MinterEllison LAWYERS

Richard Johnson | Special Counsel

Richard is a Special Counsel in Minter Ellison's Perth office and has practiced in the Restructuring and Insolvency team since 2003.

Richard regularly acts for major financial institutions and many of Australia's leading insolvency practitioners in relation to all aspects of corporate insolvency and restructuring including receivership, voluntary administration, deed of company arrangement and liquidation.

In addition to his expertise in relation to formal corporate insolvency, Richard has significant experience in financial restructuring and using informal mechanisms to provide businesses with the opportunity to achieve a turnaround or address an unsustainable debt structure, and creditors with the opportunity to improve their position by informal means.

Richard also has considerable experience providing advice to directors in relation to turnaround management, crisis stabilisation, distressed disposals and acquisitions, stakeholder management and financial restructuring matters (including creditor negotiation, refinancing, capital injections and standstill agreements and moratoria).

Richard's practice is primarily advisory and transactional in nature and he regularly works on business, asset and debt sales and purchases where the vendor is distressed or subject to control by an insolvency practitioner. He also negotiates, drafts and advises on many forms of commercial contract including asset, business and land sale and acquisition agreements, finance and security agreements, variation agreements, heads of agreement, assignment agreements and many other commercial agreements.

Richard is also experienced in the conduct of banking, financial and insolvency dispute resolution and regularly advises clients in relation to such matters.

Richard's clients include National Australia Bank Limited, Commonwealth Bank of Australia, Bank of Western Australia Ltd, Westpac Banking Corporation, ANZ, St George Bank, Deloitte, Ferrier Hodgson, KordaMentha, McGrathNicol, PPB, Pitcher Partners, Ernst & Young,

PERTH

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RELATED SERVICES

- Insolvency and Reconstruction
- Turnaround and Workouts
- Distressed Debt Trading and Acquisitions
- Creditor Claims
- Directors' Duties
- Receivership
- Voluntary Administration
- Liquidation

KPMG, Taylor Woodings, Moore Stephens and Crowe Horwath.

Richard has published a number of refereed papers in relation to insolvency and financial restructuring issues and is a regular speaker at conferences and industry events in relation to insolvency and restructuring matters.

Richard is an active member of several professional associations and specialist committees, including the Law Society of WA, the Business Law Section of the Law Council of Australia, Chartered Secretaries Australia and the Insolvency Practitioners Association of Australia. Richard also sits on the Law Council of Australia's Insolvency and Reconstruction Committee (Perth branch) and has been the Unit Co-ordinator for the Insolvency Law program (LW312/512) at the University of Notre Dame Australia since June 2009. Richard was appointed as an Adjunct Senior Lecturer by the University of Notre Dame Australia on 28 June 2010.

EXPERTISE

Areas of expertise include:

Corporate Governance

Richard has considerable experience providing advice to directors on insolvency-related matters, devising and implementing workout plans — including insolvent trading, standstill agreements and other arrangements to support restructures and turnaround plans, breach of statutory directors' duties and personal liability for various company taxes.

Creditor Rights

Richard also acts on behalf of creditors whose interests are adversely affected by the insolvency of a customer or counterparty. He has experience in drafting terms and conditions for suppliers that maximise their rights when a customer becomes insolvent (through retention of title, PPSA compliant security mechanisms or indemnities) and advising on other forms of credit risk reduction and management.

Distressed Disposals and Acquisitions

Richard has worked on a number of asset and debt sales and purchases

where the vendor is distressed or subject to control by an insolvency practitioner.

Restructuring and Insolvency

Richard regularly acts for major financial institutions in relation to all aspects of corporate insolvency and restructuring including receivership, voluntary administration, deed of company arrangement and liquidation. Richard also acts for insolvency practitioners who accept appointments as receivers and managers, administrators and liquidators.

Security Reviews and Enforcement

Regularly acts for major financial institutions on creditor rights, security validity and enforcement issues and general banking matters. This entails:

- the preparation of security reviews;
- the provision of advice in relation to all aspects of securities law and enforcement;
- the provision of advice in relation to priority issues, tacking, security enforcement, contracts of guarantee and indemnity, the consumer credit code, lender liability, set off, rights of contribution and subrogation, contingent liabilities, bank and performance guarantees, disposal of real property and other assets, and the assessment of competing legal and equitable priority issues; and
- the negotiating and drafting of a range of documents including loan agreements, securities, guarantee and indemnity documents, powers of attorney, deeds of variation, 'standstill' agreements, licence agreements, deeds of assignment, confidentiality agreements, deeds of release and settlement, trust deeds, acknowledgments of debt, option agreements, deeds of novation and set-off agreements.

Turnarounds and Workouts

Richard has significant experience in using informal mechanisms to provide businesses with the opportunity to achieve a turnaround or address an unsustainable debt structure, and creditors with the opportunity to improve their position by informal means.

Qualifications

- B.Bus, LLB, LLM

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Admissions

- WA
- High Court

Professional Memberships and Affiliations

- Member of the Insolvency & Reconstruction Law Specialist Committee (Law Council of Australia)
- Member of the Insolvency Practitioners Association of Australia (IPAA)
- Member of INSOL International
- Member of the Law Society of Western Australia
- Member of the Business Law Section of the Law Council of Australia
- Member of Chartered Secretaries Australia
- Richard was appointed as an Adjunct Senior Lecturer by the University of Notre Dame Australia on 28 June 2010
- Richard is the Unit Co-ordinator for 'LW312/512 - Insolvency Law' at the University of Notre Dame Australia (since 2009)

Other Activities

'The Financial Ombudsman Service – implications for insolvency practitioners' presented to McGrathNicol on 7 July 2011

'Restructuring in distress – the role of the CFO in a corporate turnaround' presented to 130 company CFOs at 'The 3rd Annual Western Australian CFO Symposium' at the Pan Pacific Hotel (Perth) on 16 March 2011

'Living in uncertain times - revisiting the power of the Court to provide directions to insolvency practitioners' presented to the Insolvency Practitioners Association (IPA) WA Insolvency Forum on 24 February 2011

'SME business/land sales and acquisitions - the importance of due diligence in mitigating transaction and counterparty risk' presented to clients of Grant Thornton at Frasers Restaurant on 22 September 2010

'Notices, set-off and 'all-moneys' clauses' presented to Strategic Business Services Division of National Australia Bank Limited on 14 July 2009

‘A matter of priority – fixed charges and the administrator's equitable rights

of indemnity and lien' presented to Ferrier Hodgson on 7 May 2009. This presentation concerned the nature and priority of an administrator's statutory and equitable rights of indemnity and lien and involved a consideration of the decisions in Hamilton v Donovan Oates Hannaford Mortgage Corp Ltd (2007) 61 ACSR 82 and Coad v Wellness Pursuit Pty Ltd (In Liquidation) [2008] WASC 31

'Front-end insolvency risks – protecting financiers before insolvency occurs' co-presented with Ben Cockerill to insolvency and banking and finance clients on 9 December 2008 and as part of the Minter Ellison 'Finance Matters' series

'The Criminal Property Confiscation Act 2000 (WA)' co-presented with Leith Ayres to BankWest (i.e. Credit and Asset Management – Business Banking, Credit and Asset Management – Retail and Operations, Collections, Fraud and Investigations and Legal) on 24 November 2008

'The Personal Property Securities Bill 2008' co-presented with Leith Ayres and Ben Cockerill to insolvency and banking and finance clients on 26 August 2008 and as part of the Minter Ellison 'Finance Matters' series

'Insolvency Basics' a Continuing Legal Education Seminar (CLE) presented to Minter Ellison Lawyers, Perth on 13 September 2007

Co-prepared a paper entitled 'The Contaminated Sites Act 2003 (WA) - implications for insolvency practitioners and secured creditors' which was presented at the Insolvency Practitioners Association Seminar held in Perth on 30 November 2006

'Taking Security Over Book Debts –The Position in Australian Law' presented to the City Insolvency Discussion Group held at Sheridans Chartered Accountants, Perth on 3 May 2006

Co-prepared a paper entitled 'Non-Monetary Defaults' which was presented at the Legalwise 'Enforcing Mortgages' Seminar held at the Rydges Hotel, Perth on 12 April 2006

'Proofs of Debt – Issues for Secured Creditors' co-presented to the then Specialised Business Services Division of National Australia Bank Limited on 15 June 2005

'Critical Strategies for Protecting Assets in the Advent of Bankruptcy' presented at the LexisNexis 'Wills, Succession & Estate Planning' Seminar held at the Hyatt Regency, Perth on 24-25 November 2004

'The Powers and Duties of Mortgagees' prented to the Specialised Business Services and Strategy Advisory teams at National Australia Bank Limited at Minter Ellison, Perth on 20 November 2003

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PUBLICATIONS & MEDIA

Minter Ellison Alert | A Supreme Court first - caterpillars, receivers and perfection under the PPSA

9 July 2013

On 27 June 2013, Justice Brereton of the Supreme Court of New South Wales handed down his decision in the matter of *Maiden Civil (P&E) Pty Ltd; Richard Albarran and Blair Alexander Pleash as receivers and managers of Maiden Civil (P&E) Pty Ltd & Ors v Queensland Excavation Services Pty Ltd & Ors.* This is the first Australian case to give substantial consideration to the priority of competing security interests under the *Personal Property Securities Act 2009*. The decision is a seminal one for insolvency practitioners and financiers, clarifying key provisions and rules under the PPSA.