



INDEPENDENT EXPERT REPORTS

What you need to know

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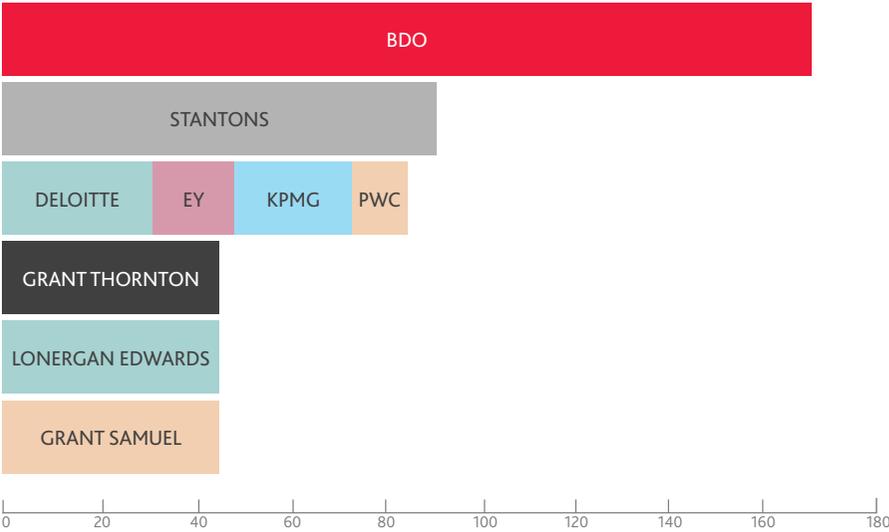
Directors of public companies which are the subject of a merger, takeover or other material corporate transaction are often faced with a difficult decision—to recommend the transaction or not? Shareholders receive a plethora of information from the company, counter-parties and the media about transactions and are usually left asking critical questions such as—what is the most objective information regarding this transaction?

An independent expert's report (IER) in the context of a corporate transaction is commissioned and prepared to address these and other similar questions by public company shareholders to assist them to make a decision regarding the transaction.

BDO is a market leader in the preparation of IERs across a range of transaction types and sizes for a number of different industry sectors.

We have compiled this e-Book which provides an overview of the process for the development of IERs, the roles your company and its advisers play in this process, and the deliverables you can expect in an IER engagement.

BDO IS THE MARKET LEADER IN THE PREPARATION OF IERS



Number of IERs for FY2013-2016 (Top 6 including Big 4) Source: Connect4



IER WHAT YOU NEED TO KNOW

1 WHEN DO YOU NEED AN IER?

2 PROCESSING AND TIMING

3 INFORMATION REQUIREMENTS

4 REGULATORY ENVIRONMENT

5 HOW CAN BDO ASSIST YOU

WHEN DO YOU NEED AN IER?

WHAT IS AN IER?

Independent Expert Reports (IERs) are often required for public companies in the context of a merger and acquisition transaction or other material transactions, such as a related party transaction. IERs provide independent analysis to security holders with the objective of providing a particular view in relation to a transaction.

WHAT TYPE OF OPINION IS EXPRESSED IN AN IER?

An IER will contain one of the following opinions (the actual opinion depends on the specific regulatory requirement):

Fair and Reasonable	Not Fair but Reasonable	Not Fair and Not Reasonable
Best Interests	Not in the Best Interests	
No Opinion		

Fairness refers to the quantitative comparison of the value of the securities or asset being exchanged with the consideration being offered to the shareholders.

Reasonableness refers to the qualitative considerations relating to the transaction, including the advantages and disadvantages to the shareholders of the transaction proceeding.

IERs prepared in relation to schemes are required to conclude whether the transaction is in the **Best Interests** of the shareholders. Where a transaction is **Fair and Reasonable** or **Not Fair but Reasonable**, it is generally able to be concluded as being in the **Best Interests** of shareholders.

In rare or unusual circumstances, where the Independent Expert is unable to form a view on a particular transaction (e.g. due to the lack of certain information), the Independent Expert may issue a **No Opinion** report.

WHEN IS AN IER REQUIRED?

An IER is required to be commissioned if prescribed by the Corporations Act or under the requirements of the Australian Securities Exchange (ASX) Listing Rules. It may also be commissioned by the directors of a company, when not required under regulation, to provide independent information to its shareholders regarding a transaction and assist with fulfilling directors' duties relating to informing shareholders about a transaction.

WHO CAN PREPARE AN IER?

IERs are prepared by an experienced finance professional who is generally a mergers and acquisitions and/or valuation expert within an accounting/advisory firm with demonstrated experience in preparing IERs. The Independent Expert is appointed by the non-associated directors of the company which is subject to a transaction. The Independent Expert firm is required to hold an Australian Financial Services Licence (AFSL) which allows the firm and its authorised representatives to provide general financial product advice.

It is important that the Independent Expert is engaged as early in the transaction process as possible to ensure that the company can meet its timetable requirements and maintain the momentum in relation to the transaction. In preparing an IER, we operate within the requirements and guidance provided by a number of regulatory and professional bodies¹.

¹ASIC Regulatory Guide 111 *Content of Expert Reports*, Regulatory Guide 112 *Independence of Experts*, Accounting Professional and Ethical Standards Board (APES) 225 Valuation Services, AFSL requirements, Codes of Conduct

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Transaction	When Directors may commission an IER
Takeover bids	<p>Target - where the bidder's interest is at least 30% of the targets or where there are common directors. Targets often commission IERs even if there is no requirements to do so.</p> <p>Bidder - where the consideration paid before the bid includes unlisted securities. In joint bids, bidders use best endeavours to have the target commission an IER</p>
Schemes of arrangement	Scheme Company - when the other company holds at least 30% of the voting shares of the scheme company or when they have common directors. In practice, our experience is that all Schemes require an IER
Compulsory acquisitions or buy-outs	The bidder must commission an IER
Acquisitions approved by security holders under item 7 of s611 (allowing a shareholder to acquire more than a 20% interest in the company)	The company commissions an IER to discharge requirements to disclose material information
Selective capital reductions	An IER accompanies the Explanatory Memorandum to satisfy the information requirements of fairness
Related party transactions	An expert's report is supplied to members along with the notice of meeting
Transactions with persons in a position of influence	An expert's report is required under ASX Listing Rule 10.10.2
Demutualisations	An expert's report is required
Buy-backs	A company proposing to buy-back a significant percentage of securities/holdings of a major shareholder.

Source: RG111 Content of Expert Reports

HOW DOES AN IER DIFFER FROM AN INDEPENDENT / INVESTIGATING ACCOUNTANT'S REPORT (IAR)?

IARs relate to the compilation and verification of certain historical, pro forma or forecast financial information included in a disclosure document (e.g. a Prospectus). IARs are prepared in accordance with the requirements of the Australian Auditing Standards. IERs, on the other hand, relate to the provision of independent analysis on a transaction and are prepared, primarily, in accordance with the requirements of Australian Securities and Investments Commission (ASIC) Regulatory Guide 111 *Content of Expert Reports* and Regulatory Guide 112 *Independence of Experts*.



The regulatory framework requires us to maintain independence at all times from parties involved in the transaction, including the Company's Board, management and employees, shareholders, advisers and the technical expert, where one is required.



Records of discussions and correspondence in relation to an IER may be requested by ASIC for the purposes of their audits.



Our depth and breadth of experience in preparing IERs means that we are in a strong position to assist in the provision of independent analysis on all transactions across sectors.

ASIC notes that: "We have observed that, when an expert does not regularly prepare reports for public control transactions, the reports can often be deficient. This leads to closer scrutiny by ASIC and, to the extent that changes are required, considerable delays to the transaction timetable and further expense for the commissioning party" *Report 469: ASIC regulation of corporate finance: July to December 2015*.

PROCESS AND TIMING

Below is an indicative process and timeline map for the preparation of an IER which is able to be tailored as required for individual engagements.

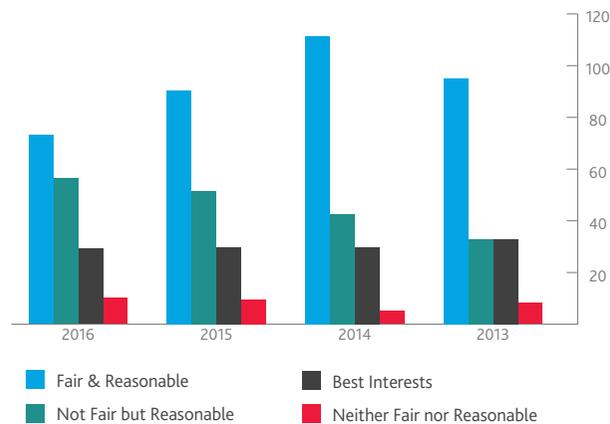
Week 1 Engagement	Week 2 - 3 Analysis and Report Drafting	Week 4 Review and Finalisation
<p>Early engagement allows the IER deliverables (draft and final reports) to be completed within the company's transaction timetable</p> <p>Once we are formally engaged as an Independent Expert, and our information requirements are provided to the company, we recommend that a dedicated senior person who is sufficiently close to the transaction, be nominated as the contact point by the company</p> <p>Where a technical expert is required, we generally make this determination early and communicate this requirement with the company. The Independent Expert is responsible for engaging the technical expert and instructing them.</p>	<p>We recommend the establishment of a data room or other such dedicated platform in which all of our requested information is provided for our consideration</p> <p>We initiate the necessary discussions after engagement and commence the analysis of available information, unless the company has specific updates it wishes to convey. Any company meeting during the course of the transaction conducted for due diligence or transaction tactics discussions should not include us (to maintain our independence)</p> <p>We give consideration to the historical and forecast financial information of the relevant entities required to be valued, the details of the proposed transaction, the qualitative and quantitative impacts on the shareholders of accepting or rejecting the transaction</p> <p>We analyse and critically evaluate the technical expert's draft report (if required)</p> <p>We clarify factual information as appropriate with the company and their legal advisers</p> <p>We prepare our draft report based on our analysis and conclusions in relation to all of the available information in relation to the transaction.</p>	<p>Upon completion of our draft report, we provide a draft non-disclosure version of the IER for checking of factual accuracy and review and we also ask the company to consider the draft and final copies of technical expert reports. Before finalisation, we incorporate the most current transaction information and factual corrections</p> <p>Request representation letters from the company to confirm factual accuracy and other relevant information. We then issue our final signed IER and final technical expert's report and issue our consent as necessary relating to inclusion of the IER in a public document</p> <p>The company is also required to continue to keep us informed regarding any changes to their operations, financial position and/or any changes to transaction terms and/or changes to other parties to the transaction which may impact our report prior to the shareholders' vote in relation to the transaction.</p>

The timeline is highly dependent on complete and reliable information. The above process map does not include the time required by regulators to review the IER before it is despatched. The timeline can often be expedited if all of the information and documentation we require is ready. Often, in a takeover scenario, we are briefed beforehand which assists us to deliver the reports in a tight timeframe.

INFORMATION REQUIREMENTS AND DELIVERABLES

Any information which assists us to understand and form a view on the transaction should be made available to us. The information requirements can vary depending on the nature of the proposed transaction.

OPINIONS EXPRESSED IN IERS



On average, 50% of the reports are **Fair and Reasonable** and 16% are Best Interests

Fair and Reasonable Opinion reports have been decreasing over the past 3 years, whereas **Not Fair but Reasonable** Opinion reports have been increasing

The number of **Best interests Opinion** reports has remained consistent

AS A GUIDE THE MINIMUM INFORMATION REQUIRED FOR AN IER WILL INCLUDE:

- ✓ Historical and forecast financial information about the target and acquirer (where scrip is offered)
- ✓ Details of the transaction terms and copies of the key agreements
- ✓ The company's strategic plan, growth options and consideration of alternative transactions
- ✓ Material contracts and commitments
- ✓ Share registers, minutes of Board meetings
- ✓ Other information as appropriate for specific transactions including property valuations, funding arrangements, related party dealings, due diligence reports.

The IER outlines our opinion regarding the transaction and an explanation of how we formed that opinion.

YOU WILL RECEIVE AN IER FROM US CONTAINING:

- ✓ Summary of our opinion
- ✓ Details of our evaluation of fairness and reasonableness
- ✓ Details of our approach and relevant details of the transaction
- ✓ Background information including industry and company historical performance and outlook

Where necessary, a technical expert's report is also commissioned and this will be attached and referred to in the IER.

Under Regulatory Guide 112, an Independent Expert is required to engage a suitably qualified expert to assist the Independent Expert to form a view in relation to specialised assets such as a mining or oil and gas permit/exploration acreage, industrial property, agricultural assets, livestock, etc.

Technical experts are required to confirm their independence from the client and the transaction being assessed. We also critically evaluate their work in forming our opinion. The technical expert's report is addressed to us and appended to our IER as a public document.

REGULATORY ENVIRONMENT

Keeping well-informed of the regulatory environment is key in ensuring that a transaction process meets the stated goals. IERs are overseen by ASIC (and ASX where relevant) to ensure that there is adequate and independent information available to assist shareholders in forming views on transactions. Regulatory oversight of IERs also ensures compliance with the Corporations Act and regulatory frameworks.

ASIC'S RECENT OBSERVATIONS REGARDING IERS

ASIC undertakes regular surveillance of IERs. ASIC has continued to raise concerns including:



Perceived or actual lack of independence in preparation of certain IERs



IERs prepared by firms that are not sufficiently experienced in this work can lead to delays and the requirement to rework and reissue an IER. For example, when an IER relies on forward-looking information without sufficient enquiry into whether it has a reasonable basis



An Independent Expert must consider whether an update to their reports is required (and the company must keep the IE informed) for any material changes occurring in relation to a transaction or the situation of the company after a signed copy of the IER has been released, but before the offer period/meeting date of the transaction



A number of IERs lack critical analysis of the information provided by the company. A key requirement of an Independent Expert's work is an independent and critical assessment of the information which they are relying on, to demonstrate that it is suitable for use in the IER

WHERE HAVE WE SEEN ASIC INTERVENE?

ASIC can request additional information in relation to matters disclosed in IERs including:

- ✓ Where there is a complex transaction involving related parties, ASIC may request additional information be disclosed or that certain opinion statements be made more specific in the IER
- ✓ In relation to scrip transactions, ASIC may require that qualitative considerations specifically have regard to the shareholders' relative dilution
- ✓ In transactions which arguably fall between a control and a merger of equals transaction, ASIC may require the Independent Expert to more clearly and comprehensively document why they selected a particular approach
- ✓ Where ASIC is concerned about whether the transaction has been properly considered as a control transaction, they may request additional information from the Independent Expert.

WHERE HAVE WE SEEN THE TAKEOVERS PANEL INTERVENE?

Established under the ASIC Act, the Takeovers Panel is the primary forum for resolving disputes about a takeover bid until the bid period has ended. We have seen the Takeovers Panel intervene in IER disclosures:

- ✓ Where there are concerns regarding unacceptable circumstances raised by a party on account of possible independence concerns, and the Takeovers Panel requires ASIC to investigate this further
- ✓ Where the Takeovers Panel forms the view that the Independent Expert has drawn a conclusion that no reasonable expert would ordinarily draw in relation to that transaction.

HOW BDO CAN ASSIST YOU

BDO's global Corporate Finance team has 1,200 professionals in 60 countries. In Australia, we have over [80 corporate finance partners and professional staff in our eight offices](#).



BDO's corporate finance specialists practice across transaction advisory services from deal initiation, M&A support, buy and sell-side lead advisory and the provision of valuation services. We are also the lead provider of IERs in Australia.

If you require an Independent Expert, our technical skills and in-depth commercial experience will ensure that you will receive succinct advice, comprehensive and compliant IERs that will assist you and your shareholders with decision making in relation to corporate transactions.

We also have access to and work closely with the relevant local and international expertise within the BDO network where necessary to ensure that the work is completed efficiently and effectively.



NEED HELP?

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