



**NOW
YOU
KNOW**
INDEPENDENT
EXPERTS'
REPORTS



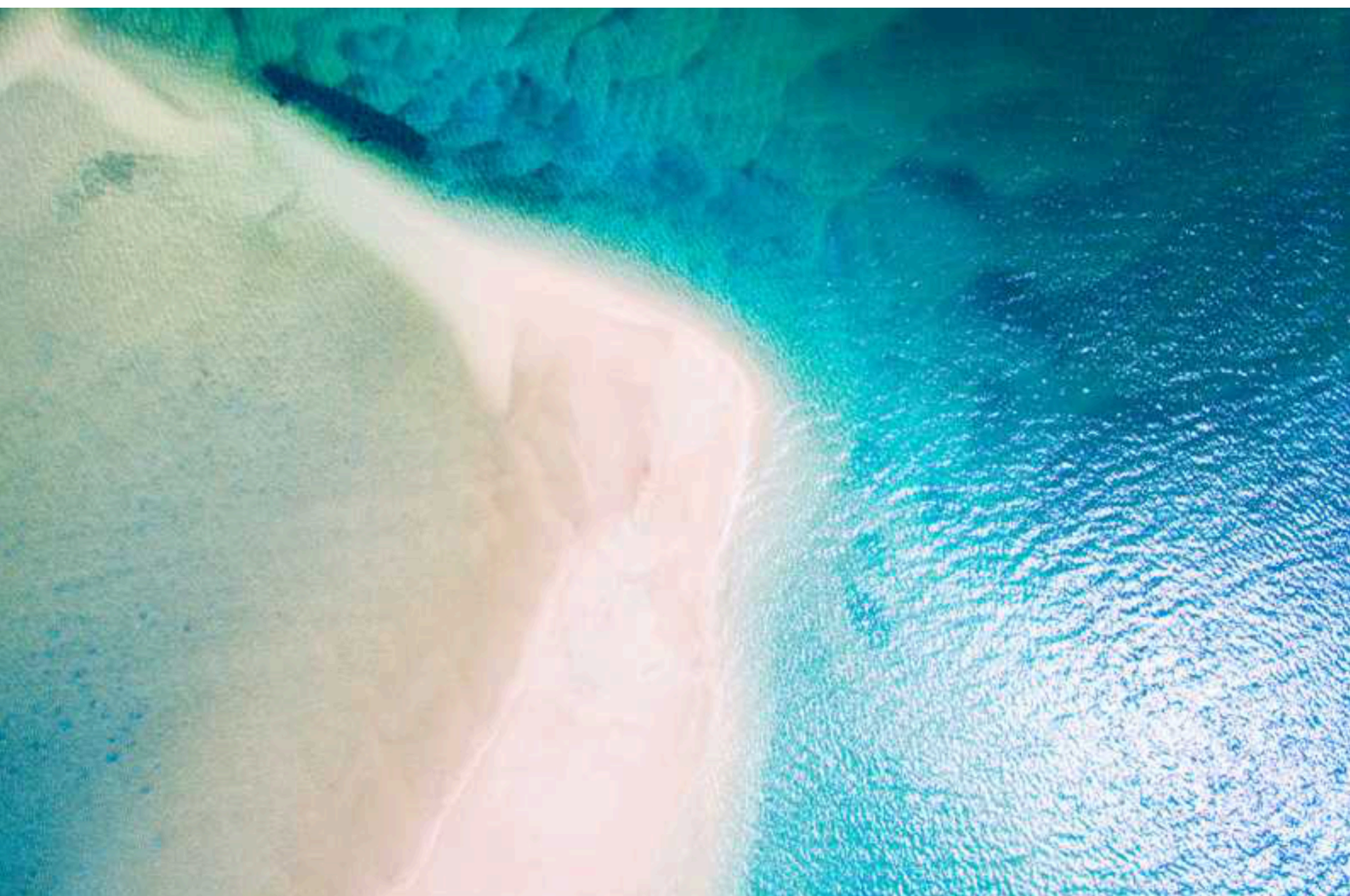


NOW YOU KNOW INTRODUCTION

What is an Independent Expert's Report?

An Independent Expert's Report (IER) provides impartial and credible advice to investors on the merits of a proposed transaction – and contains an opinion as to whether that transaction is fair and reasonable to shareholders or is in their best interests.

In other words, in addition to providing security holders with an independent assessment of whether the value of the consideration is at least equal to the value of the offer, the report also sets out an unbiased assessment of the commercial implications to security holders if the transaction proceeds.



NOW YOU KNOW WHEN YOU NEED AN IER

There are several instances where there is a statutory requirement for an IER. There are also some instances where there is no legal requirement but the Australian Securities and Investment Commission (ASIC) recommends the commissioning of an IER. It is also common market practice, in some circumstances, that IERs are voluntarily commissioned irrespective of the legislative requirement.

When should you get an IER?

The following are examples where IERs are either legally required or recommended by ASIC:

Related party transaction	Requirement
<p>TAKEOVER BID If the bidder's voting power is at least 30% of the target or the bidder and the target have a common director</p>	<ul style="list-style-type: none"> ❖ s640 of the Corporations Act
<p>SCHEME OF ARRANGEMENT An entity that is subject to a scheme of arrangement is required to commission an IER if the other party to the scheme holds at least 30% of the voting shares in that entity or if they have a common director</p>	<ul style="list-style-type: none"> ❖ Reg 5.1.01 and Schedule 8 clauses 8303 and 8306 of the Corporations Regulations 2001
<p>SALE OR PURCHASE OF A SUBSTANTIAL ASSET TO A RELATED PARTY An asset is a substantial asset if its value, or the value of the consideration for it is 5% or more of the equity interests of the entity as set out in the latest accounts given to the ASX under the listing rules</p>	<ul style="list-style-type: none"> ❖ Chapter 10 of the ASX Listing Rules
<p>FINANCIAL BENEFITS TO A RELATED PARTY PER CH 2E OF THE CORPORATIONS ACT If an exception does not apply, member approval is required for financial benefits provided to a related party of the public company</p>	<ul style="list-style-type: none"> ❖ No specific requirement for an IER, however, ASIC recommends IERs to be obtained as part of the materials accompanying the notice of meeting (s218, s219, s220 and s221) of the Corporations Act

Other transactions	Requirement
<p>ISSUE OR TRANSFER OF SHARES Where the acquirer's interest moves from below 20% to above 20% or between 20% and 90% (exception creep rules)</p>	<ul style="list-style-type: none"> ❖ ASIC's regulatory guide 74: Acquisitions Approved By Members, also refer to s611 of the Corporations Act
<p>TAKEOVER BIDS Bidder must commission an IER if the consideration paid by the bidder for acquiring a pre-bid stake includes unquoted securities</p>	<ul style="list-style-type: none"> ❖ s636 (1)(h)(iii) and s636(2) of the Corporations Act
<p>JOINT TAKEOVER BIDS OR JOINT SCHEMES OF ARRANGEMENT In joint bids or joint schemes of arrangement, the joint bidders or acquirers must use their best endeavours to have the target engage an independent expert to prepare a report</p>	<ul style="list-style-type: none"> ❖ ASIC's regulatory guide 9: Takeover Bids
<p>SCHEME OF ARRANGEMENT Where the parties are not related parties</p>	<ul style="list-style-type: none"> ❖ No legal requirement for an IER, however, it is common for scheme companies to commission an IER voluntarily
<p>COMPULSORY ACQUISITION As a result of the bidder reaching 90% ownership of the securities</p>	<ul style="list-style-type: none"> ❖ s664C and 667A of the Corporations Act
<p>COMPULSORY BUYOUT Bidder or 100% holder must commission an IER to inform holders of convertible securities of their right to be bought out</p>	<ul style="list-style-type: none"> ❖ s664C and 667A of the Corporations Act
<p>SELECTIVE CAPITAL REDUCTIONS Reducing the share capital of the company is authorised if the requirements of s256B(1) of the Corporations Act are met.</p>	<ul style="list-style-type: none"> ❖ s256C of the Corporations Act

Other transactions continued...	Requirement
<p>SHARE BUYBACK If a company proposes to buy back a significant percentage of shares or the holdings of a major shareholder</p>	<ul style="list-style-type: none"> ❖ ASIC Regulatory Guide 110 ShareBuybacks: the company should consider an independent expert's report with a valuation
<p>DEMUTUALISATION OF A FINANCIAL INSTITUTION</p>	<ul style="list-style-type: none"> ❖ Schedule 4 – Clause 29 of the Corporations Act
<p>DEED OF COMPANY ARRANGEMENT If a DoCA involves a transfer of shares an expert opinion may be required for ASIC relief from the relevant takeovers provisions and court approval of the transaction.</p>	<ul style="list-style-type: none"> ❖ Section 444 of the Corporations Act



NOW YOU KNOW

HOW TO EVALUATE TRANSACTIONS

ASIC's Regulatory Guide 111 (RG111) is designed to provide guidance for the independent expert on how they should evaluate a specific type of transaction. The following table summarises the criteria for evaluating different types of transactions as recommended by ASIC.

Transaction type	Criteria for evaluation of the transaction
TAKEOVERS AND OTHER CONTROL TRANSACTIONS EXCLUDING SCHEME OF ARRANGEMENTS, DEMUTUALISATIONS, COMPULSORY ACQUISITIONS AND BUY OUTS	❖ Fair and reasonable
SCHEME OF ARRANGEMENT AND DEMUTUALISATIONS	❖ Best interests
COMPULSORY ACQUISITIONS AND BUY OUTS	❖ Fair value

As per the Regulatory Guide, see below for the definitions of the criteria.

Fair and Reasonable

Control transactions

For takeover bids and other control transactions, fairness and reasonableness are to be treated as separate concepts, defined as:

Fairness: An offer is **fair** if the value of the consideration is at least equal to the value of the securities subject to the offer.

Reasonableness: An offer is reasonable if it is **fair**. However, an offer might be reasonable despite not being fair, if there are sufficient reasons for security holders to accept the offer in the absence of a higher bid before the close of the offer.

Approval for sale of securities

Where approval is sought for the sale of securities from one holder to another under section 611, **fair and reasonable** is treated as a compound test. The transaction is fair and reasonable if the advantages of the proposal outweigh the disadvantages to non-associated security holders.

Best Interests

The legislative test for schemes of arrangement requires a 'best interests' opinion. The best interests opinion for a control transaction is similar to the fair and reasonable test because:

- ❖ If the expert concludes that the transaction is fair and reasonable then it is in the best interests.
- ❖ If the expert concludes that the transaction is neither fair nor reasonable then it is not in the best interests.
- ❖ However, if the expert concludes that the proposal is not fair but reasonable, it is open to the expert to determine whether it is in the best interests of shareholders.

Fair Value

In relation to compulsory acquisitions and buy-outs, Chapter 6A of the Corporations Act requires that an expert:

- ❖ Provides an opinion on whether the proposed terms in the buy-out or acquisition notice provide a fair value for the securities; and
- ❖ Sets out the reasons for its opinion.

In accordance with s667C of the Corporations Act, to determine fair value an expert is required to:

- ❖ First assess the value of the entity as a whole;
- ❖ Then allocate that value amongst the classes of issued securities in the company;
- ❖ Then allocate the value of each class pro rata among the securities in that class.

In determining the fair value for the securities, an expert must also take into account the prices paid for the securities in the previous six months.



NOW YOU KNOW WHO IS INDEPENDENT

What is required for an expert to be considered independent?

An independent expert should always be independent and maintain the appearance of independence throughout the duration of the assignment.

ASIC sets out the independence requirements for an independent expert in its regulatory guide 112: Independence of Experts (RG 112). The key requirements include:

- ❖ The independent expert should have adequate procedures for the **management of conflicts** of interest and keep adequate records to demonstrate compliance with these procedures.
- ❖ Independent experts are required to provide a **genuine opinion**; they should not tailor their opinion based on the views of the commissioning party or any other interested party.
- ❖ An expert is required to **identify relationships and interests** that may affect or be perceived to affect the expert's ability to prepare an IER.
- ❖ An expert is required to **decline an engagement** under several circumstances including if the expert has acted as a:
 - lawyer
 - financial consultant
 - tax adviser
 - accountant
- ❖ Independent experts should **inform security holders** about any relationships or interest that could reasonably be regarded as relevant to the independence of the expert.
- ❖ In maintaining independence throughout the engagement, the following procedures should be observed:
 - It is preferable to appoint a non-executive director to oversee the assignment if management have a vested interest in the outcome of the transaction.
 - The expert's fee should not be linked to the outcome of the transaction.
 - The client should not reject an expert after the expert has disclosed their likely valuation approach.
 - The expert should not attend discussions relating to the development of transaction.
 - The client must not instruct the expert on the choice of valuation approach.
 - The expert should not discuss preliminary views or findings with the client or other interested parties or change opinion based on the client's suggestion, without adequate explanation.
 - The **information requirements** are to be determined by the expert and not the client.
 - The expert should only provide a full draft copy of the report to the commissioning party for factual checking when the expert is reasonably assured that the conclusions in the report are unlikely to change.

- Once 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 that affects an expert's analysis of the transaction or the expert's conclusions should be clearly and prominently disclosed in the report.
- The directors of a commissioning party should not adopt or recommend that security holders accept the findings of an expert report without critically analysing the report. The directors must ensure that the information relied upon by the expert is accurate and no material information has been omitted.
- The commissioning party should not release the conclusions of an IER in advance of the final report.
- An expert report may only be incorporated or referred to in a bidder's statement or target statement if the expert has consented to the use of the report in the form and context in which it appears.

Issues with the independence of some "independent" experts

ASIC has identified several instances where the 'independent expert' appointed was not acting independently:

- ❖ **'Opinion' provided by an interested party:** in 2013, Billabong International was required by ASIC to appoint a new independent expert after ASIC raised concerns about whether information provided by an interested party was an opinion rather than factual information and thus might have tainted the original independent expert's opinion.
- ❖ **'Licensee for hire':** in this case an expert was appointed to peer review another expert's work, provide research support and IER sign-off as the original expert was a wholesale licensee. ASIC was concerned that the second expert's compliance systems, including conflict checks and control over the engagement may not have extended to the wholesale licensee.
- ❖ **Self-review issues:** ASIC has raised concerns regarding a case where an independent expert reviewed their own work. The expert had previously provided a JORC estimate and was subsequently hired to provide an independent valuation of the same asset in accordance with VALMIN, which required a critical evaluation of the expert's own JORC estimate. As a result of ASIC's concerns, a second independent expert was appointed. The second expert reached a different opinion on the reliability of the original JORC estimate.

NOW YOU KNOW WHEN TO ENGAGE WITH AN EXPERT

Should you engage an expert prior to announcing a transaction?

In cases where the target's operations are particularly complex, the board of the target company might brief the independent expert if it is anticipating an offer, in order to meet statutory or desired timelines. This is often the case when the target operates in the energy or resources sector where the use of a subject matter expert is required or if the proposed transaction is likely to be very complex.

The familiarisation exercise:

- ❖ Can help expedite the process once a formal offer is received and alleviate time pressures to meet statutory or desired timelines.
- ❖ Allows the expert to begin analysis on the target's operations, industry and review transactions involving comparable companies.

If this approach is taken, it is important to be careful to ensure the expert is not influencing the transaction pricing or terms.



NOW YOU KNOW THE IER PROCESS

What information is required for an IER?

The information typically required for IERs includes:

Transaction

- ❖ Transaction documentation

General information

- ❖ Recent strategic plans, business plans or other strategy documents
- ❖ Brief corporate history
- ❖ Legal structure (including list of shareholders) and management structure
- ❖ Opportunities and risks of the company
- ❖ Board papers

Financial information

- ❖ Consolidated financial statements for the last three financial years
- ❖ Management accounts for the year
- ❖ Financial projections for the business

Market information

- ❖ Relevant industry reports and statistics
- ❖ Information on the competitive landscape

How long does an IER take to prepare?

The full IER process takes between four to six weeks to complete, however, this is only an indication as the timing is dependent on a number of factors such as the complexity of the transaction, whether the transaction is a friendly or hostile one, the nature of the business being valued or whether a technical expert is required. The typical timing for each milestone is as follows:

- ❖ **Factual draft IER:** within two to three weeks of our engagement, provided we receive all required information on a timely basis.
- ❖ **Full draft IER:** (including draft conclusions): within one to two weeks from the receipt of comments on the factual draft IER.
- ❖ **Final IER:** within three business days of receipt of comments on the full draft IER.

NOW YOU KNOW WHO TO CALL FOR QUALITY IERS

Introducing Leadenhall

Leadenhall was established in 1982 and is a leading Australian independent corporate advisory firm specialising in the valuation of businesses, intangible assets and intellectual property. We are a group of highly experienced valuation professionals, many with 'Big 4' corporate finance and valuations experience. Our approach is hands-on, flexible, transparent and responsive, with a commercial mindset. Through our extensive technical and commercial experience, our contacts and industry knowledge, we offer clients high quality commercial valuation advice to support decisions and assist in satisfying regulatory and compliance obligations.

Why Leadenhall?

Beyond being careful, unbiased and experienced, a major advantage for our clients is that Leadenhall can quickly and comprehensively deliver you with a defensible IER. In particular, Leadenhall provides you with reports that:

- ❖ **Withstand scrutiny:** you'll be working with a team that is experienced in providing reports for review by regulators (including ASIC and ASX) and other interested parties such as bidders in hostile takeovers and disgruntled shareholders. We have a strong track record of reports needing little or no changes during the regulatory review process.
- ❖ **Are easily understood:** while we analyse transactions comprehensively, we focus on providing reports that make the complex simple and can be easily understood by the board, retail shareholders and other interested parties.
- ❖ **Are delivered quickly:** significant involvement of our report signatories throughout the process combined with no unnecessary internal 'red tape' ensures a quick turnaround without compromising quality. We have prepared IERs in under two weeks and can quickly respond to changes in transactions or new information, for example having recently updated a report within one day to reflect substantially changed transaction terms.
- ❖ **Have a fixed and reasonable fee:** we commit to not billing more than our agreed fees unless there are significant changes to the scope of our work. We know all processes have some inefficiencies and will not seek to charge you additional fees for minor delays or similar inconvenience. We also believe our fees are reasonable for the level of analysis we undertake and careful drafting of our reports.
- ❖ **Will not waste your time:** our experience providing IERs for a wide range of transactions and industries, coupled with the hands-on involvement of our senior team, means we minimise the amount of time you need to spend assisting us with our analysis.

NOW YOU KNOW WHO ELSE TURNS TO LEADENHALL

Independent Expert's Reports

The Leadenhall team has extensive experience in the preparation of IERs, involving many different types of transactions and across many different industries. Our IER clients have included:



Corporate experience

We also have experience with a wide range of corporate clients, including:



NOW YOU KNOW YOUR IER TEAM

Leadenhall's team members are dedicated valuation professionals and include former directors of 'Big 4' accounting firms. They have prepared IERs and other valuations for many listed and private companies.

Who will personally work on your IER?



RICHARD NORRIS
Director



KATY LAWRENCE
Director



NATHAN TIMOSEVSKI
Director



SIMON DALGARNO
Director



ANDREW STEERE
Director



FUNG YEE
Director



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