of our clients.



We develop the best pricing approaches with our clients to strike the right balance of fairness, certainty and risk-sharing.



We invest time at our cost to understand our clients' objectives, risk appetites and operating styles.



# Areas of expertise

Our expertise spans the corporate and commercial legal sphere and for each representation we build a team to best to serve the needs of our client. Our areas of expertise include:

- Corporate, M&A and Private Equity
- Capital Markets
- Funds and Financial Services
- Real Estate and Projects
- Litigation and Dispute Resolution
- Restructuring and Insolvency
- Banking and Finance
- Intellectual Property and Technology
- Workplace and Employment

We also have experience in a broad spectrum of industry sectors including agribusiness, financial services, new energy, carbon, real estate, natural resources, technology, and health, care and education.



Best Lawyers rated for Corporate, Distressed Investing & Debt Trading Practice, Private Equity, Venture Capital, Banking and Finance, Occupational Health and Safety and Commercial, Information Technology



Chambers rated for Private Equity, Investment Funds, Restructuring and Insolvency

# Why Hamilton Locke

## Vast experience in preparing companies for IPO by:

- conducting due diligence on: corporate registers, material contracts and assets, IP and IT systems, employment (compliance with workplace legislation and contract reviews), property and leasing, litigation, environmental, licences and permits;
- conducting pre-IPO restructures; and
- introducing appropriate corporate governance processes.

## Experience in advising clients on IPO process including:

- due diligence committee meetings;
- prospectus verification process;
- review of underwriter agreements;
- initial escrow assessment; and
- identifying any material impediments to listing.

## Flexible approach such as:

- fixed price costing; and
- phased fee arrangements (where scope of work can be phased and priced separately with only a % of the estimate payable if the transaction does not progress to the next phase).



# Experience

## Snapshot of experience



Advised Primewest on its A\$350m IPO and ASX listing



Advised JLMs (Moelis Australia and Shaw & Partners) on Pivotal Systems Corporation's A\$206m IPO and ASX listing



Advised OneView Healthcare on its A\$195m IPO and ASX listing\*



Advised Sundance Energy Australia on its redomiciliation from Australia to the US and Nasdaq listing\*



Advised Cettire on its A\$190m IPO and ASX listing\*



Advised JLMs (Bell Potter and Morgans) on ai Media's A\$177m IPO and ASX listing



Advised afterpay on its A\$165m IPO and ASX listing\*



Advised Bravura Solutions on its A\$311m IPO and ASX listing\*



Advised Achiko AG on its listing on SIX Swiss Exchange and capital raisings\*



Advised JLMs (Moelis Australia, Ord Minnett and Shaw & Partners) on Elanor Commercial Property Fund's A\$255m IPO and ASX listing

*Note: transactions with an \* were undertaken by team members at their previous firms*



# Experience

## Snapshot of experience



Advised Black Mountain Energy on its IPO and ASX listing\*



Advised Falcon Metals on its IPO and ASX listing\*

COSMOS

Advised Cosmos Exploration on its IPO and ASX listing\*



Advised Sarama Resources on its IPO and ASX listing.



Advised Argenica Therapeutics on its IPO and ASX listing\*



Advised Bellavista Resource on its IPO and ASX listing.



Advised Revolver Resources on its IPO and ASX listing\*



Advised Botala Energy on its IPO and ASX listing



Advised Green Technology Metals on its IPO and ASX listing\*



Advised Parabellum Resources on its IPO and ASX listing\*

*Note: transactions with an \* were undertaken by team members at their previous firms*



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# Our Corporate, M&A, Private Equity and Capital Markets teams



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Hal Lloyd  
Deputy Managing  
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Brett Heading  
Chairman of Partners



Andrew Black  
Executive Director –  
ASX Compliance



Gordon McCann  
Partner, Corporate



Brent Delaney  
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Patricia Paton  
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James Roberts  
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Lorenzo Ricchi  
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Ali Attia  
Lawyer, Corporate



John McDonagh  
Lawyer, Corporate



# Awards and Recognition

 <p><b>Australasian Lawyer</b></p> <p>Fast Firms Report 2021</p> <p>Employer of Choice 2020 - 2021</p> <p>Innovative Firms 2019 - 2020</p>	<p><b>Best Lawyers</b></p> <p><b>Best Lawyers (Australia / Global Edition)</b></p> <p>Ranked for:</p> <ul style="list-style-type: none"> <li>Agriculture and Rural Affairs</li> <li>Alternative Dispute Resolution</li> <li>Banking and Finance Law</li> <li>Corporate Law</li> <li>Distressed Investing &amp; Debt Trading Practice</li> <li>Equity Capital Markets Law</li> <li>Insolvency and Reorganization Law</li> <li>Information Technology</li> <li>Mergers and Acquisitions Law</li> <li>Mining Law</li> <li>Natural Resources Law</li> <li>Occupational Health and Safety Law</li> <li>Private Equity Law</li> <li>Structured Finance Law</li> <li>Venture Capital Law</li> </ul> <p>2020 -2023</p>	 <p>Lawyers Weekly Partner of the Year Awards</p> <p>Winner – Innovator of the Year NICK HUMPHREY   2020</p> <p>Finalist – Construction and Infrastructure VENO PANICKER   2018-2019</p>	 <p>Australasian Law Awards</p> <p>Excellence Award</p> <p>Employee Health and Wellbeing 2021</p> <p>Law Firm of the Year (1-100 lawyers) 2020</p>	<p><b>DOYLES</b></p> <p>Leading Corporate Lawyer BRETT HEADING   2022</p> <p>Recommended Leading Business and Commercial Lawyer BRETT HEADING   2022</p> <p>Preeminent Leading Business and Commercial Lawyer HAL LLOYD   2021</p> <p>Leading Business and Commercial Lawyer NICK HUMPHREY   2021</p> <p>Recommended Leading Corporate Lawyer PETE WILLIAMS   2022</p> <p>NICK HUMPHREY and HAL LLOYD   2020 – 2021</p> <p>Recommended Leading Energy and Resources Lawyer MATT BAUMGARTEL   2021</p> <p>Recommended Leading Corporate Law Firm   2019 – 2021</p> <p>Recognised Corporate &amp; Commercial Law Rising Star GRACE KAGGELIS   2022</p>	 <p>Financial Times Innovative Lawyers Asia-Pacific Awards</p> <p>Finalist, Law Firm Leader 2021 NICK HUMPHREY</p> <p>Finalist – Law firm: Strategy 2020</p>	 <p>Legal 500 Asia Pacific</p> <p>Ranked (Tier 6) Corporate and M&amp;A 2022</p> <p>Ranked (Tier 5) Restructuring and Insolvency 2021 - 2022</p> <p>Firm to Watch Banking and Finance 2022</p> <p>Ranked Partner Corporate and M&amp;A NICK HUMPHREY 2014 - 2017</p>	<p><b>Chambers AND PARTNERS</b></p> <p><b>Global Guide</b></p> <p>Ranked Practice (Band 6) Corporate M&amp;A   2022</p> <p><b>Asia Pacific Guide</b></p> <p>Ranked Practice (Band 5) Corporate M&amp;A   2022</p> <p>Ranked Practice (Band 6, 5) Restructuring and Insolvency   2021 - 2022</p> <p>Investment Funds (Band 2) BRENDAN IVERS   2014 – 2022</p> <p>Restructuring and Insolvency (Band 4) ZINA EDWARDS   2022 NICHOLAS EDWARDS   2022</p> <p>Private Equity (Band 4) NICK HUMPHREY   2012 – 2021</p>
 <p>ACQ Law Awards</p> <p>M&amp;A Law Firm of the Year and M&amp;A Lawyer of the Year NICK HUMPHREY 2019</p>	 <p>ACQ Global Awards</p> <p>M&amp;A Law Firm of the Year, Private Equity Law Firm of the Year and M&amp;A Lawyer of the Year NICK HUMPHREY 2016 – 2019</p>	 <p>Australasian Lawyer Rising Stars</p> <p>Recognised Lawyer MONTY LOUGHLIN 2021</p>	 <p>Lawyers Weekly Australian Law Awards</p> <p>Finalist - Employee Program of the Year   2019</p> <p>Finalist - Wellness Initiative of the Year   2019</p>	 <p>Mergermarket Australian M&amp;A Awards</p> <p>Winner - Boutique Legal Adviser of the Year   2019</p> <p>Finalist - Business Services M&amp;A Legal Adviser of the Year   2019</p>	 <p>AFR Law Partnership Survey</p> <p>Top 50 Australian Law Firm 2021</p>	 <p>Australasian Law Awards</p> <p>Law Firm Leader of the Year (&lt;200 lawyers) NICK HUMPHREY 2020 -2021</p>	<p><b>IFLR 1000</b></p> <p><b>IFLR1000 Guide to the world's leading financial and corporate law firms</b></p> <p>Ranked (Tier 4) 2021 – Private Equity</p> <p>Leading individual 2008 to 2016 – NICK HUMPHREY</p>



# Awards Programs



The Australian Growth Company Awards were launched in 2012 by Hamilton Locke's managing partner Nick Humphrey to celebrate excellence in the mid-market. The awards recognise companies that demonstrate high rates of growth, as well as innovation, integrity, contribution to community and sustainable growth.

The awards are proudly co-sponsored by Hamilton Locke, Moelis Australia, Grant Thornton, Ansarada, Source, 2020 Exchange and Willis Towers Watson, as well as media partner, MergerMarket.

Nominations open in July each year for eligible Australian companies. Participating in the awards gives you and your company the opportunity to:

- Gain industry recognition for high growth rates, innovation, integrity, contribution to the community and sustainable growth
- Raise your business profile through positive media exposure and publicity
- Network with the leaders of the award partner sponsors
- Attract interest from potential investors and business partners

[Visit Website](#)[Contact](#)

The Technology Scale-up Awards celebrate disruptive Australian technology businesses that demonstrate high rates of growth and industry-leading innovations, while making a significant impact in their industry sectors.

The awards are proudly co-sponsored by Hamilton Locke, Moelis Australia, Grant Thornton, Ansarada, Source and MacMillan Trade Marks.

Nominations open in April each year for eligible Australian companies. Participating in the awards gives you and your company the opportunity to:

- Attract interest from potential investors and business partners
- Become part of the Technology Scale-Up Awards ecosystem, including access to exclusive industry events throughout the year
- Gain industry recognition for high growth rates, innovation, integrity, contribution to the community and sustainable growth
- Raise your business profile through positive media exposure and publicity

[Visit Website](#)[Contact](#)

**Hamilton Locke** and **Source** come together to provide the most practical and effective combination of professional services in the market, no matter your business size or need.

Highly regarded for their commercially-minded approach, **Source** provides a different approach to essential day-to-day professional services. The team can provide a whole team, or supplement your current team with additional legal, HR, governance, IP and compliance specialists. Source adds specialist expertise to our depth and breadth of experience at **Hamilton Locke**.

The result is a team and business model unlike any other.

We know our clients need flexibility, the highest quality service and an unmatched depth of experience to do their best work, and we don't want to just deliver – we want to deliver differently.

# Thank you.

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**BRISBANE**

Riverside Centre  
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Brisbane QLD 4000

**MELBOURNE**

Level 13, 461 Bourke Street  
Melbourne VIC 3000

**PERTH**

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Level 27, 152-158 St Georges Terrace  
Perth WA 6000

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## hamiltonlocke.com.au

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