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# THOMSON GEER

LAWYERS

Advice | Transactions | Disputes

Domestic & Cross Border



## Why Invest in the West

Darren Fooks (Partner )

# Why invest in Western Countries?

# Protections for Investment in Western Countries

## 澳大利亚投资保护措施

- Stable Government – always protects your investments  
稳定的政府 – 以保护投资者权益为出发点
- Society based on protection of individual wealth  
社会以保障个人财富为根基
- Growing population  
逐渐增长的人口



# Western Culture



# No.1 – Let the Buyer Beware ...

- Culture of Guanxi -v- Culture of Law
- Culture of walking together -v- 'Barbarism'
- 28 Recommendations Incl Independent Due Diligence, not reliance on long term 'friendship'



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Eric & Bill  
"Our financial advice is free  
... and it's worth every penny of it."



Goddard Cartoon ©PharmaVentures; all rights reserved

# No 2 – Government is a regulator, not facilitator

The CMCA Guide – [www.cmca6108.org](http://www.cmca6108.org)

Meeting the Premier/Minister does not authorise your investment!



**AUSTRALIA CHINA**  
Minerals Investment Summit  
澳中南北资源投资论坛

Registrations only  
8756 + GST  
until 31 March

- Australia China Minerals Investment Summit (ACMIS) is a joint Northern Territory, South Australian Government Initiative.
- ACMIS will bring together Chinese investors and SA/NT explorers.
- The event will mix high profile plenary speakers with organised networking and workshops.
- ACMIS is an ideal opportunity to showcase SA/NT mineral potential to the Asian markets with a view to increasing investment for future development.
- What makes this event different to other conferences?

Goal objective: ACMIS 2013 is a multi-tiered event. It is being hosted by the Governments of South Australia and the Northern Territory solely to assist exploration and mining companies to present investment opportunities to China. This will be a very cost-effective way for Australian companies to meet investment-ready Chinese decision-makers.

Unprecedented Chinese attendance: The organisers are working with major industry organisations in China such as the China Chamber of Commerce of Metals, Minerals and Chemicals Importers and Exporters to invite delegates from Chinese industry sectors that need the Northern Territory and South Australia's commodities.

This targeted invitation list means that you will be making contact with genuine investors.

Further information:  
Phone: +61 8 8252 1076  
or email: [acmis@nt.gov.au](mailto:acmis@nt.gov.au)  
[www.acmis.nt.gov.au](http://www.acmis.nt.gov.au)

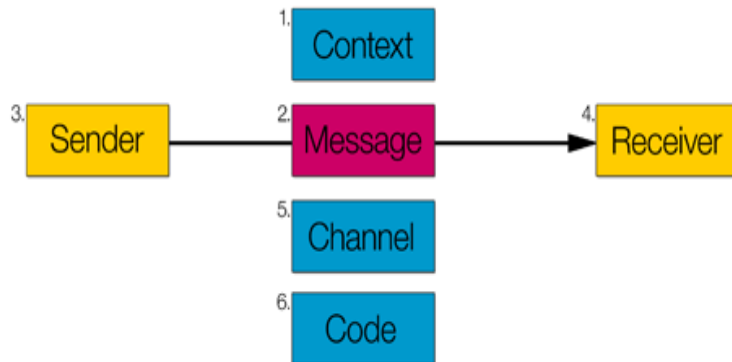
21-23 May | DARWIN  
Darwin Convention Centre

Northern Territory Government  
Government of South Australia  
Department for Manufacturing, Innovation, Trade, Resources and Energy  
PACE 2013



# No 3 – Speaker/Receiver Dominant Linguistics

'Mean what I say and  
say what I mean'



'Polite and respectful'



# Australian Business Structures



# Australian business structures

## 澳大利亚商务结构

- Private (i.e. Proprietary) Australian company.  
澳大利亚私人公司。
- Public Australian company (listed and unlisted).  
澳大利亚公众公司（上市以及非上市）。
- Registered foreign company.  
在澳注册的外资企业。
- Partnership.  
合伙制企业。
- Incorporated or unincorporated joint venture.  
合资公司以及非法人合作经营企业。

# Why different structures? 为何使用不同的商务结构？

- Tax 税务
- Foreign investment approvals 外国投资审批
- Land ownership 土地所有权
- Permit and license applications 各类许可证与执照申请过程
- Liability 责任
- Ability to list on Stock Exchange 能够在证券交易所上市

# Australian companies overview

## 澳大利亚公司 概况

- Tax 税务
- Foreign investment approvals 外国投资审批
- Land ownership 土地所有权
- Permit and license applications 各类许可证与执照申请过程
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# Proprietary (i.e. private) and public companies 私人公司以及公众公司

- An Australian company will be either a proprietary company or a public company.  
澳大利亚的公司分为私人公司与公众公司。
- A public company may be listed on the Australian Securities Exchange.  
公众公司有资格在澳大利亚证券交易所上市。
- A proprietary company is limited to 50 non-employee shareholders and cannot engage in fundraising activities in Australia.  
私人公司限制于50名非员工股东，并不能在澳大利亚募集基金。



# Australian company residency requirements

## 澳大利亚的公司居民身份

An Australian company must have:  
澳大利亚公司必须：

- a registered office within Australia.  
在澳大利亚拥有注册办公室。
- Australian resident directors (two for public companies, one for proprietary companies).  
拥有澳大利亚居民身份的董事（公众公司两名，私人公司一名）。
- an Australian resident company secretary (optional for proprietary companies).  
拥有澳大利亚居民身份的公司秘书（私人公司可有可无）。

# Foreign registered company 在澳注册的外资公司

- A foreign company may be present and operate in Australia as itself, but must register with ASIC if it intends to **'carry on business'** in Australia.  
外资公司可以以本公司的身份在澳'经营生意'（特殊法律定义），不过必须经澳大利亚证券和投资委员会（简称澳大利亚证监会）进行注册。
- Whether a foreign company is 'carrying on business' in Australia is a question of fact, and requires a degree of repetitive and systematic behaviour over a sufficient period of time.  
一家外资公司是否被认定为在澳'经营生意'取决于个案情况而定，基本上在一段足够长的时间内有一定程度的重复与系统的行为将会符合此定义。

# Foreign registered company 在澳注册的外资公司

- A foreign registered company must have a **registered office in Australia** and appoint a local agent to represent the company in Australia.  
在澳注册的外资公司必须在**澳大利亚注册办公室**，并且委派一名在当地代表此公司的本地代理。
- A registered foreign company is required to lodge copies of its **financial statements** and comply with various **notification obligations** under the Corporations Act.  
在澳注册的外资公司必须递交公司的**财务报表**并需要遵守依据公司法的**通知义务**。

# Partnership 合伙制

## (Relationship by Statute and Supplementary Agreement) (由法则与补充协议所管辖)

- Each State of Australia has its own Partnership Act. The Acts are very similar.  
在澳大利亚每一个州都有各自的'合伙制法规'
- Partners are each 100% jointly and severally liable 每一个合伙伙伴都必须共同与分别承担100% 的债务责任
- One single partnership tax return  
整个合伙制只提供一个纳税申报

Jurisdiction	Relevant Act
ACT 首都领地	Partnership Act 1963
NSW 新南威尔	Partnership Act 1892
NT 北领地	Partnership Act 1997
QLD 昆斯兰	Partnership Act 1891
SA 南澳大利亚	Partnership Act 1891
TAS 塔斯马尼亚	Partnership Act 1891
VIC 维多利亚	Partnership Act 1959
WA 西澳大利亚	Partnership Act 1895



# Partnership 合伙制

## (Relationship by Statute and Supplementary Agreement) (由法则与补充协议所管辖)

- Partners take a share of profits only (not product)  
合伙伙伴只可以直接分配利润 (而不是当中的产品)
- Lending to partnerships is difficult and not common  
合伙制实体借贷相对困难与罕见
- Partners usually cannot assign partnership interest but can retire from partnership (and may get some form of payout)  
合伙伙伴通常没有权利出售合伙股份，可是可以从合伙实体退位 (并有可能可以获得某种形式上的报酬)

Jurisdiction	Relevant Act
ACT 首都领地	Partnership Act 1963
NSW 新南威尔	Partnership Act 1892
NT 北领地	Partnership Act 1997
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# Joint Ventures

## 合资企业

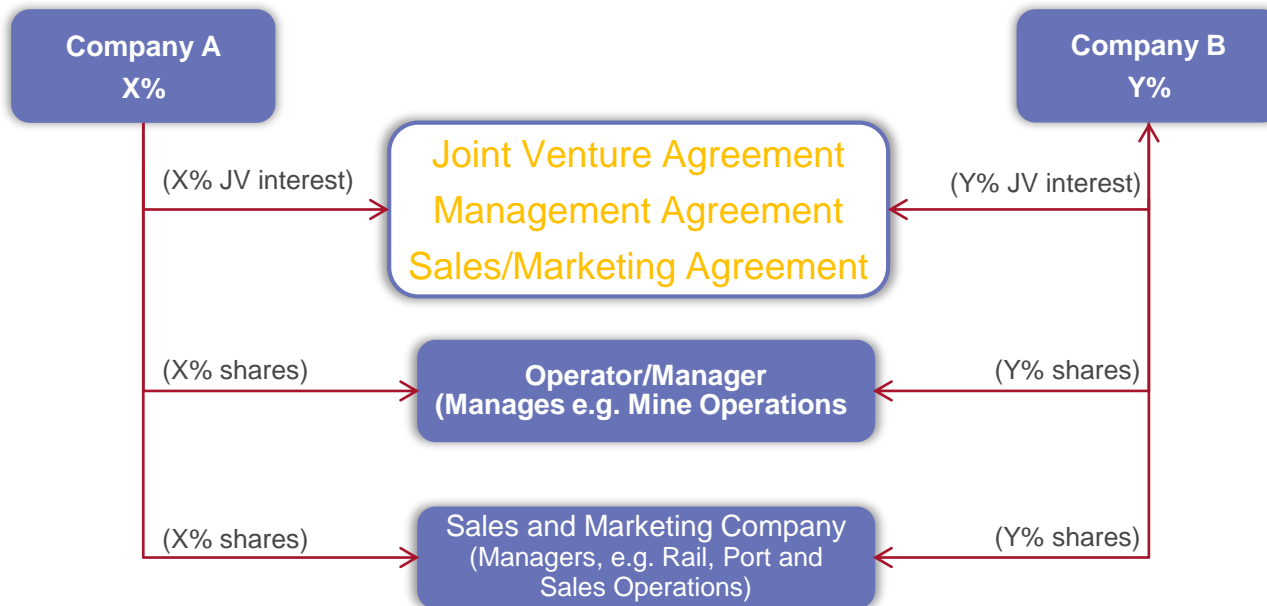
- Two or more individuals or companies may carry on a project as a joint venture.  
两个及两个以上的人与公司可以合资方式经营项目。
- Often formed for a particular project or product, or where the contributions of the venturers are different in type, amount or timing.  
一般的情况下，合资方针对一个项目或产品一起合作，在合资方投资的形式，金额或时间上可以有差异。

# Joint Ventures

## 合资企业

- Joint ventures may be incorporated (as a separate legal entity) or unincorporated.  
合资经营可以分为两类 – 合资经营公司（成立独立的法人实体）或成立非法人合作经营企业。
- The rights and liabilities of the respective venturers will depend upon the terms of the joint venture agreement.  
各个合资方的权利与债务责任将由合资协议上的条款所规定。

# Joint Ventures – unincorporated 合资企业 – 非公司制 (只受合伙合约约束)

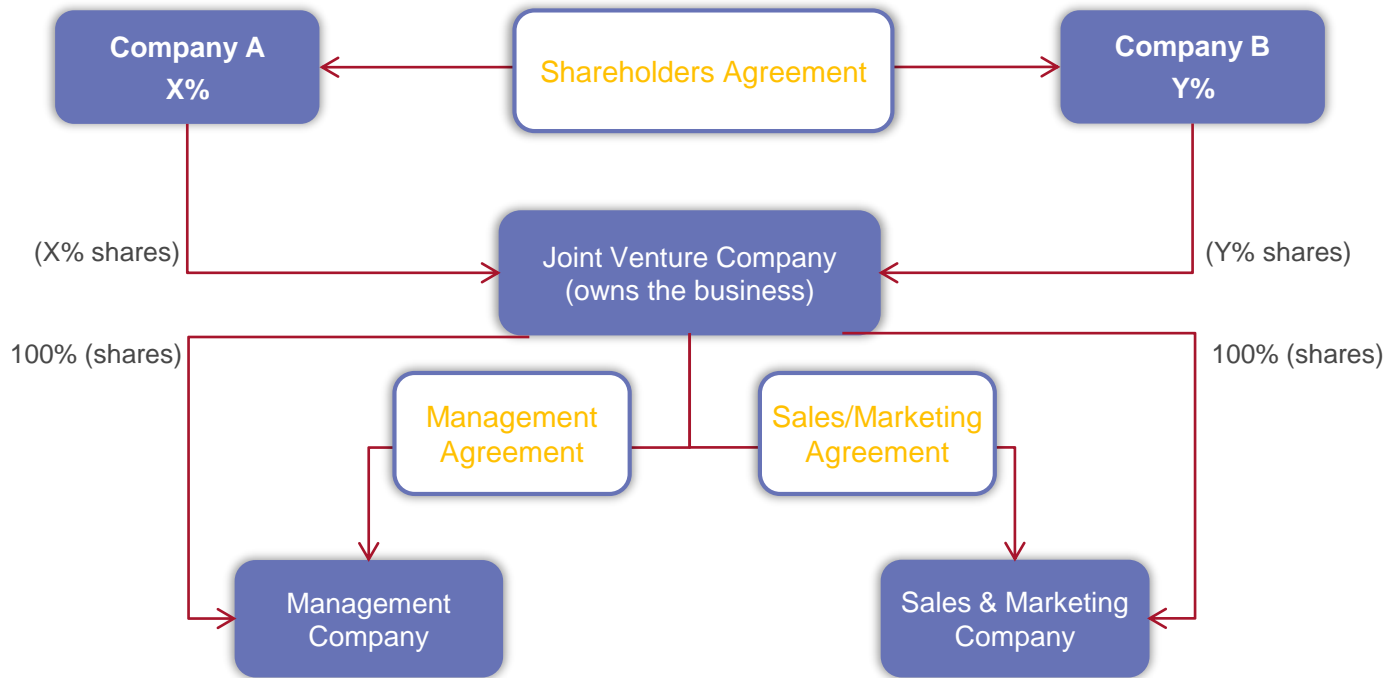


Assets and liabilities owned by Operator/Manager 'as agent for Company A as to X% and Company B as to Y% in several proportions'.



# Joint Ventures – incorporated

## 合资企业 (受股权协议以及合伙合约约束)



Assets and liabilities owned 100% by Joint Venture Company

# Joint Venture vs Partnerships 合资企业 (Joint Venture)与合伙制企业(Partnership)的对比

- Although there are common interests in a JV, liability of participants in JV is several.  
虽然合资方在合资企业里设有共同的目的，合资方的债务责任是个别的
- Participants receive their share of product of the project separately.  
合资方将在项目成品中分得相应的比例。
- A manager or operator is often interposed between participants and business operation and participants have no authority to bind each other.  
通常合资方在项目中委任一家经理公司或营运公司经营项目，并且各个合资方没有权利绑定对方。

# Joint Venture vs Partnerships 合资企业 (Joint Venture)与合伙制企业(Partnership)的对比

- Cross-charges for respective shares of liabilities are common.  
通常合资方会根据债务责任签署交叉担保抵押。
- Participants in JV can dispose of their interest (subject to terms of JV agreement) while partners can only assign partnership interest subject to Partnership Act.  
合资方可以（依据合资合同上的条款）售卖股份权益，而合伙人则只能依据合伙法律转让合伙人权益。

Thanks!  
谢谢!



# Contacts



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