



# PricewaterhouseCoopers and Scyne Advisory contract novation guidance

## **Novation of contracts from PricewaterhouseCoopers to Scyne**

- Scyne Advisory Pty Ltd. (Scyne) has been notified of the outcome of Finance's examination and will formally approach entities to seek agreement to novate existing PwC contractual arrangements.
- Scyne or PricewaterhouseCoopers (PwC) will initiate the novation process for your entity based on the scope of services that will move from PwC to Scyne. Please note that where your entity deems a novation is not required for a specific contractual arrangement, as a minimum, your entity will need to consider change of control requirements as Allegro will acquire Scyne as the new parent entity (rather than PwC). Finance recommends you seek legal advice if this issue is relevant to you.
- Upon receipt of a request for novation, your entity will need to make assessments on the basis of the capability, capacity and financial viability of Scyne to deliver your specific contractual requirements, with consideration to any specific novation processes detailed in your respective contracts. These requirements may differ based on the contractual arrangement you have in place with PwC.
- It is recommended that entities seek advice on the legal, financial and contract delivery implications of novating existing arrangements, particularly for more complex, operationally sensitive, high value or high risk-risk arrangements.

## **General considerations for exercising a novation option with your existing PwC contractual arrangements**

- A novation has the effect of substituting one party for another party without necessarily changing the rights and obligations under the original contract. The rights and obligations under the original contract can be transferred to the new party.
- A contract novation at its simplest involves:
  - the termination of the original contract between the two original parties – (PwC and your entity);
  - the creation of a new contract between Scyne and your entity on the same terms as the original contract; and
  - the transfer of all existing rights and obligations under the original contract from PwC to Scyne (and the release of PwC). Scyne will take over all the rights, obligations and

liabilities of PwC under the original contract, including those that arose prior to the date of the novation.

- A novation can only occur when all parties provide consent (Commonwealth entity, PwC and Scyne). If any of the parties do not consent, a novation cannot occur and the original contract will continue to be in place. If this scenario occurs, your entity will need to consider other options in the contract which could be exercised, such as termination.
- Some contractual agreements have specific provisions that deal with novation. If so, any novation should be implemented in accordance with those provisions.
- Your entity will need to consider a range of different overarching issues when exercising a novation option in response to a novation request. Guidance is provided below to some of the common types of Commonwealth arrangements. For more general information about novation of contracts please see the following Legal briefing from the Australian Government Solicitor - [Novation and assignment of contracts](#).

### **Advice for Commonwealth Contracting Suite contracts**

- Commonwealth Contracting Suite contract terms do not include a specific provision for dealing with novations. In instances where there is no specific novation clause, the common approach is for both parties to the original contract and the proposed new party to enter into a tripartite agreement in the form of a deed to formally document consent and agreement to the proposed novation. This is referred to in the CCS as a 'Deed of Novation'.
- Under a standard novation, the new contract will be on the same terms as the original contract. The only change would be administrative details such as contact details, addresses for notices and bank account details for payments.
- If more substantive amendments are being proposed, these should be considered and managed in the same way that proposed variations to a contract would normally be managed, and the same policy, commercial and legal considerations will apply. If agreed, amendments can also be documented in the Deed of Novation which would then be referred to as the 'Deed of Novation and Variation'.

### **Advice for ClauseBank contracts**

- For contracts using the pre drafted [Novation and Assignment Clause](#) in [ClauseBank](#), entities will need to assess Scyne's ability to perform the contract, which may cover all issues assessed in the original approach to market, including confirming that the contract's value for money outcomes will not be negatively impacted by the novation.
- This clause also allows entities to impose conditions on Scyne should they consider this appropriate as a condition of novation.

## **Novating a work order entered into under the Management Advisory Services (MAS) Panel**

- Finance is finalising the novation requirements from PwC to Scyne under the MAS Panel Head Agreement.
- Following the execution of a deed of novation, Scyne will be listed as a supplier under the MAS panel and Commonwealth entities will be notified.
- Pending the request to novate from Scyne, entities will need to assess the capability and capacity of Scyne to deliver the requirements of their individual work orders, to determine whether it is appropriate to novate their individual arrangements under the panel.
- Further advice will be provided to entities once a deed of novation has been executed with Scyne.

## **Advice for other Commonwealth panel arrangements**

- For other Commonwealth panel arrangements, novation requirements (if any) are generally set out within the individual head agreements. Panel owners will need to manage the proposed novation in accordance with the terms of the head agreement.
- Panel managers will need to communicate the outcomes of assessments and provide any specific novation requirements with entities utilising the panel.
- If you receive a request for novation relating to a work order you are managing under a panel arrangement, you should confirm with the panel manager whether they have finalised their novation considerations under the head agreement.

## **Executing a deed of novation**

- A Deed of Novation will commonly include the following details:
  - the names of the parties, including details such as ABN/CAN
  - details of the agreement, such as date, your entities internal reference ID or other identifier
  - the date from which the novation will take effect
  - confirmation of the legal mechanisms:
    - termination of the original contract and creation of the new contract
    - transfer of all existing rights, obligations and liabilities arising under the original contract from the PwC to Scyne.
    - release of the exiting party (PwC) from any ongoing responsibility and liability under the original contract.

- details of any other variation to the contract terms
- confirmation of costs
- execution as a deed
- Your entity may have an existing novation template that you may be able to use. Consult with your central procurement team (or equivalent) for further guidance.