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Introduction

The nature and organisation of medical practice in Australia is undergoing significant change. Falling levels of income in general practice, high levels of stress, the changing demographics of the medical workforce and the increased complexity of running a small business are all significant factors driving this change. In recent times the emergence of corporate models of medical practice have been viewed by many doctors as a potential solution to seemingly entrenched problems in the current models of practice. Others view the development with some mistrust and fear that the commercial imperatives of a corporation will necessarily place undue pressure on the clinical independence of doctors and adversely impact on patient care.

Various models of corporatised practice exist, from the relatively simple management service provider model at one end of the spectrum to the wholesale divesting of an existing practice and employment status at the other. Governments have responded to public interest concerns over the corporatisation processes by proposing and in some cases enacting legislation aimed at preventing aspects of corporate commercial behaviour that may impinge on ethical standards of practice. It is a complex and rapidly changing landscape.

This publication is aimed at general practitioners and specialists thinking of a corporate engagement and is not designed to be either pro- or anti-corporate models of practice.

The different models of corporatisation currently emerging will obviously entail a consideration of differing matters when assessing and negotiating a package that will be attractive to your individual circumstances. Not all doctors will be selling an interest in an existing practice and of those who are selling an existing practice, not all will be paid partly in cash and partly in shares of the corporation. For other doctors a more ‘minimalist’ approach will be the preferred option, whereby a corporate entity merely takes over the administration of the existing practice in exchange for an agreed fee.

Against this diversity of corporate medical practice models, the principal purposes of this kit are to raise awareness of issues associated with corporatisation generally and to provide some useful and practical guidance to the information that may be required in order for doctors to more safely negotiate the corporatisation process.
How to Use the Kit

This kit is divided into six parts. Each of these parts is further divided into specific areas. A general discussion is provided on each particular subject, followed by a listing of some of the key issues involved and a boxed summary of the central theme of the discussion. The kit has been designed to accommodate both the casual and informed reader as well as those doctors wanting a more detailed study of particular topics.

The parts are as follows:

General Issues

This part provides background information on the nature of a corporate identity and a discussion of the commercial imperatives of large publicly listed companies.

Contractual Documentation

This part discusses the importance of understanding the effects of the arrangements you will be entering into and their particular terms and conditions.

Sale of Your Existing Practice

This part affects those doctors who will be selling their interest in an existing practice prior to joining a Corporate. It includes sections on disposal of assets, handling of current staff and termination of existing commercial arrangements.

Practising Under The Corporate Umbrella

This part deals with the issues that are likely to confront doctors in a contractual arrangement with a Corporate entity. It includes sections on mode of engagement, remuneration, clinical independence, support services, management fees, flexibility, leave and insurance.

Life and Practice After The Corporate

The fifth part is concerned with the effects of a termination of your relationship with the Corporate. It discusses issues such as methods of
terminating the contractual relationship, the types of obligations that survive the contract and restrictions on your future practice rights.

*The Kit in a Nutshell*

The final part is a summary of the essential aims of informed involvement in the corporatisation process.

Not all the issues raised will be relevant to your circumstances. Nor might the Corporate readily provide all the information you request, particularly if the Corporate considers the information may be commercially sensitive. No adverse inference should necessarily be drawn against the Corporate in such circumstances.

In general terms, it should also be emphasised that the kit is not intended to be used as a comprehensive ‘checklist’ for an individual contemplating practice under a corporate structure. Rather, it is intended to be used as a tool to guide doctors and their advisers to some of the issues and details that should be taken into account when contemplating any such important practice decision.

The kit will not come to a decision for you, but should be of assistance in helping you make a decision for yourself.

It would also be prudent to consider whether alternative models of Corporate practice might be more suitable to your circumstances, such as forming a company yourself, or in conjunction with like minded practices, to develop similar services and practice arrangements to those on offer from the Corporates.

You are strongly advised to obtain your own legal, accounting and financial advice prior to making binding decisions in relation to an engagement with a corporate entity.
General Issues

What is a Corporate?

A great deal of debate is currently taking place within the medical profession and the wider community regarding the growth of 'corporatised' primary health care. But what is a Corporate?

To attempt to provide a succinct yet comprehensive definition would create as many questions as it answers. For the purposes of this kit, a Corporate may be described as a legal entity created through the process of incorporation. As such, this entity may enter into contractual relations, sue and be sued and engage in commerce. Corporatisation of medical practice is viewed by some as a more convenient vehicle than traditional practice models through which private health commerce may be effectively organised and conducted on a much larger scale.

Although some corporate structures may be 'boutique' in nature and operate under the form of a small private company, at the other end of the spectrum a great deal of market penetration has been achieved to date by large public and private companies venturing into the healthcare market in order to seek attractive profits by capturing an entire array of medical services.

In this kit, the word 'Corporate' has been used in a very generic sense and is not intended to identify any particular corporate practice model or company. The kit does, however, focus on issues concerned with the larger corporate models, as it is in this arena that doctors are more likely to require guidance, given some of the unfamiliar conceptual issues involved.

Commercial Imperatives of a Corporate

Issues of good governance aside, the principal concern of any corporation engaged in commerce or trade is to return a profit to its owners or shareholders. That central driver is the lawful priority of the directors. In fact, company directors whose acts are not associated with that principle may well be in breach of the law. In broad terms, these commercially oriented companies exist to make a profit.

In the case of a corporation engaged in the provision of health services, part of the profit will be derived from the services doctors are contracted
to provide to the Corporate. In business terms, a doctor contracted to a Corporate is a working asset and will be expected to turn a profit either from management fees deducted from their individual activities, or by acting as a referral gateway to other activities in which the Corporate may have a financial interest, such as diagnostic services or admission to selected private hospitals.

This does not necessarily mean that the Corporate will not have a ‘human face’ or is inclined to treat doctors as little more than fee earning assets. There is little long-term benefit for any corporation to treat its workforce poorly.

Nevertheless, doctors may be entering into binding arrangements with large corporations that control millions of dollars of assets and whose strategic focus differs from the concerns of doctors providing medical services to patients.

Moreover, these corporations must necessarily generate profits on invested capital. It is important to remember that simply because a commercial entity chooses to invest in the delivery of health services, it does not follow that it has any altruistic motive in relation to overall health policy or even standards of patient care. The ultimate responsibility for patient care will still rest with the medical practitioner.

What You Need to Understand

You will be entering into contractual arrangements with companies, some of which are seeking to make substantial profits from the provision of health care services. You will need to recognise this is a potentially foreign environment to that which you have previously experienced and many of the principles which have guided decisions governing your professional career to date may no longer be as applicable, appropriate or even valid.
Contractual Documentation

Understanding the Nature of the Contract

Many doctors will already be familiar with the complexities of grappling with contracts. Some practices are already incorporated. There is, however, a significant difference in entering into a contractual arrangement with what are, in some instances, multinational corporations.

Previously, you may simply have been able to walk into the office next door and informally change your working arrangements with your partner. That may not be so easy with a Corporate. Large corporations may not be overly concerned with tailoring individual arrangements or making minor changes to your contract once the terms are settled. Do not be surprised if you are expected to practice strictly in accordance with the terms of your contract.

That is why it is crucial to understand the terms of the various contracts, especially in relation to the more complex relationships contemplated under some models. Doctors are highly educated professionals (by wider community standards) and neither the Corporate nor a Court would have a great deal of sympathy if you breach a term of the contract through ignorance. The consequences of a breach may quickly result in you being without rooms, records, staff or patients.

Understanding the Terms of The Contract

The overriding principle is that you should seek legal advice if you do not fully understand the terms and conditions of the contract.

Not only do the details of contracts differ between the Corporates, so might the terms and conditions of contracts issued by the same Corporate to different doctors be significantly different depending upon the individual circumstances. For those reasons, it is impractical to provide anything other than general guidance on these issues. Doctors may be required to sign what may be several large and complex contracts to effect the transition from independent private practice to practice in the service of, or under the umbrella of, a Corporate.

The legal concept of consideration is an important aspect of the contractual process. Contracts may provide that a ‘purchase price’ will
be paid to you in consideration for certain acts on your part. In very loose terms, consideration may thus be described as the price paid by the Corporate for your promise to do something in exchange for that purchase price.

The ‘promise’ may include obvious items such as executing all necessary documents to effect the sale of your premises and assets, dismissal or transfer of all your current non-medical staff and ownership of your patient records. It may also be intended to include compensation for you agreeing to enter into restrictive covenants restricting when and where you practise after you leave the Corporate structure. That, in turn, makes it more difficult to avoid the onerous obligations of the covenants if it can be established that part of the purchase price was compensation for you entering into those covenants in the first place. At least one Corporate contract specifically details part of the payment is in exchange for the restrictive covenant clauses.

See also the section on *Contractual Restrictions on Future Practice Rights*.

**Heads of Agreement**

Many doctors may not be familiar with the concept of a Heads of Agreement. The majority of the principles discussed below have general applicability to all contracts.

Some Corporates will want you to enter into a Heads of Agreement that sets out the essential terms that have been agreed between you and the Corporate. These terms may be reproduced in subsequent specific agreements regarding the sale of your existing business or governing your contractual relationship when providing services to the Corporate. Heads of Agreement may also stipulate any conditions required to be met by either party before the latter documentation is settled. As the contracts have been drafted on behalf of the Corporate, the agreement to terms and conditions is normally only subject to a due diligence check by the Corporate. Conversely, you may also be able to insert conditions of your own by negotiation.

It is important to determine the actual legal effect of such documents. The Heads of Agreement might reflect that:
• The parties have finalised their agreement and intend to be bound immediately. For example, an assent to the terms without any associated power to vary those terms will normally be indicative of a completed contract.

• The parties have agreed all the terms but have made performance of one or more terms conditional upon the execution of a formal document/s.
• The parties do not wish to be bound until they have completed the formal document. The parties retain the right to withdraw if agreement cannot be reached on outstanding matters.

The first two may be regarded as creating binding relations, but the third may be viewed as a record of the terms which are intended to form the basis of a later formal agreement. The third type would not normally create a binding contract.

Payments made under such agreements may be viewed as anticipatory, intended to form part of the ‘deposit’ under the contract, or may be simply payments to guarantee the purchasing party will enter a reasonable contract.

Key Issues To Consider

• Does the Heads of Agreement create a binding contract?

• If so, what are the terms of that contract?

• Are there any avenues by which to lawfully avoid any obligation created under the contract?

• If the Heads of Agreement provides for negotiations to settle the precise details, what is the effect if agreement cannot be reached?

• What are the legal ramifications if the arrangement is not proceeded with at this stage?
What You Need to Understand

Before you execute any formal documentation you will need to determine the legal effect of a Heads of Agreement, the effect and meaning of any terms and conditions ‘agreed’, the means by which it can be terminated and whether there is any mechanism to withdraw without penalty once you sign.

Subsequent Contractual Documentation

The detailed subject matter of the contracts is dealt with in the parts that follow. If the Heads of Agreement discussed above is intended to produce a binding contract, the following sections should also be read to determine the nature and effect of the specific terms.
Sale Of Your Existing Practice

This section is relevant to those doctors entering into arrangements whereby they sell their existing practice to the Corporate.

Assets

The following is a general guide to the ‘assets’ that might be included in a business transaction of this nature.

- Goodwill
- Buildings
- Leases
- Medical Equipment
- Office Equipment
- Medical supplies
- Business Name
- Patient Records (including issues of ownership, sale)

Some Key Issues To Consider

- What exactly will the Corporate be purchasing from you pursuant to the terms of the contract?

- Do you actually own all these assets?
  You cannot sell something you do not have any proprietary rights over. For example, doctors are warned to be careful in relation to the sale of patient records, as these may be the property of the practice, or the individual doctor who created them. With respect to patient records and notes, the provisions of the recent Privacy Act amendments should also be taken into account. These come into effect in December 2001.

- Are these assets free from encumbrances?
  This is an important issue. It means that any mortgages on properties must be discharged at the time of settlement, as might leases or other encumbrances registered on title. It also means you will be responsible to discharge those encumbrances, so remember to factor in the financial costs to you of discharging a mortgage or terminating a sub-lease when assessing the overall package on offer.

- What is the value of these assets?
  You may be content to rely upon a valuation performed under the contract, or have an independent valuation conducted at your own expense. If the assets have not been valued properly, you will not be in a position to assess whether or not you are being paid a fair or market price.
• What are the Capital Gains Tax implications of selling my existing practice?
  If there are significant implications, the potential taxation liability should be factored into your assessment of the overall financial package on offer.

What You Need to Understand

What have you specifically contracted to sell to the Corporate, do you actually own these assets and are you being paid a fair price for them? From a taxation perspective, is the purchase price properly characterised as income or capital, or a combination and what are the implications of each?

Staff

Doctors

Some Corporate models require that all doctors currently within the practice also come under the Corporate umbrella. In some cases it may be a condition precedent of the entire arrangement that you bring any such doctors with you. The Corporate may expect a percentage of these doctors’ fees for management services, but may not intend to create any legal relationship between itself and the doctor other than that of independent contractor.

This may place pressure on you to change, or better define, your legal relationship with doctors situated in your former practice. Simply because such a doctor has entered into a contractual relationship for the Corporate to provide an equipped surgery and to take a share of his/her billings, does not mean that any previous arrangements with you can simply be ignored.

You should also factor into your financial assessment the fact that you may forego any revenue you may previously have collected from that doctor for use of the surgery and ancillary support services.
Some Key Issues To Consider

- Are you required to bring all doctors in your practice with you?

- If so, what inducements are available to achieve this?
  Some Corporates suggest you should pay part of your purchase price to employed or sessional doctors as a financial inducement to also join.

- What is the effect if those doctors choose not to join the Corporate, or cannot agree on terms and conditions?
  Does the entire contract fall over, or is there some alternative solution to such a scenario.

- What is the current employment status of other doctors in your practice?
  Are these doctors’ employees or independent contractors? Will the move to a Corporate change this relationship or require a re-defining of the existing relationship from the perspective of liability?

### What You Need to Understand

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Non-Medical Staff

Non-medical, support and administrative staff are the next group to consider.

For those doctors attracted to the practice management service provider model, staff arrangements may not be greatly affected. Some of the larger Corporate models, however, require that you terminate all existing staff. Those staff may or may not subsequently be offered employment with the Corporate, a process over which you will have no control.

Terminating existing staff can be both an expensive and difficult exercise. It is unlikely, although not impossible, that your former staff will be offered employment on similar or enhanced terms as those enjoyed previously. Some may not be offered employment at all and some will find the offer unacceptable for a variety of reasons.
These are issues you must manage effectively and sensitively in order to minimise disruption to your practice before it is sold. In this respect, your staff may well look to you, fairly or not, to act on their behalf. In addition, as your former staff may well return to your practice as Corporate employees, it is not in your best longer term interests to have appeared insensitive to their employment concerns on previous occasions.

Staff that are unhappy, disruptive or overtly lacking in loyalty to you will not make your working day any easier. As they may not be your staff anymore in the Corporate, remedying systemic staff problems may prove to be a problematic process. It also necessarily means that any staff in your ‘new’ practice will be responsive to the wishes of the Corporate as their employer and that may emerge as a cultural change issue which could present its own unique challenges from time to time.

The process of terminating staff usually requires that you pay out accrued entitlements that are able to be cashed out, such as recreation leave and long service leave. This can quickly become an expensive exercise if you have long serving staff who have not always taken leave as it accrues. Alternatively, the Corporate may agree to assume responsibility for the accrued entitlements of employees who elect to take up a position with the Corporate.

You will also be required to settle any outstanding issues such as workers compensation and unfair dismissal claims. Eligibility for termination payments will be governed by the terms and conditions of employment, whether individual contract or industrial award.

Some Key Issues To Consider

- Are you required to terminate all existing staff members?
- If so, does the Corporate guarantee them ongoing employment?
- Will this employment be on similar terms and conditions?
- Are the superannuation or other benefits of existing staff portable?
- What must you do to lawfully terminate existing staff? Look at issues such as notice periods, whether there is a power to terminate etc.
• How much will it cost by way of ‘cashing out’ of accrued benefits?
  There may be ways to minimise your outlays by directing staff to expend all leave prior to settlement. This may also be attractive to staff because of the obvious income tax implications of receiving lump sum payments as a wage earner.

• Are you required to fund redundancy payments?
  This is important to ascertain due to the potentially large sums of money that may be involved for long serving employees.

What You Need to Understand

If you are required to terminate staff, what is the best method of achieving this process with a minimum of disruption and dissatisfaction to all parties concerned? How much will it cost to terminate staff and are there any methods by which you can lawfully minimise expenses in this area?

Termination of Existing Commercial Arrangements

Most Corporates will insist on a certain level of management rights. This may extend to the entire range of services required to support your practice. For example, one of the larger Corporates insists on the total provision of:

• facilities,
• administration functions,
• management functions,
• all services; and
• all advice, assistance and information.

Moreover, these may be contracts of exclusivity, which means you will be legally precluded from obtaining or seeking those services from third parties. For those doctors who are independent contractors, there may be trade practice implications in such arrangements. Practice Managers will already have in place arrangements to provide goods and services to the existing practice. It is therefore necessary to delineate with some accuracy those administration and support services which will be provided by the Corporate.
Once those particular services have been identified, the next step is to determine how that existing service is provided. For example, is the photocopier service maintained by written contract? Is there an oral agreement to provide stationery? Have you always purchased consumables from the same company? The third step is to terminate the redundant arrangements in a manner appropriate to either the terms of the agreement for their supply or the nature of the relationship.

It is important to ensure, that by entering into exclusive service arrangements with the Corporate, you do not breach existing contracts with current suppliers. Unilateral breaches or repudiations of existing arrangements may lead to damages claims against you from contracted suppliers to your present business.

Some Key Issues to Consider

• What exactly will the Corporate provide in the way of support services?

• Is that an exclusive arrangement?

• Do you have formal or informal contracts with suppliers for those services later to be provided by the Corporate?
  It is important to note that ‘contractual’ arrangements need not be reduced to writing. Contractual relations may be in the form of oral contracts, or may be inferred by a course of conduct over a period of time, or even by industry ‘norms’.

• How do you legitimately terminate those arrangements?
  For example, some contracts may require a period of notice in writing, some may be terminable ‘at will’.

What You Need to Understand

Having identified the range of support services that will provided by the Corporate, how do you terminate all potentially conflicting current arrangements in the most effective manner?
The Sale Price

The price received for your existing practice may be in the form of cash alone or a combination of cash, shares and other considerations.

Cash Sale Price

The sale price will commonly be in the form of cash payment to an account nominated by you. The concept of a cash purchase price is relatively straightforward, although some variations do exist.

It is hazardous to offer comment on the oft-asked question regarding the adequacy of the price obtained for your practice. In simple terms, the practice is worth what the market will pay for it. There is certainly anecdotal evidence that some Corporates are willing to pay a premium for particular practices. From that perspective, the only contemporary yardstick for comparison purposes may be what another Corporate is prepared to offer for your practice.

Some Key Issues To Consider

- How is the purchase price to be paid?
- Is any amount to be withheld?
  Some contracts provide that a portion of the purchase price, around 20-30%, will be retained by the Corporate as a warranty.

What You Need to Understand

How much are you being paid and do you have immediate access to those monies? Are the payments properly characterised as either capital or income? This may have consequential Capital Gains Tax or Income Tax implications.
Combination Cash/Shares Sales Price

Some Corporate contracts provide that the sale price will be paid as a combination of cash and shares in the Corporate. In essence, the Corporate is investing in itself part of the sale price owed to you.

The advantages to a Corporate of such an arrangement are obvious, but you need to make a careful decision regarding the profitability of an investment over which you have no apparent control. One advantage to this arrangement is that you may gain some influence over Corporate affairs, not so much as a doctor, but as a shareholder in the company.

The combination cash/shares price model thus requires a consideration of two discrete issues – the attractiveness or otherwise from financial and taxation perspectives of investing in the Corporate and the potential degree of influence that share parcel may give you over broader Corporate affairs.

Investment Considerations

As a general principle, shares will attract a return on the initial investment through either upward movements in the share price itself, or through the issuing of dividends on the shares, or a combination of both. Conversely, a fall in the listed share price will correspondingly result in the incurring of a loss on your investment. Poor profitability by the Corporate may also result in no dividends being issued in any given year. In this context, it is important to take into account likely future national economic trends when assessing the mid to long term security of investing in corporations engaged in the business of providing healthcare services.

These are complex issues and it is recommended individuals seek expert advice when assessing the relative merits of investing a significant sum of money in the Corporate itself. See also related sections in this kit on ethical and legal issues that may arise with share ownership in the Corporate and disposal of your shareholding when terminating your relationship with the Corporate.
Some Key Issues to Consider

- May you decline the offer to take up shares in the Corporate?

- Is it possible to have the shares issued in the name of another entity you control?
  There may be taxation advantages in having the shares issued in the name of a discretionary trust, proprietary company or similar vehicle in order to maximise taxation relief.

- What is the share price history of the stock?

- Do the shares attract dividends?

- If so, are the dividends partly or fully franked, or not franked at all?
  Does the Corporate pre-pay tax on the dividend on your behalf and, if so, to what extent?

- How difficult will the stock be to dispose of?

- Will your shareholding affect your overall investment/taxation strategy and, if so, to what extent?

- May you liquidate your investment at any time?

- If you choose to liquidate, what are the Capital Gains Tax implications if you realise a profit on the investment?

- Is the company operating from a sound financial base?
  Look at issues such as secured creditors, debentures, mortgages and other charges registered on the company to obtain a picture of the debt/equity ratio of the corporation. Also ascertain the extent, if any, of unsecured creditors or unregistered charges.

- What effect will known future company actions have on the share price?

- What is the operating environment of the corporate healthcare market likely to be in the near future and how might this affect profitability?

- Do your shares rank equally with other shares in a winding up?

- In the case of a winding up, where do shareholders rank with respect to satisfying all creditors of the Corporate?
  Shareholders may rank last in winding up and therefore receive little or no share of the liquidated assets of the company.
What You Need to Understand

Is the part payment of the purchase price by way of issuing shares in the Corporate a sound investment for you and your individual circumstances?

Degree of Influence

Although it may not be readily apparent, the parcel of shares may be viewed as being of greater significance than a mere investment. This is because the shares may have attached to them certain rights that will permit you to influence Corporate decision making.

Issues of good governance aside, the Corporate is principally concerned with returning the best possible profit to those who have invested capital in the venture. In that respect, company officers must be responsive to the needs of the shareholders, particularly those investors who have the larger or majority shareholding.

In order to assess your potential level of influence within this environment it is necessary to determine how your individual shareholding fits within the overall structure of the Corporate and any associated rights that may be attached to your shares, such as voting rights. Even if your individual shareholding is insufficient to exert any real influence on its own, it may be the case that the combined shareholdings of all doctors engaged with the Corporate will be sufficient to form a voting bloc of some significance in order to progress issues of concern to doctors.

It is important to ascertain precisely what level of influence your shareholding may enjoy, as an effective voting voice for doctors at General Meetings may go a long way to alleviate some of the loss of control that will almost inevitably occur under some Corporate structures. In addition, the fact that doctors are the essential and initial fee earners for the entire commercial enterprise should also enhance your relative influence on company affairs. The Corporates simply cannot survive without doctors and that factor should always be borne in
mind when negotiating with the Corporate individually, or in your collective capacity as a group of shareholders.

Some Key Issues to Consider

- How many shares have you been issued?

- How many shares has the Corporate issued in total?  
These two pieces of information will enable you to assess the basic strength of your bargaining position as a shareholder of the Corporate.

- How many shares have been allotted by the Corporate?  
The Corporate may only have issued 10,000 shares to date, but may be authorised to issue 10,000,000 more. This ‘dilution’ of your shareholding strength obviously affects the relative influence of your shareholding if those further shares are issued in the future.

- Do your shares have voting rights?  
Some shares may not have voting rights.

- Are your shares of equal value to other shares issued by the Corporate?  
Companies may issue different ‘classes’ of shares, such as Preference shares or A class shares with superior voting rights, dividend rights, or enjoying preferential treatment in a winding up.

- Are your shares fully paid for?  
If shares are not fully paid for at the time of purchase, the shareholder may be liable for a ‘call’ by the Corporate for that unpaid amount in the future.

- How many shares have been issued to other doctors in the practice?

- What is the total percentage of company stock that is intended to be issued to doctors – both currently and taking into account any future bonus share or options issues?

- Does the Corporate intend further major share issues and, if so, to what extent?
What You Need to Understand

You need to obtain a working understanding of the level and degree of influence that your shareholding may grant you individually, or in concert with other doctors in the Corporate, over the operational activities and strategic direction of the Corporate.
Practising Under the Corporate Umbrella

Modes Of Engagement

Generally, doctors belong to one of four major “employment” groupings. Doctors will probably be one of an employee, an independent contractor, a sole trader or a practice principal (either in the form of incorporation, trust or partnership). Most corporate models contract with either the practice, in whatever form it is, or the individual doctors within the practice. The mere fact of a practice entering into an agreement with a corporation does not automatically or necessarily change the legal relationships among doctors within the practice.

Some doctors, however, may be placed in a less secure position than others. A doctor who merely leases a room and use of facilities within a larger practice will need to consider different issues to a salaried GP within the same practice. If you are a partner in a practice, you should also consider how specific aspects of the contract with the Corporate may affect your relationship with your other partners. For example, is the entire practice penalised if one of the doctors breaches an essential term of the contract permitting rescission by the other party? Similarly, if the Corporate commences litigation proceedings against a partner in the practice for unpaid service fees, do the other partners incur a contingent liability for the same debt?

Your contractual status in relation to the Corporate, as a general principle, will be either that of independent contractor or employee. Both may appear under different guises. For example, an independent contractor to the Corporate may be either a tenant doctor or a practice principal.

This is a very complex legal question and the law is currently in a state of flux regarding the proper tests for determining independent contractor or employee status. Nevertheless, the ramifications of whether one is an independent contractor or employee are significant and your legal adviser should be specifically consulted on this issue. The overwhelming majority of Corporate contracts will define your status as that of independent contractor.
Effects of Modes of Engagement

An independent contractor is invariably personally responsible for an entire raft of employment issues which, for employees, are generally the responsibility of the employer. These include:

- Workers Compensation (for any staff that remain in your employment)
- Public Liability Insurance
- Professional Indemnity Insurance
- Superannuation
- Disability Insurance
- Taxation Arrangements
- Leave Arrangements

If you are not presently responsible for arranging and paying for these items, then these are additional costs you will need to investigate and assess as part of the overall package on offer.

Most doctors are familiar with these concepts and should be well versed in the principles involved. More information about employment and independent contracts is available from the Federal AMA in the publication “Guidelines on Service Contracts Between Doctors and Medical Practice Principals.”

What You Need to Understand

What is your employment status with the Corporate? If different to your present circumstances, what do you need to put in place to give effect to these new arrangements and to provide a degree of protection to yourself? How much will these new arrangements cost?
Remuneration

Overall remuneration levels under a Corporate structure will usually be derived from a number of differing primary and secondary sources, including consultation fees, incentive payments and non fee for service income.

Base Remuneration

This section is concerned with that part of your remuneration which will be directly derived from your share of the fees generated from the patients you treat.

Virtually all Corporate models operate on a fee splitting arrangement, with most Corporates deducting between 40 – 60% of billings as a management or service fee. The net amount, less any further administrative charges that may be levied by the Corporate under the terms of the contract, is then remitted to you and may usefully be described as your base remuneration.

Some Key Issues To Consider

- **What are the specific details of the fee-splitting arrangement?**
  The same Corporates have been noted offering quite different levels of administration or management fees depending upon the individual/practice to be engaged. Attempt to negotiate this figure down.

- **What additional charges may be levied by the Corporate in addition to a straight percentage cut of billings?**
  Other administrative charges may apply from time to time. As some Corporates impose financial penalties for under performance or absence from work on extended leave, the extent and triggering factors of these additional imposts should be clarified with the Corporate.

- **What is your likely level of remuneration with the Corporate?**
  A useful starting point may be to examine your billing patterns based on consultations alone from the past two to three years and calculate the total fees earned. Then deduct the proposed Corporate fee from those billings to obtain an estimate of how much you would earn if you continued with the same practice pattern. That figure should then be used, together with other forms of remuneration, to obtain an overall picture of your projected earnings.

- **By what methods may you enhance that level of remuneration?**
  This may include seeing a greater volume of patients, a differing case mix or higher fees. Discuss methods of enhancing this aspect of your income with the Corporate.

- **What events may lead to reductions in the level of remuneration?**
  Mooted Government moves to a greater proportion of ‘blended payments’ over ‘fee for service’ arrangements may adversely impact on future earnings if that means any future upward
movements in ‘fee for service’ payment levels suffer by comparison and your individual income is predominantly reliant upon patient throughput.

- What other methods of remuneration are available to you?
  Some Corporates may offer an hourly or sessional rate. This may be attractive to those wishing to work part time.

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<td>How your ‘base’ remuneration will be calculated. What is the likely quantum of your base remuneration during the life of the contract and what factors may lead to increases or reductions in that base level?</td>
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**Non Fee for Service Payments and Performance Pay Schemes**

**PIP Payments**

The Practice Incentive Program (PIP) was introduced in 1998 to compensate for the perceived limitations of fee for service arrangements. It was considered that practices that provided numerous quick consultations received higher financial rewards than those who took more time with their patients. Of particular concern was the high throughput of patients in some practices which were subsequently associated with alleged unnecessary prescribing, tests and referrals.

Under the current system, PIP payments are dependent on practice size in terms of patient numbers, rather than the number of consultations undertaken. The additional funding is designed to reduce the pressure on practices to undertake more consultations in order to maximise their income. Practices are free to spend the payment as they wish. PIP payments are also available to accredited Corporates and are the subject of specific contractual terms.

Doctors should bear in mind that the central philosophy of PIP payments has been to reduce pressure on practices to increase patient throughput. This philosophical aim may be undermined by the commercial imperatives of a publicly listed company to maximise returns on capital invested by shareholders. Consequently, these market forces may in
turn place pressure on Governments and health legislators to modify the program in light of Corporate practices.

**Some Key Issues to Consider**

- **How does the Corporate calculate its ‘costs’ in obtaining the PIP payment?**
  Does the Corporate use a fixed percentage base, or is it calculated on a full cost recovery basis? Ask the Corporate to provide both a detailed breakdown of how the Corporate calculates its ‘costs’ generally and for details of representative ‘costs’ relating to previous PIP payments for comparison purposes with your current practice.

- **What percentage of the PIP payment does the Corporate retain as profit?**
  Under most contractual arrangements, the Corporate will retain around 50% of the payment for its own purposes.

- **How is the net PIP payment disbursed?**
  Is it distributed based on the highest fee earners in the Corporate, is it distributed equally, or is it distributed as the Corporate sees fit in its discretion? Doctors are especially warned against the uncertainties of the Corporate distributing PIP payments as it sees fit, as there is no guarantee any doctor would receive a share of the payment.

**What You Need to Understand**

If you have traditionally relied upon PIP payments as a significant contribution to overall income, are the new arrangements likely to alter that position and, if so, to what extent? Conversely, if you have been formerly precluded from sharing PIP income in private practice, how may you access part of those payments under the Corporate structure?

**Performance Pay and Bonus Schemes**

The Corporate may have bonus schemes in place though which you will be able to enhance your income. There are potential dangers to such schemes and it is recommended you are aware of both the nature of the schemes and any potential they may have to prejudice your status as a practising doctor.

For example, the Corporate may provide you with an estimated billings target and if that target is exceeded, you will receive a greater share of
the extra revenues generated. Bodies such as the Health Insurance Commission and State Governments will doubtless monitor such schemes from the perspective of over servicing, inappropriate referral patterns or failure to disclose a financial interest in a referral or other recommended service. In this regard, issues of unconscionable conduct may arise if such schemes are seen to be interfering with clinical independence.

Some Key Points To Consider

• What bonus or performance pay schemes are in existence within the Corporate?

• Do these schemes conform with relevant legislation and applicable ethical and probity standards? If they do not, it is your Provider Number and your Registration that is at risk.

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<tr>
<td>What schemes are available to maximise or enhance your income? Are you comfortable from a legal and ethical standpoint with what is required of you under these schemes?</td>
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Method of Payment of Remuneration

Many doctors will already have in place sophisticated income streaming and taxation arrangements in order to maximise their net income. For example, some doctors may have discretionary trusts or private companies established to direct income to in order to lawfully minimise taxation liability. Other doctors may direct income to other individuals or entities for the same purpose. It is common practice to direct income to a spouse/partner or other family member in consideration for providing secretarial or support services. Such an arrangement may no longer be available to you when practising under the Corporate umbrella.

The savings available under such schemes can be quite significant, depending upon your personal circumstances. It is noted that most Corporates will attend to all billings, deduction of management fees and remittance of any net amounts to you.
What You Need to Understand

Does the accounting system in place within the Corporate have sufficient flexibility to permit income streaming or other methods of remittance that may be to your personal taxation advantage? If so, will the Corporate entertain flexible payment options?

Control and Provision of Medical Services

Clinical Independence

Corporate contracts will usually have specific clauses delineating your clinical independence. Notwithstanding such clauses, you must remain on your guard to ensure that your clinical independence is not compromised indirectly through influences on referral patterns, changes to throughput of patients or various financial inducements. Interference with your clinical independence may amount to unconscionable conduct.

Other significant issues include patient mix, capacity to bulk bill, fee setting and the freedom to pursue areas of personal interest within medicine.

Professional Indemnity Insurance

Most Corporates will insist you maintain your own professional indemnity insurance. This is also a natural corollary of the independent contractor nature of most arrangements and serves to place a convenient barrier between you and the Corporate, whereby the latter takes no responsibility for acts on your part and further, under most contracts viewed to date, you provide a specific indemnity to the Corporate in the event of any such loss occurring.

Professional Development/CME

This important element of medical practice has been recognised by most Corporates in their contractual documentation by the specific inclusion of CME and professional development.
Nonetheless, it is important to analyse the actual mechanics of any arrangements from an overall perspective, as the most attractive scheme on paper may pale somewhat if there are significant risks of income reduction involved.

It should always be emphasised in your dealings with the Corporate that CME is a necessary tool of prudent practice and may even reduce your indemnity premiums.

Other Insurances

All doctors should seek advice on the likely range of insurances that will be necessary in order to securely practice. This includes defining what insurances are required, who is responsible to pay and the nature of risk exposure. In some circumstances the Corporate may take responsibility for negligent actions of non-medical staff in your practice and this may even extend to a full indemnity.

Other issues to consider include the provision of insurances for fire, theft, workers compensation and public liability.

Other Clinical Issues

In the larger corporations it may be difficult to communicate effectively with Corporate management on clinical issues. It is therefore important to have mechanisms in place whereby you are able to securely raise issues of clinical concern. As can be appreciated, these are not issues that will be immediately appealing to those company officers managing the financial and accounting arms of your practice.

Ideally, your Corporate should have in place a Medical Director to deal with these issues, as there is a real risk some clinical issues will not be fully understood or may not assume a priority to the ‘bean counters’ within the organisation and with whom you may have most of your dealings.

Some Key Issues To Consider

- Does your contract specifically provide for the maintenance of clinical independence?
• Who sets your fees?
  This should be you and you alone (unless you are an employee) to avoid any unwelcome attention from the ACCC. Most Corporates are cognisant of this issue and have specifically provided for this in their contractual documentation.

• Do any of your contractual obligations have the potential to adversely impact on this independence?

• Are you free to speak publicly on clinical issues?
  Corporates may attempt to impose a ‘gag’ on doctors speaking publicly. Determine the extent of any proposed restraint and the specific areas to which it relates. Most contracts will preclude you from speaking publicly on any matter in relation to the Corporate.

• Who bears the cost of compliance for patient privacy programs?
  There may be high ‘one off’ compliance costs, such as will be required by year’s end pursuant to new privacy legislation.

• What does it mean if your contract provides that the Corporate will ‘arrange’ all your patient appointments?
  Does ‘arrange’ mean a total lack of control in that you have no say over who you see, or how many patients you see? Probably not, but it is an issue that should be investigated simply in order to determine the extent of the control this clause gives the Corporate over your patient base.

• Do you have complete freedom over your patient case-mix?
  Are you free to maintain any particular clinical interests you have?

• Are you free to reject certain types of procedures?
  If you are a female doctor, for example, will you be given all the pap smears in the practice to perform?

• Are there any current work practices within the Corporate that may affect your clinical independence?
  This issue is best discussed with other doctors already in practice under the Corporate umbrella. The AMA’s Code of Ethics and the proposed AMA code of conduct for Corporates will further refine some of these issues.

• Are there any specific legislative requirements of which you should be aware?
  For example, New South Wales has legislation regulating relationships between doctors and Corporates whereby the doctor must disclose any financial interests in a referral service to his or her patient to avoid a potential conflict of interest. Such a conflict is likely to arise if you have shares in the Corporate. Queensland is also set to introduce similar legislation.

• Who is responsible for maintaining the currency of your professional indemnity insurance?
  This will invariably be you, but consider asking the Corporate to negotiate a group ‘Corporate’ rate of indemnity insurance on your behalf as doctors.
• What happens in the event that you lose your medical registration or do not maintain your indemnity insurance?
  In most cases this will be sufficient cause to permit the Corporate to terminate your contract. It may also occur if you lose your PIP accreditation.

• What professional development schemes/CME are in place under the contract?
  Look at how these schemes are accessed, how they are funded and any financial implications that may arise as a result. Will a trip of six weeks have a negative impact on your billings and/or the management fee?

• Is the Corporate willing to pay for memberships of professional associations?
  It would be surprising if Corporates were reluctant so to do. In addition, the Corporate may be able to negotiate a reduced ‘Corporate’ rate of membership for professional associations.

• Are there appropriate mechanisms in place to advance clinical issues within the Corporate structure?
  It would be a mistake to assume the financial and accounting sections of the Corporate have any interest or expertise in these areas. Does the Corporate employ a Medical Director to progress clinical issues within wider management?

• What is the full range of insurances you are likely to require?

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<tr>
<td>When you have obtained answers to the questions above, do you consider you will be comfortable with the degree of control that will be exercised by the Corporate, directly and indirectly, over the manner in which you practise medicine?</td>
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**Provision of Support and Administrative Services**

This issue involves a number of steps. The first is to determine exactly who is responsible for providing all the services that will be required to support your medical practice in its new configuration. Once that has been determined, the second is to look carefully at the range of services it will be the responsibility of the Corporate to provide. It is desirable to conduct such an analysis in order to make an assessment of the level of services that it will be the responsibility of the Corporate to provide to you.
By obtaining a working understanding of the level of support you will be given by the Corporate once you have commenced practice, you will be in a better position to assess what you are paying the Corporate for and to negotiate a better level of service for those areas you may consider inadequate. Your bargaining position in this respect is much stronger during the negotiation stage of your engagement. Although it is readily conceded this may become a time consuming exercise, the benefits of having obtained a clear picture of your new daily working environment will make it significantly easier to assess the financial and lifestyle merits of the overall package on offer from the Corporate.

Some Corporate packages contemplate the provision of the complete range of support services, under other packages there may be a division of responsibilities. In the case of the former, it is especially important to come to a mutual understanding of what the Corporate intends to provide to you, as you will ordinarily be precluded under the terms of the contract from seeking those services elsewhere.

For example, it is common to see clauses such as: “The Corporate will provide an adequate level of secretarial and nursing support”. Who decides what is ‘adequate’ in the event to a disagreement and against what standards should it be measured? The inherent danger in such a loosely worded clause is that what the Corporate deems to be an adequate level of secretarial support may not necessarily equate with what you consider an appropriate level.

Similar issues could arise in relation to defining ‘adequate’ nursing support, maintenance of office equipment and even what may be a reasonable number of pens or linen for your practice to consume over any given quarter. Identifying and remedying any potential misunderstandings during the negotiation stage is a prudent business measure that may make your new working life that much more enjoyable.

It should be emphasised that you may discover significant improvements to practice support infrastructure in your new working environment. At the very least, the Corporate should be in a position to provide up-to-date facilities, equipment and support services. In that sense, this exercise will also serve to highlight any advantages that the new arrangements should secure for you concerning this often undervalued aspect of your practice.
Some Key Issues To Consider

• Is the Corporate contracting to provide you with all necessary support services?

• Exactly what levels of support are intended to be provided?
  This will require direct and detailed questioning of the Corporate. A useful method may be to list all services you currently require and compare that with what is on offer from the Corporate, paying particular attention to the level of support. Look critically at these proposals and ask to speak with other doctors in the Corporate, as their experience on the ground should be an invaluable indicator.

• Do these levels of support favourably compare with your existing situation?

• What is the actual cost to you of providing this support at present?
  Look at both actual costs and percentage of income.

• Does this favourably compare with cost projections of procuring those services from the Corporate?
  Again, look at both projected costs and the percentages to be charged for the more complete picture. Be aware that the same Corporate may offer different rates to different doctors regarding the level of the management fee to be charged, so be prepared to negotiate.

• If you are unhappy regarding the level of support intended to be provided, is the Corporate willing to negotiate a superior level of support?

• If you are not satisfied regarding the level of support once you are under the Corporate umbrella, what mechanisms are in place to address such problems?
  Does the contract provide for dispute settling procedures in such a situation, how are they accessed, and who bears the cost?

What You Need to Understand

Firstly, does the percentage of fees you will be paying to the Corporate in exchange for the provision of services represent ‘value for money’ having regard to both the range of services to be provided and the level to which they will be provided? Secondly, apart from financial considerations, do you consider the range and level of services to be adequate in any event?
See also the section on *Termination of Existing Commercial Arrangements* for further information on this topic.

**Working Flexibility**

At some point in the future you may decide that the circumstances under which you originally contracted with the Corporate have changed and, for example, you want to reduce your overall working hours. This may be because you are close to retirement, or want to start a family, or for any number of valid reasons. In such cases, it is possible to vary your working hours? While the short answer is ‘yes’ in most cases, it is likely to come at a cost.

Another issue to consider is the physical location in which you practice. Be aware that some Corporate contracts have as a condition that you may be re-located to another site operated by the Corporate. This may be in a location you do not wish to work. As you have agreed to this condition by signing the contract, you may be placed in the rather unenviable position of moving or risking legal action from the Corporate for breach of contract.

**Some Key Issues To Consider**

- Does the contract itself permit re-negotiation of working hours?
- If so, what are the financial impediments to a reduction in working hours?
- Under the terms of the contract, can the Corporate unilaterally move you to another location and, if so, how may you successfully resist such a move?

**What You Need to Understand**

Determine how flexible your working arrangements will be, how changes may be negotiated and examine the likely financial implications of contract and location changes.
Leave

The issue of leave is dependent on the status of your relationship with the Corporate. As a general principle, if you are an independent contractor leave is essentially a matter for you to arrange in accordance with any specific contractual terms on the subject. Employed doctors will have their leave arrangements determined solely in accordance with the terms and conditions of their employment contract.

Independent contractor doctors are in a different position. Two separate schemes are in vogue at present with the larger Corporates. Under one scheme, doctors are permitted to absent themselves from their workplace for defined periods in any given year without incurring any specific penalty, apart from the obvious loss of income over that period. This equates to around six weeks per year for general or unspecified purposes and seven days per year for sick leave in one example. Any time in excess of that period, however, may incur a penalty in that the term of your engagement can be extended by the Corporate, in order to make up for any extended periods during which you have been absent from your practice.

Under the other major model, doctors are not precluded from taking leave in any form for any period, but penalties may be invoked if the Corporate considers the absence excessive. The penalties include an ‘excess fee’ that is levied in an amount determined by the Corporate. Doctors are also responsible for arranging locum relief in conjunction with the Corporate.

Under this model doctors may also be charged the Corporate management fee during their absence. This arises under this particular model as the Corporate is entitled to recover at least a set minimum management fee each year. If the Corporate ‘take’ of your fees results in a shortfall due to reasons such as an absence of six weeks on study leave overseas, you may be required to make up this shortfall to the Corporate. The penalty may also be triggered if you fail to bring in sufficient fees to the Corporate over the course of a year. Other leave schemes do exist, but these are principally derivations of the two major schemes discussed above.

A warning regarding these types of leave provisions is sounded to female doctors. The financial penalties, direct and indirect, for any extended absences from your workplace may place those women...
doctors with family responsibilities, or considering starting a family, in a difficult financial situation. There is some force in the argument such clauses may amount to indirect discrimination against women.

In addition, under one contract extended absence due to disability for more than six months resulted in immediate termination of the contract by the Corporate. The doctor was entitled to a notice period of one day for a termination effected under this provision and was specifically precluded from claiming any loss for such a termination as a term of the contract.

Some Key Issues To Consider

• What are your options in relation to taking leave whilst engaged with the Corporate?

• What is the full range of financial penalties that may be invoked for an extended absence?

• How will any family responsibilities you may have impact on your earning capacity?

• If you are planning to have a child, how will this affect both your engagement itself and your subsequent income levels?

• Who is responsible to pay for a locum and how does this affect the management fee?

• Does the Corporate have any study leave scheme in place and, if so, how is this scheme accessed and funded? If not, why not?

• Is it possible, or practical, to take out some form of insurance to cover any extended absences that have arisen from factors beyond your immediate control e.g. serious illness of yourself or a family member?
What You Need to Understand

What exactly is your entitlement to take leave under the terms of the contract? What is the full range of financial implications for taking leave and at what stage are any such financial penalties invoked?

Maintenance of the Contractual Relationship

The terms of the contract will primarily determine the minimum period you must stay with the Corporate. This will invariably be for a period of years. Issues to consider include re-negotiation of the contract upon the expiry of its original term and mechanisms for dealing with contractual disputes during the life of the relationship.

Some Key Issues To Consider

• What is the length of your initial contractual relationship?
   This will normally be expressed as a period of years or months.

• How may that period be extended?
   Is there an automatic offer of a further contract? If not, what factors will influence the Corporate to offer you another term if you so wish?

• Does the contract continue to run after its nominal expiry date?
   Some contracts provide that the relationship continues automatically, but may be terminated at will by the giving of notice in writing.

• What are you able to do to resolve disputes with the Corporate?
   Look at methods of dispute resolution contained within the contract. Discuss with your legal adviser the fairness or otherwise of these procedures and also what other mechanisms are available to you at law to resolve disputes. Does the Corporate employ a Medical Director with responsibility for progressing issues such as these?

• If the Corporate is in financial difficulty, what are the implications for you from a commercial and clinical perspective?

• Are you required to ‘brand’ your practice with the Corporate logo?
   You may be required to erect Corporate signage on the exterior and display promotional material inside your surgery.
What You Need to Understand

How the contractual relationship is likely to be managed, what dispute resolution mechanisms exist and what other mechanisms are in place that are intended to provide continuity of the relationship.
Life And Practice After The Corporate

General

There may come a time in the future when you decide that you wish to terminate or simply not renew your relationship with the Corporate. Moreover, you or the Corporate may take some action or omit or fail to do something that consequently entitles the other party to seek damages or even terminate the contract. This section provides an overview of the issues you will need to consider when you are contemplating life or practice after the Corporate.

From a general perspective, if you are severing your connection with the Corporate, you may need to start a new practice completely from scratch. If you sold your practice, rooms and assets prior to providing your professional services to the Corporate, you will need to develop these all over again, in addition to recruiting new staff if you are not joining an established practice.

You should be aware that a long term relationship with the Corporate may create a form of ‘dependency’ by you on the Corporate and its services that you may find difficult or prohibitive to replicate in independent practice.

Types of Termination

Contracts and the relationships they regulate may be ended in a variety of ways.

By Agreement

Most contracts will expressly provide that the contract may be terminated at any stage prior to its nominal expiry date by mutual agreement. Even if not expressly included, the existence of such a clause may be implied in most circumstances. Any existing or accrued entitlements are not normally extinguished by a mutual termination.

By Effluxion of Time

Contracts are expressed to run for a period of time. At the expiry of this period, the agreement will come to an end. It is important to understand that not all obligations under the contract will cease at this time, even
though the major component of the relationship is no longer operative. Therefore, any monies due and owing prior to termination will still be due and owing. Restraint clauses are also an example of obligations that may not even come into effect until the main contract is at an end.

The contract may also provide that, notwithstanding the expiry of the original contractual period, the contract automatically continues in existence for further specified period/s until terminated by notice in writing given by one party to the other. Under such an arrangement all obligations remain current until the agreement is formally terminated. It may not be desirable to permit such a tenuous arrangement to continue indefinitely, although it does provide you with the option of a reasonably quick method of termination.

By Default

A contract may be brought to an end by one party after the other party has breached the contract to such an extent that the other party is entitled to terminate the contract if it chooses so to do.

Certain clauses within the contract may be identified as ‘default’ clauses in that both parties agree that following the occurrence of specified events the other party has the right to bring the contract to an end. These may include events as diverse as you losing your right to practice medicine, failing to meet contractual obligations governing income generation or bringing the reputation of the Corporate into disrepute. Other clauses may be identified as ‘essential’ terms or clauses. This evidences the parties’ intention that these identified and agreed terms are considered so fundamental to the operation of the entire agreement that a breach of one of these obligations may entitle the other party to treat the contract as being at an end.

Contracts may be terminated for many other reasons including frustration (for example, if the premises due to be sold to the Corporate are destroyed by fire prior to settlement of the sale), mistake or contracts made for an illegal purpose. The effects of termination will often be directly dependent on the cause of termination.
**What You Need to Understand**

Identify the means by which the contract can be ended and be aware of potential actions of yours that may entitle the Corporate to either seek damages from you, terminate the contract, or both. It is also useful to be aware of what actions on the part of the Corporate may entitle you to seek damages or rescind the contract.

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**Effects of Termination**

The terms of the contract will govern much of what occurs following separation from the Corporate. If you are retiring from medicine altogether a termination of the agreement may not present any ongoing issues of significance, apart from those obligations that would have existed in any event, such as maintaining an appropriate level of indemnity insurance.

Conversely, if you intend to continue to practice medicine following a period with the Corporate, you should be aware of what restrictions, if any, have been placed upon you pursuant to the terms of the contract. From a practical perspective, you will also need to identify and put in place the full range of services that you will need to replicate. Issues such as what is the most effective model of practice for you as an individual could be usefully re-visited at this juncture.

**Some Key Issues to Consider**

- What ongoing obligations are likely to be extended beyond termination of the contract?

- What, if any, assets or information (such as patient records) are you permitted to take with you? This will include an analysis of ownership of confidential information by the Corporate and what the terms of the contract define as ‘confidential information’. Ordinarily, the Corporate will seek to include all patient records.

- Are you precluded from seeing former patients?
• What other practical steps should you consider?
  This encompasses issues such as the costs of obtaining and equipping new rooms, staff and transfer of accounts.

What You Need to Understand

Identify and understand the likely impact of any obligations that will survive termination of the contractual arrangements.

Contractual Restrictions on Future Practice Rights

It is not uncommon in contemporary commercial practice to seek to restrain individuals from setting up in competition with a contracting entity once the original contractual relationship has been terminated or has expired. Clauses within contracts with this purpose in mind are ordinarily referred to as restrictive covenants or restraint clauses. It is important to emphasise that these clauses are solely for the benefit of the Corporate.

The intent of such clauses is to prevent you practising medicine within a certain radius of your practice location for a specific period both during the life of the agreement and for a period of time thereafter. Such restrictions enable the Corporate to protect its market share within a defined area, maintain revenue streams and promote a stable investment climate for its shareholders. It may also effectively preclude former patients of yours/the Corporate following you to your new practice.

Such clauses are commonly written in the form of a descending scale of both time periods and geographic radii.

As a hypothetical example, such a clause may be expressed as:

a. Not to practice medicine within a 10 kilometre radius of your current practice, but if 10 kilometres is held to be unenforceable by a Court, then,

b. Not to practice medicine within an 8 kilometre radius of your current practice, but if 8 kilometres is held to be unenforceable by a Court, then,
c. Not to practice medicine within an 6 kilometre radius of your current practice, but if 6 kilometres is held to be unenforceable by a Court, then,

…..and so on.

The clauses are drafted in an identical manner with respect to time preclusion periods. The Corporate, if it chooses to enforce the clause, will seek to restrain you by the commencement of particular types of legal proceedings.

The principal method of defence is to argue that the clause is unreasonable in terms of either the time period sought to be restrained or the geographic area sought to be enforced, or both. Accordingly, rather than run the risk of the entire restraint clause being struck out for being unreasonable, it has become common practice for Corporates to insert a range of enforcement periods and areas.

The enforceability or otherwise of these clauses will be dependent upon the overall suitability of these clauses to the medical profession (as determined by the Courts from time to time) and the application of any such general principles derived from case law to your particular circumstances. For example, a restraint area of 10 kilometres may be perfectly reasonable for a practice in a country centre, but may be considered excessive for a similar practice in the CBD of a major capital city.

Some Key Issues To Consider

- As individual circumstances vary, will the Corporate consider negotiating reasonable alternative restraint clauses by mutual agreement?

- Are there any other associated restraint provisions?  
  For example, are you prohibited from any form of medical practice during the restraint period, or simply the clinical activities you undertook for the corporate.
• Are you precluded from undertaking other paid work during the life of your contract with the Corporate?
  For example, you may have an interest in another practice, or practice for another surgery at weekends\after hours.

• Does the restraint extend to others?
  Some contracts contain exclusions on working or forming other professional relationships with former associates of the Corporate.

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**What You Need to Understand**

Determine the likely validity of restraint clauses and their potential to adversely impact on your freedom to practice medicine, both during the life of the arrangement with the Corporate and the duration of the restraint period thereafter.
The Kit in a Nutshell

It is readily conceded that not everyone will be prepared to conduct such an exhaustive investigation as contemplated by this kit. Such an investigation may not even be necessary in all cases. Further, the kit deliberately assumes a low level of commercial knowledge, although most medical practitioners will be familiar with many of the matters discussed.

There will be doctors who are prepared to enter into long term binding arrangements with little or no real understanding of what their new earning and working environment will be like. It is not recommended that any doctor, irrespective of his/her perceived level of legal and accounting competence, or how unobtrusive the practice changes appear to be, enter into any formal agreement with a Corporate without first obtaining good quality legal and financial advice.

The kit is intended to serve as a practical guide to doctors to assist them in coming to a decision that will best suit their personal circumstances when considering engagement with a Corporate. The following steps provide a brief summation of the processes described in greater detail in the body of the kit.

The Key Steps

- **STEP ONE - Form an objective picture of your current position**
  Look at what you like and dislike about aspects of your professional practice at present. Income and the degree of effort required to earn it are certainly prime aspects of this process, but also consider what is important to you in terms of family and lifestyle issues, clinical independence, degree of control over the manner in which you practice medicine, your physical working environment, security, administration and other issues.

- **STEP TWO - Form an objective picture of your future position with the Corporate**
  Go through a similar process utilising the information you now have to hand regarding your proposed arrangements with the Corporate.

- **STEP THREE - Compare the Two**
  Be objective! Remember that the things that you were unhappy with in practice before may well be repeated with the Corporate if not specifically addressed. The negotiation process is actually a good opportunity to remedy those problems or irritations.
What You Need to Understand

Having made the comparison between your present circumstances and your likely future circumstances, the financial position you will be in and what is important to you as an individual, the question is quite simple – will you be better off overall or not?

There is no doubt the ‘Corporate’ solution may present the ideal environment for some doctors, for others it will not. If you find the arrangement does not suit you at some later date it is unlikely you will be permitted to simply terminate the arrangement at will. With that principle in mind, carefully assess your position and what it is you actually seek from the practice of medicine before you accept an engagement with a Corporate.

More Information

Additional information on corporatisation and contract issues may be obtained from the AMA and your legal and financial advisers. The following publications may be obtained from the Federal AMA at the contact details overleaf:

- General Practise Corporisation – AMA Scoping Paper – November 2000
- Guidelines on Service Contracts Between Doctors and Medical Practice Principles – September 1999
AMA Corporatisation Kit and Information Register

If you have obtained this publication from a colleague and would like your own copy and/or wish to receive information updates on developments in corporatisation simply complete the form below. Information updates will be issued from time to time and will be sent to you by e-mail or facsimile.

Please send the completed form to the AMA.

By facsimile to: 02 62705499

By freepost to:

Reply Paid 115
Australian Medical Association
PO Box E115
Kingston ACT 2604

You can also lodge your contact details on-line through the AMA’s website at [www.ama.com.au](http://www.ama.com.au) by following the corporatisation prompts or e-mail your contact details to the AMA at workplace@ama.com.au

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AMA Corporatisation Kit and Information Register

Please send me a copy of the AMA publication “Corporatisation of Medical Practice – Decision Support Kit for Doctors” as well as information updates on developments in corporatisation as they are issued.

First Name:---------------------- Surname:-------------------------------------------

Address:-----------------------------------------------------------------------------------

Town/Suburb:----------------------------- State: --------------Postcode:----------

Phone:-------------------------------------- Fax: ----------------------------------------

E-mail:-------------------------------------------------------------------------------------
Contact the AMA

AMA contact details are set out below.

**Federal AMA:**
Australian Medical Association  
PO Box E115  
KINGSTON ACT 2604  
Ph: 02 6270 5400  
Fax: 02 6270 5499  
Website: http://www.ama.com.au  
E-mail: workplace@ama.com.au

**State AMA’s:**

ACT Branch of the Australian Medical Association  
PO Box 560  
CURTIN ACT 2605  
Ph: 02 6270 5410  
Fax: 02 6273 0455  
E-mail: ama.act@dynamite.com.au

Australian Medical Association (NSW) Limited  
PO Box 121  
ST LEONARDS NSW 1590  
Ph: 02 9439 8822  
Fax: 02 9438 3760  
E-mail: enquiries@nswama.com.au

Australian Medical Association Northern Territory Inc  
PO Box 41046  
CASUARINA NT 0811  
Ph: 08 8927 7004  
Fax: 08 8927 7475  
E-mail: amant@bigpond.com
Queensland Branch of the Australian Medical Association
PO Box 123
RED HILL QLD 4059
Ph: 07 3872 2222
Fax: 07 3856 4727
E-mail: amaq@amaq.com.au

Australian Medical Association Incorporated (South Australia)
PO Box 134
NORTH ADELAIDE SA 5006
Ph: 08 8267 4355
Fax: 08 8267 5349
Email: admin@amasa.org.au

The Tasmanian Branch of the Australian Medical Association
2 Gore Street
SOUTH HOBART TAS 7004
Ph: 03 6223 2047
Fax: 03 6223 6469
E-mail: admin@amatas.com.au

Australian Medical Association (Victoria) Limited
PO Box 21
PARKVILLE VIC 3052
Ph: 03 9280 8722
Fax: 03 9280 8786
E-mail: amavic@amavic.com.au

Australian Medical Association (WA) Inc
PO Box 133
NEDLANDS WA 6909
Ph: 08 9273 3000
Fax: 08 9273 3073
E-mail: mail@wa.com.au