MinterEllison LAWYERS

James Beaton | Partner

James Beaton is a commercial litigator with extensive corporate insolvency and reconstruction experience and expertise in anti-money laundering and anti-bribery compliance and enforcement.

James practices extensively in the financial services sector but also has rich telecommunications experience, having acted for Optus for more than 10 years.

As a litigator, he regularly acts in complex contractual disputes, funds management and trust disputes, fraud actions and regulatory investigations (particularly by ASIC). He has conducted many matters in the Federal Court of Australia and the Supreme Court of New South Wales.

In his corporate insolvency and reconstruction practice, James acts for leading financial institutions and insolvency practitioners in contentious recovery matters, formal appointments and informal corporate turnarounds. James' strong insolvency and reconstruction expertise is independently recognised by Asia Pacific Legal 500.

James' practice also embraces contentious compliance and risk issues associated with anti-money laundering and anti-bribery compliance and enforcement. James led the firm's anti-money laundering practice in response to Australia's introduction of a new anti-money laundering regime in 2006. He is also the Australian counsel for TRACE, a non-profit membership association that pools resources to provide practical and cost-effective anti-bribery compliance solutions for multinational companies and their commercial intermediaries.

Some long-standing clients include ANZ, Westpac, NAB, Challenger and Optus.

EXPERTISE

Areas of expertise include:

SYDNEY

T +61 2 9921 4063
M +61 412 890 936
F +61 2 9921 8040
Email

RELATED SERVICES

- Insolvency and Reconstruction
- Corporate and Commercial Disputes
- Litigation and Dispute Resolution
- Creditor Claims
- Directors' Duties
- Liquidation
- Receivership
- Turnaround and Workouts
- Voluntary Administration
- Regulatory Compliance and Disputes
- Banking and Finance Litigation

RELATED INDUSTRIES

- Financial Services

MinterEllison LAWYERS

James Beaton | Partner

Banking and Finance Litigation

James' extensive experience in banking-related disputes began with his 1998 secondment to Westpac as the sole lawyer responsible for managing claims and litigation against the bank. In that role he saw and managed diverse disputes ranging from cheque and mandate disputes, fraud, alleged breaches of customer confidentiality, and alleged improper enforcement of security. In his practice since, James has often acted for financial institutions in disputes alleging unconscionable dealings, misleading and deceptive conduct and undue influence. James is thoroughly familiar with the management of ancillary brand and reputation issues arising in such matters.

Corporate and Commercial Disputes

James is a commercial litigator, highly experienced in complex litigation in the Federal Court of Australia and the Supreme Court of New South Wales. He is familiar with all aspects of claim or defence preparation and litigation strategy, including obtaining urgent injunctive relief and the appropriateness and timing of dispute resolution mechanisms such as mediation. High profile cases include successfully defending a $40 million claim against ANZ Bank; acting for the representative defendant of the 'continuing investors' in the failed Basis Capital Funds; and managing the response of a leading Australian financial institution to an aggressive ASIC investigation into the collapse of the Storm Financial group.

Creditor Claims

James has extensive experience is working with creditors whose interests are adversely affected by the insolvency of a customer or counterparty. James has experience in drafting terms and conditions for suppliers that maximise their rights when a customer becomes insolvent, enforcing retention of title clauses against insolvent companies and enforcing charging clauses in guarantees against guarantors as well as advising on creditors ability to terminate contracts as a result of an actual or potential insolvency-related default.

Directors Duties

James has extensive experience providing advice to directors in the context of insolvent trading risk. He has advised directors effected by deeds of company arrangements on rights and remedies available and has been involved in complex litigation involving claimed breaches of directors duties.

Liquidation

James acts for insolvency practitioners appointed as liquidators following a corporate collapse. He has experience in dealing with the big 4 Australian

- Technology, Media and Telecommunications

Banks and leading insolvency accountants, as well as with regulators when a corporate collapse occurs, including ASIC and ASX.

Receivership

James' practice is largely based on advising secured creditors, security trustees and receivers tasked with realising assets for the benefit of their appointor.

Regulatory Compliance and Disputes

James has extensive experience in managing the response to regulatory investigations, especially by ASIC. This typically involves notices for the compulsory production of documents and the summonsing of key executives to give confidential sworn evidence to ASIC officers. James is adept at managing this process to ensure that the rights of the organisation and key employees are protected. James recently managed the response of a leading Australian financial institution to an aggressive ASIC investigation into the collapse of the Storm Financial group.

Turnaround and Workouts

James has substantial experience in working with businesses that require the opportunity to achieve a turnaround or address an unsustainable debt structure. James' work involves negotiating standstills with major creditors, promoting and implementing a debt for equity swap or promoting a creditors' scheme of arrangement, amalgamating businesses or funds, refinancing debt or accelerated asset sales.

Voluntary Administration

James frequently acts for insolvency practitioners appointed as voluntary administrators by a company's board, and other stakeholders who interact with voluntary administrators (whether as secured creditors, receivers, landlords, directors, or potential purchasers of assets).

Qualifications

- LLB, BCom

Admissions

- NSW

Awards and Recognition

James Beaton is an 'astute litigator who get[s] to the core issues quickly' -

MinterEllison LAWYERS

James Beaton | Partner

Asia Pacific Legal 500: 2011/12

PUBLICATIONS & MEDIA

Integrated AML - new 2012 release available now

Integrated AML is an essential aid for in-house legal teams, compliance officers and risk managers. It is designed to help organisations understanding and comply with their obligations under the Australian anti-money laundering regime. *Integrated AML 2009* brings together the *Anti-Money Laundering and Counter-Terrorism Financing Act* 2006 (Cth) and related rules, regulations, explanatory materials, guidance notes, policies and AUSTRAC material in a single easy-to-use package.

Minter Ellison Alert | AUSTRAC considers enhancements to customer due diligence

24 May 2013

AUSTRAC, in association with the Commonwealth Attorney-General's Department, has released a discussion paper that sets out proposed amendments to the Anti-Money Laundering and Counter-Terrorism Financing customer due diligence regime. The proposed changes are a response to the revision of international AML/CTF CDD standards by the Financial Action Task Force, and consider whether the Australian AML/CTF regime could benefit from the adoption of the revised FATF standards.

Minter Ellison Alert | Bribery and corruption - US Department of Justice and Securities and Exchange Commission release guidance on the Foreign Corrupt Practices Act

20 November 2012

On 14 November 2012, the United States Department of Justice (DOJ), together with the Securities and Exchange Commission (SEC), issued a guidance note on the interpretation and enforcement of the US Foreign Corrupt Practices Act (FCPA). The guidance note will be particularly interesting for Australian businesses with an international presence or operations, given the potentially vast extra-territorial reach of the FCPA over non-US companies.

Minter Ellison Alert | ANZ Bank fee case - High Court Broadens the Field

6 September 2012

The High Court has allowed an appeal from a limited aspect of Justice

Gordon's recent judgment on the enforceability of exception fees charged by ANZ Bank.

Minter Ellison Alert | ANZ Bank fee case heard by High Court
15 August 2012

Yesterday the High Court heard an Appeal from a limited aspect of Justice Gordon's recent Judgment on the enforceability of exception fees charged by the ANZ Bank.

Alert | ANZ Bank fee case heading to High Court
11 May 2012

The High Court has allowed the Appeal from Justice Gordon's recent Judgment to be removed directly to the High Court by-passing the Full Federal Court.

Alert – Administrator's liens: Priority may be defeated by a competing lien
16 April 2012

An insolvency practitioner taking an appointment as a voluntary administrator under Part 5.3A of the *Corporations Act* will commonly not have the benefit of an indemnity from their appointor for the fees, liabilities and expenses which are incurred during the administration.

Alert – ANZ Bank fee case
16 January 2012

On 5 December 2011, Justice Gordon of the Federal Court delivered an important judgment on the enforceability of exception fees charged by the ANZ Bank. The case is a class action brought by three applicants on behalf of a much larger group of ANZ customers and is the vanguard of a wider consumer movement to challenge bank fees in a series of class actions. Justice Gordon's decision has wider implications for similar fees charged by other banks and financial institutions. This alert analyses the decision.

Alert – CAMAC Discussion Paper on Managed Investment Schemes
7 July 2011

The Corporations and Markets Advisory Committee (CAMAC), an independent advisor to the Commonwealth Government, has issued a discussion paper on Managed Investment Schemes (MIS) proposing important legislative changes specifically to deal with external administration of insolvent MISs or responsible entities (RE). This follows a reference to CAMAC by Parliamentary Secretary to the Treasurer, the Hon. David Bradbury, in November 2010. This reference noted that, while the

corporate insolvency provisions in the Corporations Act provide creditors and directors with certainty about their rights and obligations, the Act sets out very few specialised rules regarding the external administration of insolvent trusts or trustees.

Alert – Creditors' trusts - Court reviews ASIC's statutory guide
16 June 2011

Creditors' trusts can be a very useful restructuring tool and enable a company to accelerate its exit from external administration. Described by one judge as 'quite ingenious,' a deed of company arrangement (**DOCA**) can be 'fully effectuated' by the creation of a trust, with the creditors immediately ceasing to be creditors of the company, and instead becoming beneficiaries of the trust.

Alert – Expert Witnesses Open To Claims For Negligent Expert Reports
4 May 2011

On 30 March 2011, the United Kingdom Supreme Court abolished the immunity previously enjoyed by experts for testimony given in court proceedings. Although the case involved a claim for negligence by the party who retained the expert in question, and was a personal injuries matter, the court said expert witness immunity could no longer be justified on public policy grounds.

Alert – Esber case affects mortgage surplus claims
4 April 2011

Should mortgagees holding a surplus after sale, pay it to the next mortgagee in line?

Alert – ATO clarifies GST obligations between mortgagees in possession and representatives of incapacitated entities
14 December 2010

On Friday 10 December 2010, the ATO released an ATO Interpretative Decision which clarifies the GST position where there is a sale by a mortgagee in possession of a property owned by a company that has been put into some form of administration/receivership/liquidation etc.

Alert – Knock-knock. Who's there? AUSTRAC...
8 December 2010

AUSTRAC recently released its supervision, enforcement and intelligence strategies for 2011 and beyond, providing an indication to industry of its regulatory focus in the coming years.