

# Corporate Insolvency Conference

Interactive  
Forums

Case Study  
Analysis

**Revival, Survival: In-depth analysis  
of the complex issues in times of  
economic downturn**

**Intensive and Conference**

**26 – 27 August 2009,  
Stamford Plaza, Melbourne**

**1 – 2 September 2009,  
Duxton Hotel, Perth**



## Addressing crucial issues such as:

- The **2009 economic outlook, property development insolvencies and mining and resources** industry in Australia
- Effectively **restructuring distressed debt** to restore liquidity
- Recognising the factors to **success in voluntary administrations**
- Refining your **workout and restructuring skills** to put your client back into business
- Analysing high profile corporate collapses such as **Opes Prime, Centro Properties and Allco Finance**
- Minimising **insolvent trading risk**
- Confronting the issues in **shareholder class action litigation** and litigation funding

## Expert speakers include:

**Top-tier insolvency practitioners and lawyers  
recognised by the Chambers Global:**

**Ross McClymont**, Partner, **Blake Dawson**

**Ian Walker**, Partner, **Minter Ellison**

**John Stragalinos**, Partner, **Corrs Chambers Westgarth**

**Beau Deleuil**, Partner, **Mallesons Stephen Jaques**

## Leading corporate insolvency and recovery firms:

- |                          |                      |
|--------------------------|----------------------|
| • Allens Arthur Robinson | • Freehills          |
| • Arnold Bloch Liebler   | • Ferrier Hodgson    |
| • Baker & McKenzie       | • IMF                |
| • Deacons                | • Gadens             |
| • Deloitte               | • McKenzie Moncrieff |



# Corporate Insolvency

## Revival, Survival: In-depth analysis of the

### Conference

Melbourne: Thursday, 27 August 2009

8:30 **Conference registration**

8:50 **Welcome from the Chairperson**

9:00 **An economy in turmoil: Global credit crisis and the rise in insolvencies and restructuring**

- Economic update**
- Lessons learnt – what could be done to prevent future crises from happening again?
  - How will the expected tightening of the regulatory regime impact corporations in the future?
  - Taking the crystal ball to 2010 and beyond: how will the financial crisis play out over the next few years?
  - What are the long-term and short-term ramifications?

**Mark Crosby, Economist, Melbourne Business School (Tentative)**

9:40 **Case Study: Lessons learnt from OPES Prime – in the shareholders' or creditors' best interests?**

- Interactive forum**
- Payments and transactions leading up to the collapse – what protection is available to directors when exercising commercial judgments in uncertain solvency situations?
  - Margin lending by securities lending agreements compared to those secured by a mortgage: *Beaconwood Securities Pty Ltd v Australia and New Zealand Banking Group Limited* [2008] FCA 594 – the distinction between economic and legal effect
  - Reviewing ASIC proposed settlement and ANZ enforceable undertaking – Dissecting ASIC response by way of settlement and regulation redressing structural failure in the market
  - Managed investment provisions of the *Corporations Act* – operation of unregistered schemes
  - Examining the principle of a broker's duty to inform clients of the risks of securities lending / fostering awareness of retail investors rights and obligations
  - Will this lead to an increase in prudential regulation?

**Adrian Brown, Partner, Corporate Recovery, Ferrier Hodgson**  
**David Porter, Partner, Deacons**

10:30 **Morning tea**

11:00 **Restructuring distressed debt and equity: Restoring liquidity and preventing the erosion of value**

- Examining the drivers for restructuring distressed debt
- Resolving issues in negotiating with bankers, noteholders and other creditors – towards achieving a reduction of debt and/or an extension of payment terms
- Addressing the issues raised by “out of the money” currency and interest rate hedges
- Considering the impact of initial structuring of transactions on restructuring distressed debt
- Navigating the intricacies of debt for equity swaps
- Lessons from recent restructures: Centro Properties and Babcock and Brown

**Michael Dodge, Partner, Arnold Bloch Liebler**

11:50 **Avoiding the risk of insolvent trading and delineating director duties at the brink of insolvency**

- Recognising the risk of insolvent trading – delineating the boundaries and definition of insolvency
- Current and future directions for developments for reforms to legislation in regards to insolvent trading
- Safeguarding against director's exposure to personal liability – s558G of *Corporations Act 2001*
- Clarifying director duties, liabilities and responsibilities in distressed companies and during insolvency – reviewing director duties in formal administration and trustee company director issues
- Insolvency claims: Defending claims brought about by liquidators
- Are administrators liable as shadow directors?
- **Case studies: Bell Group decision** – refinancing on the brink of collapse, impacts of decision in *Hall v Poolman* [2009] NSWCA 64 at [79], *ASIC v Storm Financial Limited (R & M) (in Adm)* [2009] FCA 269

**Ian Walker, Partner, Minter Ellison - Chambers Global 2009** – Leading individual for restructuring and insolvency

12:40 **Networking lunch for speakers and delegates**

1:40 **Voluntary Administration from the Secured Creditor's perspective – strategies to maximise outcomes**

- What is meant by a charge over “the whole or substantially the whole” of a company's property?
- When should a creditor with such a charge consider appointing a VA rather than a receiver?
- Use of open-ended consents under section 440B
- Use of “donkey” VAs
- Use of “pre-pack” VAs
- Publicly-listed companies - use of creditors trusts to realise value

**Ross McClymont, Partner, Blake Dawson - Chambers Global 2008** – Leading individual for restructuring and insolvency

### Upcoming events

#### Advanced Insolvency Law Fundamental Workshops

5 August, Sydney | 6 August, Brisbane

#### Advanced Insolvency Law Intensive & Workshops

19-20 August, Sydney | 21-22 August, Brisbane

#### Bulletproof your Securities using the Personal Property Securities Act

25 August, Melbourne | 26 August, Sydney | 1 September, Brisbane | 3 September, Perth

# Conference

## e complex issues in times of economic downturn

2:30

### Examining the shifting landscape of property market in Australia: the intricacies of property development insolvencies

The future of the property industry is uncertain, as, coinciding with halted property development in late 2008, low interest rates have also spurred demand, and the effects of the first home owners grant have inflated property prices in certain areas. However, there had been a number of casualties such as Raptis Group and Wincrest Homes. This session will investigate:

- Reviewing property development insolvencies in Australia
- Resurrecting or saving the property development
- Planning and executing an exit strategy on behalf of builders, developers and financiers of commercial developments
- When should we apply development management agreements?
- Case studies in large property development collapses: Westpoint Group, Centro

**Jeff Clark**, Partner, **Mallesons Stephen Jaques**  
**Andrew Denehy**, Partner, Property & Construction, **Gadens**  
**Jonathan Oldham**, Partner, **Mallesons Stephen Jaques**

3:10

### Afternoon tea

3:40

### Anticipating the rise in shareholder class action litigation post CAMAC report and Sons of Gwalia

- Dealing with defended shareholder claims
- Will there be an increase in litigation in this economic environment?
- Outlining outcomes of the CAMAC report – how will it enable shareholders to recover funds in insolvency proceedings where they were misled
- How did the Sons of Gwalia decision impact the outcomes of the report?
- Implications for companies seeking funds in an unsecured debt market
- What are the implications for company disclosure?

**John Stragalinos**, Partner, **Corrs Chambers Westgarth - Chambers Global 2008** - Leading individual for restructuring and insolvency

4:30

### Navigating the complexities of the Cross-border Insolvency Act: Concrete scenarios and applications of cross-border issues

- What are the implications of the Cross-border *Insolvency Act 2008* (Cth)?
- Reviewing *In re Betcorp Ltd* (in Liquidation) – cross-border insolvency proceeding under Chapter 15 of the US Bankruptcy Code
- Some key considerations for future applications

**Alexander Wolff**, Partner, **Baker & McKenzie** - Best Lawyers 2008 & 2009 (Litigation), **Chambers Global 2009** – Dispute Resolution

5:10

### Closing remarks from the Chairperson

5:20

### Close of Conference

## Who Should Attend

- Insolvency Lawyers
- Insolvency Practitioners
- Banks
- Credit and Lending Professionals
- Commercial Lawyers
- Business Advisers
- Turnaround Professionals
- Corporate Recovery Professionals
- Accountants
- In-House Counsel
- CEOs
- Directors

## Australian Insolvency Law book

*Symes C, Duns J*

*Australian Insolvency Law* is a new text that deals with both personal and corporate insolvency. The work covers the most recent legislative change and case law in the area of insolvency and is written by specialist academics in the area.

### Contents:

#### PART 1 – INTRODUCTION

1. Introduction to Australian Insolvency and Bankruptcy Law

#### PART 2 – PERSONAL INSOLVENCY

2. The Bankruptcy Process and its consequences
3. The Bankrupt Estate
4. Claims against the estate
5. Alternatives to bankruptcy
6. Other Personal Insolvency matters

#### PART 3 – CORPORATE INSOLVENCY

7. Receivership
8. Voluntary administration
9. Deeds of Company Arrangement
10. Liquidation : Voluntary and Compulsory
11. Liquidation : Activities of the Liquidator
12. Liquidation : Ultimate aspects
13. Insolvent trading and directors

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Soft cover ISBN: 9780409325379



**Intensive**  
26 August 2009, Melbourne  
1 September 2009, Perth

**Conference**  
27 August 2009, Melbourne  
2 September 2009, Perth

## Conference | Perth: Wednesday, 2 September 2009

8:30 **Conference registration**

8:50 **Welcome from the Chairperson**

**Chris McLeod**, Partner, **Deacons**, State Chairman, **Insolvency Practitioners Association of Australia (IPA)**

9:00 **Impact of China's inward investment into WA's mining sector**

- Availability of capital
- Equity versus asset level investment
- Is control an issue?
- Processes and timing
- Perceptions

**Dr Eric Lilford**, National Head, Mining, **Deloitte Touche Tohmatsu**

9:40 **Complex work-outs and corporate restructuring: a valuable tool in company recovery**

- Navigating the complexities of Australian corporations – complex structures, business operations
- Syndicated work-outs and distressed debt
- Issues regarding the restructuring and recapitalising of distressed businesses
- Avoiding pitfalls

**Beau Deleuil**, Partner-in-Charge, **Mallesons Stephen Jaques - Chambers Global 2008** – Leading individual for restructuring and insolvency

10:30 **Morning tea**

11:00 **Restructuring distressed debt and equity: Restoring liquidity and preventing the erosion of value**

- Diagnose the problem, commence stakeholder communication
- Stabilise the business - don't delay the urgency to act
- Its not just about re-arranging the financial deck chairs but true operational restructuring
- Establish a core profitable and sustainable business
- Create options for financiers and shareholders - earn the right to grow the business

**Gary Doran**, Partner, Corporate Reorganisation, **Deloitte Touche Tohmatsu**

11:50 **Avoiding the risk of insolvent trading and delineating director duties at the brink of insolvency**

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- Are administrators liable as shadow directors?
- **Case studies: *Bell Group decision*** – refinancing on the brink of collapse, impacts of decision in *Hall v Poolman [2009] NSWCA 64 at [79]*, *ASIC v Storm Financial Limited (R & M) (in Adm) [2009] FCA 269*

**Kim Reid**, Partner, **Allens Arthur Robinson**

12:40 **Networking lunch for speakers and delegates**

1:40 **Embarking on the decision to enter into a Voluntary Administration – issues and cases**

- Decisions regarding entering a VA or making a formal appointment – reviewing situations where VAs are most applicable
- Maximising returns to shareholders and creditors
- VAs vs moratoriums – investigating the pros and cons
- Maximising the sale price of the company's assets – negotiating the sale of assets and businesses
- What accounts for the success of VAs?
- Case studies of high profile and high value administration – OPES Prime, Allico Principals Investments

**Martin Jones**, Partner, **Ferrier Hodgson**

2:30 **Litigation funding: how has this affected the insolvency and class action landscape?**

- *IMF (Australia) Ltd v Meadow Springs Fairway Resort Ltd (in liquidation) [2009] FCAFC9* – entitlement to succession fees
- Ability of a litigant to run a single test case either privately or via litigation funder
- Analysing recent case law

**Hugh McLernon**, Managing Director, **IMF**

3:10 **Afternoon tea**

3:40 **Mitigating the effects of insolvency on contracting parties**

- Examining the effect of insolvency on supplier, contract relationships and joint venture partnerships
- JVs – will debts or payments be honoured?
- What's the deal with pre-emptive rights clauses?
- What contracts are still valid?
- Case Study: Fortescue Metals, and others

**Leith Ayres**, Partner, **Minter Ellison**

4:30 **Closing remarks from the Chairperson**

4:40 **Close of Conference**



# Intensive

**Melbourne: Wednesday, 26 August 2009**  
**Perth: Tuesday, 1 September 2009**

8:30 **Intensive morning registration**

## Intensive Session A

9:00 **Critical issues in receivership**

- Issues to consider prior to appointing receivers
- Receivership v administration
- Priorities
- The appointment
- Funding receivers
- Examining the duties and functions of a receiver
- S420A duties
- Duties and rights of directors
- Asset realisations and distributions
- Priority creditors under S433
- Pre-receivership contracts – are they binding on receiver?
- Right to retain funds
- Interaction between receivers and voluntary administrators

**Melbourne:** *Mini VandePol, Partner, Head of Insolvency & Restructuring, Baker & McKenzie*

**Perth:** *Kirsty Sutherland, Partner, Corrs Chambers Westgarth*  
*Megan O'Rourke, Partner, Corrs Chambers Westgarth*  
*Andrew Saker, Partner, Ferrier Hodgson*

10:30 **Morning tea**

## Intensive Session B

11:00 **Deeds of Company Arrangement: The roadmap to company recovery**

- What are the advantages of a deed of company arrangement?
- Reviewing Part 5.3 of the *Corporations Act* – Voluntary Administrations and Deeds of Company Arrangements
- Benefits of the moratorium period
- Delineating the terms of the deed
- Termination of deeds of company arrangements
- *Advance Healthcare Group Ltd* (Administrators Appointed) – application of s 444DA of the *Corporations Act 2001* (Cth)

**Melbourne:** *Ian Walker, Partner, Minter Ellison*

**Perth:** *Dr Chris Symes, Associate Dean, Flinders University, Barrister & Solicitor, Supreme Court of South Australia – High Court of Australia, Author, LexisNexis Butterworths – Australian Insolvency Law*

12:30 **Close of morning sessions**

12:30 **Networking lunch for speakers and full-day delegates**

1:15 **Intensive afternoon registration**

## Intensive Session C

1:30 **Navigating the intricacies of voidable transactions**

- Powers of the court to set aside transactions (s588FE)
- When is a transaction a voidable transaction? An insolvent transaction?
- What are unfair preferences (s588FA), uncommercial transactions (s588FB)?
- Defences to voidable transactions (s588FG)
- Basic principles relating to the defences to insolvent trading claims
- Future claims of reinsurance contracts
- Recent cases: *Meadow Springs Resorts v Balanced Securities*; *Austin Australia v De Marin Gasparini* and more

**Melbourne:** *Alan Mitchell, Partner, Freehills*

**Perth:** *David John, Partner, Freehills*

2:30 **Afternoon tea**

## Intensive Session D

3:00 **Liquidation proceedings: Achieving compliance and commercial efficacy**

- Evidentiary requirements and processes: establishing insolvency
- Identifying stakeholders in winding up: ASIC, the Court, creditors, shareholders, company officers and employees, liquidators and administrators
- Defining the role, powers and duties of the liquidator as agent of the company
- Winding up processes
- Meetings with creditors
- Committees of inspection
- Status and treatment of pre-liquidation transactions
- Avoiding traps and pitfalls – ineffective resolutions by directors, conflicts of duties, 1st meetings

**Melbourne:** *Michael Gronow, Barrister, Victorian Bar*

**Perth:** *Rob McKenzie, Executive Director, McKenzie Moncrieff*  
*David Skender, Senior Consultant, McKenzie Moncrieff*  
*Barbara Gordon, Senior Consultant, McKenzie Moncrieff*

4:30 **Close of Intensive Sessions**

# Priority registration form Corporate Insolvency Conference

**4 easy ways  
to register**

**Phone:** 1800 772 772  
**Fax:** (02) 9422 2338  
**Online:** [www.lexisnexis.com.au/pd](http://www.lexisnexis.com.au/pd)  
**Mail:** Conference Co-ordinator, LexisNexis  
Locked Bag 2222,  
Chatswood Delivery Centre, Chatswood NSW 2067

**Please complete sections A, B, C, D**

**TAX INVOICE**

Conference codes: PD3319 - VIC, PD3419 - WA ABN: 70 001 002 357

## A Delegate 1 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Organisation: \_\_\_\_\_

Postal address: \_\_\_\_\_

Suburb Postcode State

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

## Delegate 2 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

## Delegate 3 details

Mr/Ms/Dr: \_\_\_\_\_  
First name Last name

Position: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email (required\*\*): \_\_\_\_\_

\*\* to send conference confirmation

## B Please send me more information on:

- ☐ Australian Insolvency Law book ☐ Australian Corporation Practice  
☐ Insolvency Law Bulletin ☐ Australian Corporation Law - Principles and Practice  
☐ Bankruptcy Law and Practice ☐ Australian Corporate Law Legislation

### GROUP BOOKING

Register 3 or more people from the same organisation at the same time and book at the advanced price, per person.

### CONFERENCE RESOURCES

- ☐ I am unable to attend but would like to purchase a set of the Corporate Insolvency Conference day papers only for \$180 + GST = \$198

### PROGRAM CHANGES

Details regarding this conference were confirmed and correct at the time of printing. LexisNexis reserves the right to cancel or amend the conference details at any time if required.

### CANCELLATION

Your registration will be confirmed in writing when full payment has been received. LexisNexis will refund your registration fee in full less a \$165.00 administration cost if a request to cancel the registration is received in writing up to but not including 1 month prior to the event. If written notification is received any time up to but not including 2 weeks prior to the event, you will receive a 50% refund of your registration fee and seminar documents. No cancellation requests will be accepted after this time. You may nominate a replacement; however, no refund will be issued.

## C Event Pricing (please tick your selection)

### EXAMPLE

<input checked="" type="checkbox"/>	1 Day Conference + All Intensive	2	\$1800 + GST = \$1980	<del>\$3960</del>
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### Advance Price (Register and pay before 29 May 2009) or Groups

Please Select	Options	Qty	Price	Subtotal
<input type="checkbox"/>	1 Day Conference + All Intensive		\$1800 + GST = \$1980	
<input type="checkbox"/>	1 Day Conference only		\$900 + GST = \$990	
<input type="checkbox"/>	1 Day Intensive (All Sessions)		\$900 + GST = \$990	

### Early Bird Price (Register and pay after the 29 May and before 10 July 2009)

<input type="checkbox"/>	1 Day Conference + All Intensive		\$1950 + GST = \$2145	
<input type="checkbox"/>	1 Day Conference only		\$1050 + GST = \$1155	
<input type="checkbox"/>	1 Day Intensive (All Sessions)		\$1050 + GST = \$1155	
<input type="checkbox"/>	2 Intensive Sessions only #		\$550 + GST = \$605	

### Standard Price (Register and pay after 10 July 2009)

<input type="checkbox"/>	1 Day Conference + All Intensive		\$2050 + GST = \$2255	
<input type="checkbox"/>	1 Day Conference only		\$1150 + GST = \$1265	
<input type="checkbox"/>	1 Day Intensive (All Sessions)		\$1150 + GST = \$1265	
<input type="checkbox"/>	2 Intensive Sessions only #		\$650 + GST = \$715	

\* Early Bird, team discounts and any other discount cannot be taken concurrently

**TOTAL**

Please select which city you wish to attend: ☐ Melbourne ☐ Perth

### # Please select which Intensive Sessions you wish to attend:

- ☐ Intensive Sessions A and B  
☐ Intensive Sessions C and D

Where did you hear about this event? \_\_\_\_\_

## D Payment details

Payment is due upon registration. This document will be a Tax Invoice/Receipt for GST upon completion of payment.

☐ Enclosed is my cheque for: \$ \_\_\_\_\_ made payable to LexisNexis

☐ Pay by credit card: Please charge \$ \_\_\_\_\_ to

☐ Mastercard ☐ Visa ☐ American Express

Card number: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Expiry: \_\_\_\_/\_\_\_\_

Name of cardholder: \_\_\_\_\_

Signature of cardholder: \_\_\_\_\_

☐ Charge to my LexisNexis account: \$ \_\_\_\_\_

Account number: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of approving manager: \_\_\_\_\_

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