

GENETIC TECHNOLOGIES LTD
Form 20-F
October 24, 2012
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 20-F

**REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OF
THE SECURITIES EXCHANGE ACT OF 1934**

OR

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended June 30, 2012

OR

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

OR

**SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR
15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of event requiring this shell company report

For the transition period from _____ **to** _____

Commission file number 0-51504

GENETIC TECHNOLOGIES LIMITED
(Exact name of Registrant as specified in its charter)

N/A
(Translation of Registrant's name into English)

AUSTRALIA
(Jurisdiction of incorporation or organization)

60-66 Hanover Street, Fitzroy, Victoria, 3065, Australia
Telephone: 011 61 3 8412 7000; Facsimile: 011 61 3 8412 7040
(Address of principal executive offices)

Thomas G. Howitt
Telephone: 011 61 3 8412 7050; Facsimile: 011 61 3 8412 7040
Email: tom.howitt@gtglabs.com
60-66 Hanover Street, Fitzroy, Victoria, 3065, Australia
(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

Securities registered or to be registered pursuant to Section 12(b) of the Act. None

Securities registered or to be registered pursuant to Section 12(g) of the Act.

American Depositary Shares each representing 30 Ordinary Shares and evidenced by American Depositary Receipts
Title of each class

Table of Contents

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act. None

Number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report.

464,771,819 Ordinary Shares

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

Yes No

Note: Checking the box above will not relieve any registrant required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 from their obligations under those Sections.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

U.S. GAAP

International Financial Reporting Standards as issued by the International Accounting Standards Board

Other

Edgar Filing: GENETIC TECHNOLOGIES LTD - Form 20-F

If Other has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow.

Item 17 Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

(APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PAST FIVE YEARS)

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court.

Yes No

Table of Contents

TABLE OF CONTENTS

<u>Item 1.</u>	<u>Identity of Directors, Senior Management and Advisers</u>	2
<u>Item 1.A</u>	<u>Directors and Senior Management</u>	2
<u>Item 1.B</u>	<u>Advisers</u>	3
<u>Item 1.C</u>	<u>Auditor</u>	3
<u>Item 2.</u>	<u>Offer Statistics And Expected Timetable</u>	3
<u>Item 3.</u>	<u>Key Information</u>	3
<u>Item 3.A</u>	<u>Selected Financial Data</u>	3
<u>Item 3.B</u>	<u>Capitalization and Indebtedness</u>	6
<u>Item 3.C</u>	<u>Reasons for the Offer and Use of Proceeds</u>	6
<u>Item 3.D</u>	<u>Risk Factors</u>	6
<u>Item 4.</u>	<u>Information on the Company</u>	14
<u>Item 4.A</u>	<u>History and Development of the Company</u>	14
<u>Item 4.B</u>	<u>Business Overview</u>	14
<u>Item 4.C</u>	<u>Corporate Structure</u>	36
<u>Item 4.D</u>	<u>Property, Plant and Equipment</u>	36
<u>Item 5.</u>	<u>Operating and Financial Review and Prospects</u>	36
<u>Item 5.A</u>	<u>Operating Results</u>	37
<u>Item 5.B</u>	<u>Liquidity and Capital Resources</u>	42
<u>Item 5.C</u>	<u>Research and Development, Patents and Licenses, etc.</u>	44
<u>Item 5.D</u>	<u>Trend Information</u>	44
<u>Item 5E.</u>	<u>Off-balance sheet arrangements</u>	45
<u>Item 5F.</u>	<u>Information about contractual obligations</u>	45
<u>Item 6.</u>	<u>Directors, Senior Management and Employees</u>	45
<u>Item 6.A</u>	<u>Directors and Senior Management</u>	45
<u>Item 6.B</u>	<u>Compensation</u>	48

Table of Contents

<u>Item 6.C</u>	<u>Board Practices</u>	52
<u>Item 6.D</u>	<u>Employees</u>	54
<u>Item 6.E</u>	<u>Share Ownership</u>	54
<u>Item 7.</u>	<u>Major Shareholders and Related Party Transactions</u>	54
<u>Item 7.A</u>	<u>Major Shareholders</u>	54
<u>Item 7.B</u>	<u>Related Party Transactions</u>	55
<u>Item 7.C</u>	<u>Interests of Experts and Counsel</u>	56
<u>Item 8.</u>	<u>Financial Information</u>	56
<u>Item 8.A</u>	<u>Consolidated Statements and Other Financial Information</u>	56
<u>Item 8.B</u>	<u>Significant Changes to Financial Information</u>	57
<u>Item 9.</u>	<u>The Offer and Listing</u>	58
<u>Item 9.A</u>	<u>Offer and Listing Details</u>	58
<u>Item 9.B</u>	<u>Plan of Distribution</u>	59
<u>Item 9.C</u>	<u>Markets</u>	59
<u>Item 9.D</u>	<u>Selling Shareholders</u>	59
<u>Item 9.E</u>	<u>Dilution</u>	59
<u>Item 9.F</u>	<u>Expenses of the Issue</u>	59
<u>Item 10.</u>	<u>Additional Information</u>	59
<u>Item 10.A</u>	<u>Share Capital</u>	59
<u>Item 10.B</u>	<u>Our Constitution</u>	61
<u>Item 10.C</u>	<u>Material Contracts</u>	62
<u>Item 10.D</u>	<u>Exchange Controls and Other Limitations Affecting Security Holders</u>	62
<u>Item 10.E</u>	<u>Taxation</u>	63
<u>Item 10.F</u>	<u>Dividends and Paying Agents</u>	68
<u>Item 10.G</u>	<u>Statement by Experts</u>	68
<u>Item 10.H</u>	<u>Documents on Display</u>	68
<u>Item 10.I</u>	<u>Subsidiary Information</u>	68
<u>Item 11.</u>	<u>Quantitative And Qualitative Disclosures About Market Risk</u>	69

Table of Contents

<u>Item 12.</u>	<u>Description Of Securities Other Than Equity Securities</u>	69
<u>Item 12.A</u>	<u>Debt Securities</u>	69
<u>Item 12.B</u>	<u>Warrants and Rights</u>	69
<u>Item 12.C</u>	<u>Other Securities</u>	69
<u>Item 12.D</u>	<u>American Depositary Shares</u>	69
<u>Item 13.</u>	<u>Defaults, Dividend Arrearages and Delinquencies</u>	70
<u>Item 14.</u>	<u>Material Modifications to The Rights Of Security Holders and Use Of Proceeds</u>	70
<u>Item 15.</u>	<u>Controls and Procedures</u>	70
<u>Item 15.A</u>	<u>Disclosure controls and procedures</u>	70
<u>Item 15.B</u>	<u>Management s annual report on internal control over financial reporting</u>	70
<u>Item 15.C</u>	<u>Attestation report of the registered public accounting firm</u>	71
<u>Item 15.D</u>	<u>Changes in internal control over financial reporting</u>	71
<u>Item 16.A</u>	<u>Audit Committee Financial Expert</u>	71
<u>Item 16.B</u>	<u>Code Of Ethics</u>	71
<u>Item 16.C</u>	<u>Principal Accountant Fees and Services</u>	72
<u>Item 16.D</u>	<u>Exemptions From The Listing Standards For Audit Committees</u>	72
<u>Item 16.E</u>	<u>Purchases Of Equity Securities By The Issuer And Affiliated Purchasers</u>	72
<u>Item 16.F</u>	<u>Change in Registrant s Certifying Accountant</u>	72
<u>Item 16.G</u>	<u>Corporate Governance</u>	73
<u>Item 16.H</u>	<u>Mine Safety Disclosure</u>	73
<u>Item 17.</u>	<u>Financial Statements</u>	73
<u>Item 18.</u>	<u>Financial Statements</u>	73
<u>Item 19.</u>	<u>Exhibits</u>	73

Table of Contents

INTRODUCTION

In this Annual Report, the Company, Genetic Technologies, we, us and our refer to Genetic Technologies Limited and its consolidated subsidiaries.

Our consolidated financial statements are set out on pages F1 to F40 of this Annual Report (refer to Item 18 Financial Statements).

References to the ADSs are to our ADSs described in Item 12.D American Depositary Shares and references to the Ordinary Shares are to our Ordinary Shares described in Item 10.A Share Capital.

Our fiscal year ends on June 30 and references in this Annual Report to any specific fiscal year are to the twelve month period ended on June 30 of such year.

FORWARD-LOOKING STATEMENTS

This Annual Report contains forward-looking statements that involve risks and uncertainties. We use words such as anticipates, believes, plans, expects, future, intends and similar expressions to identify such forward-looking statements. This Annual Report also contains forward-looking statements attributed to certain third parties relating to their estimates regarding the growth of Genetic Technologies and related service markets and spending. You should not place undue reliance on these forward-looking statements, which apply only as of the date of this Annual Report. Our actual results could differ materially from those anticipated in these forward-looking statements for many reasons, including the risks faced by us described below under the caption Risk Factors and elsewhere in this Annual Report.

Although we believe that the expectations reflected in such forward-looking statements are reasonable at this time, we can give no assurance that such expectations will prove to be correct. Given these uncertainties, readers are cautioned not to place undue reliance on such forward-looking statements. Important factors that could cause actual results to differ materially from our expectations are contained in cautionary statements in this Annual Report including, without limitation, in conjunction with the forward-looking statements included in this Annual Report and specifically under Item 3.D Risk Factors.

All subsequent written and oral forward-looking statements attributable to us are expressly qualified in their entirety by reference to these cautionary statements.

ENFORCEMENT OF LIABILITIES AND SERVICE OF PROCESS

Edgar Filing: GENETIC TECHNOLOGIES LTD - Form 20-F

We are incorporated under the laws of Western Australia in the Commonwealth of Australia. The majority of our directors and executive officers, and any experts named in this Annual Report, reside outside the U.S. Substantially all of our assets, our directors' and executive officers' assets and such experts' assets are located outside the U.S. As a result, it may not be possible for investors to affect service of process within the U.S. upon us or our directors, executive officers or such experts, or to enforce against them or us in U.S. courts, judgments obtained in U.S. courts based upon the civil liability provisions of the federal securities laws of the U.S. In addition, we have been advised by our Australian solicitors that there is doubt that the courts of Australia will enforce against us, our directors, executive officers and experts named herein, judgments obtained in the U.S. based upon the civil liability provisions of the federal securities laws of the U.S. or will enter judgments in original actions brought in Australian courts based upon the federal securities laws of the U.S.

Table of Contents**PART I****Item 1. Identity of Directors, Senior Management and Advisers****Item 1.A Directors and Senior Management**

The Directors of the Company as of the date of this Annual Report are as follows:

Name	Position/Function	Business Address
Dr. Melvyn J. Bridges	Non-Executive Chairman	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Tommaso Bonvino	Non-Executive Director	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Dr. Malcolm R. Brandon	Non-Executive Director	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Gregory W. Brown	Non-Executive Director	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Dr. Mervyn Cass	Non-Executive Director	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Huw D. Jones	Non-Executive Director	60-66 Hanover Street Fitzroy Victoria 3065

Australia

The members of Senior Management of the Company as of the date of this Annual Report are as follows:

Name	Position/Function	Business Address
Dr. Paul D.R. MacLeman	Chief Executive Officer	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Thomas G. Howitt	Chief Financial Officer and Company Secretary	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Alison J. Mew	Chief Operating Officer	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Dr. David J. Sparling	Vice President Legal and Corporate Development	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Gregory J. McPherson	Vice President Sales and Marketing	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Ivan Jasenko	Quality and Regulatory Manager	60-66 Hanover Street Fitzroy Victoria 3065 Australia
Mark J. Ostrowski	Senior Vice President Sales and Marketing (Phenogen Sciences Inc.)	9115 Harris Corners Parkway Suite 320 Charlotte North Carolina 28269 USA

Table of Contents**Item 1.B** **Advisers**

Our principal bankers, accountants and legal advisers are as follows:

Name of Adviser	Function	Business Address
National Australia Bank Limited	Bankers - Australia	Level 2, 151 Rathdowne Street Carlton Victoria 3053 Australia
Bank of America, N.A.	Bankers - USA	155 Town Centre Drive Mooresville North Carolina 28117 USA
Middletons	General Counsel	525 Collins Street Melbourne Victoria 3000 Australia
Sheridan Ross PC	Licensing and Patent Attorneys	1560 Broadway, Suite 1200 Denver Colorado 80202-5141 USA
Greenberg Traurig, LLP	U.S. Securities Counsel	200 Park Avenue New York New York 10166 USA

Item 1.C **Auditor**

The auditor of the Group's financial statements for the years ended June 30, 2012, 2011 and 2010 was PricewaterhouseCoopers, whose address is 2 Southbank Boulevard, Southbank, Victoria, 3006, Australia. PricewaterhouseCoopers is the Company's current independent registered public accounting firm, an appointment ratified at the Annual General Meeting held on November 25, 2009.

Item 2. **Offer Statistics And Expected Timetable**

Not applicable.

Item 3. Key Information

Item 3.A Selected Financial Data

The following selected financial data for the five years ended June 30, 2012 is derived from the audited consolidated financial statements of Genetic Technologies Limited, prepared in accordance with International Financial Reporting Standards (IFRS) which became effective for our Company as of our fiscal year ended June 30, 2006.

The balance sheet data as of June 30, 2012 and 2011 and the statement of comprehensive income data for the 2012, 2011 and 2010 fiscal years are derived from our audited consolidated financial statements which are included in this Annual Report. Balance sheet data as of June 30, 2010, 2009 and 2008 and statement of comprehensive income data for the 2009 and 2008 financial years are derived from our audited consolidated financial statements which are not included in this Annual Report. The data should be read in conjunction with the consolidated financial statements, related notes and other financial information included herein.

All amounts are stated in Australian dollars as of June 30, as noted.

Table of Contents

GENETIC TECHNOLOGIES LIMITED

CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

FOR 2012, 2011, 2010, 2009 AND 2008

	Year ended June 30, 2012 AUD	Year ended June 30, 2011 AUD	Year ended June 30, 2010 AUD	Year ended June 30, 2009 AUD	Year ended June 30, 2008 AUD
Revenue from operations					
Genetic testing services	3,691,215	4,594,960	4,915,528	4,599,286	3,918,692
Less: cost of sales (refer note below)	(1,948,625)	(2,034,916)	(2,722,975)	(2,760,359)	
Gross profit from operations	1,742,590	2,560,044	2,192,553	1,838,927	3,918,692
Other revenue	2,526,599	13,680,741	3,739,747	5,391,714	10,730,743
Gain on deconsolidation of subsidiary	5,113,175				
Selling and marketing expenses	(4,384,184)	(3,018,947)	(2,679,979)	(2,765,060)	(2,576,607)
General and administrative expenses	(5,608,038)	(3,696,165)	(3,196,488)	(4,282,275)	(4,234,500)
Licensing, patent and legal costs	(1,267,838)	(4,097,323)	(3,923,102)	(4,017,721)	(4,780,463)
Laboratory, research and development costs	(4,029,369)	(4,380,866)	(6,258,871)	(6,116,450)	(9,677,723)
Finance costs	(45,217)	(81,934)	(100,422)	(89,499)	(66,763)
Share of net loss of associates accounted for using the equity method	(132,037)				
Non-operating income and expenses	787,491	(85,771)	425,239	1,407,829	1,234,983
Profit/(loss) from continuing operations before income tax	(5,296,828)	879,779	(9,801,323)	(8,632,535)	(5,451,638)
Net profit from discontinued operation		21,562	446,114	774,214	