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BANKRUPTCY & RESTRUCTURING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in bankruptcy & restructuring.



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AUSTRALIA

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Respondents



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Quentin Olde is a senior managing director at Ankura. He has over 25 years of experience in business consulting, corporate advisory, restructuring and operational turnarounds. He is a highly regarded restructuring and corporate advisory practitioner who provides strategic advice to clients on complex informal and formal restructuring, insolvencies and workouts, as well as a range of corporate transactions for banks, lenders, finance companies, hedge and private equity funds, special situation funds, bondholders and noteholders. He has broad industry expertise and is regarded as a leader in retail and consumer products, resources and mining, mining services, property, hospitality and technology services.



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Liam Healey is a managing director at Ankura. He is a restructuring and corporate finance professional with more than 17 years of experience in advisory, restructuring and insolvency matters. He provides a variety of advisory services to lenders and corporate clients, including pre-lending and independent business reviews, due diligence and strategic restructuring advice for clients facing challenges. He has extensive formal restructuring and insolvency experience in receiverships, voluntary administrations and liquidations, including the trading and sale of distressed businesses and real estate, and has expertise in mining and mining services, energy, real estate, retail, hospitality and technology.

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Q. Reflecting on the last 12-18 months, how would you characterise Australia in terms of failing businesses and bankruptcy filings?

A: The restructuring landscape has changed in recent years with the introduction of the safe harbour regime and a push toward informal and consensual restructuring and away from formal insolvency processes. Overall, there has been limited activity in the restructuring market as debt and equity markets have provided solutions. Further, fallout from the Royal Commission into misconduct in the banking industry has seen retail banks reluctant to enforce their security in distressed situations and receivership appointments have been minimal. Lenders have promoted a ‘self-help’ approach, encouraging distressed companies to engage advisers and bring restructuring solutions to the table themselves. The number of formal insolvency appointments in Australia has generally declined in the last five years, however there was a slight year on year increase in the second half of 2019. Considering the COVID-19 pandemic, formal insolvency appointments have



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remained flat in 2020 as companies gauge the cost of government mandated shutdowns and try to take advantage of government assistance packages.

Q. Could you outline the primary macroeconomic trends currently affecting businesses? Are any particular sectors demonstrating structural weaknesses, resulting in distress?

A: The fallout from the COVID-19 pandemic is the biggest factor affecting businesses in Australia at present. Sectors such as tourism, hospitality, entertainment and retail have all been affected from the outset of the crisis. It remains to be seen whether structural changes to consumer behaviour will affect discretionary spending in the longer term. In the medium to longer term, businesses tied to overseas travel and inbound tourism including the education sector will be affected while travel restrictions are in place. Professional services firms will continue to face headwinds as corporate clients tighten discretionary spending on consultants and external advice. Companies in the natural resources sector will continue to be affected, particularly

oil & gas companies. With depressed oil prices, the viability of projects in various phases of development is threatened, impacting the ability to attract further capital support.

Q. Have any recent restructuring trends or cases in Australian captured your attention in particular?

A: The recent entry of the Virgin Australia airline into a formal insolvency process is a noteworthy case that has underlined the severe impact of COVID-19. The company collapsed owing approximately AU\$7bn to a range of creditors, including a workforce of over 10,000 employees. The case is of national interest given that there are now concerns about the future of competition in the aviation industry given that Virgin was one of only two major domestic airlines in Australia. The Chapter 11 filing in the US by Australian-listed Speedcast International Limited is another recent matter of interest. Speedcast provides satellite technology solutions and has significant operations in the US. A US restructuring process is being used as opposed to a voluntary administration in Australia. Advantages of the Chapter

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11 process include contractual continuity and access to DIP funding options. It also means the restructuring takes place without the accountability of the process under Australian law. We anticipate that more Australian companies will consider using foreign restructuring processes where available for greater optionality. Given that Chapter 11 was likely an available option for Virgin it will be interesting to compare the process impacts and ultimate results for stakeholders.

Q. How easy is it to renegotiate existing debt in the current market? Is there funding available to support distressed companies and finance restructurings?

A: In recent years, a range of alternative lenders have become more involved in the Australian market. Participants including credit funds, special situations funds and specialist lenders such as asset-based lenders (ABL) have provided distressed companies with a wider range of funding options when renegotiating existing debt. While retail banks have tightened credit policies and shown a reduced appetite to fund businesses in certain industries, they have been willing to provide businesses

with time to restructure and refinance. In current circumstances we see lenders working with financially distressed borrowers to find solutions other than enforcement of their security. We have also seen retail banks trade their debt in businesses in order to exit their exposure. This has presented alternative lenders with an opportunity to obtain exposure to a range of industries in situations where they have specialist industry knowledge. Anecdotal evidence suggests a rise in interest rates since the onset of the COVID-19 disruptions.

Q. What trends are you seeing in the market's appetite to purchase troubled assets? How would you describe recent distressed M&A activity?

A: There is an increase in distressed funds or risk capital participation in both stressed and distressed opportunities, especially as the safe harbour regime ushers in a pathway for companies to proactively explore turnaround avenues. Troubled companies with distinct value propositions continue to attract interest. Outside of larger deals, which attract global capital providers, support for



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troubled assets in the mid-market is still relatively mediocre with key capital avenues being a limited number of local Australian turnaround funds and strategic investors. However, there is an increasing appetite in the mid-market to back external seasoned industry operators to parachute into distressed opportunities.

Q. Could you outline some of the personal risks facing D&Os of a company that nears insolvency or enters bankruptcy in Australia?

A: Under the Australian Corporations Act, directors risk becoming personally liable for debts incurred while a company is insolvent. Traditionally this has meant an insolvent company would be placed into a formal insolvency process by directors seeking to obtain protection from personal liability. An insolvency practitioner then takes control of the assets of the insolvent company for the benefit of creditors, as well as investigating the company and the conduct of its directors. The safe harbour regime was enacted to provide directors with protection from insolvent trading while executing a restructuring plan. The intention of the regime has been

to foster a more proactive turnaround and restructuring culture in Australia. The extent to which this regime has been utilised in the past is questionable, however we are seeing the process being used more frequently. Recent temporary legislative changes due to COVID-19 have placed a temporary moratorium on insolvent trading liability for a period of six months, subject to certain good faith obligations.

Q. How do you expect restructuring and bankruptcy activity in Australia to unfold for the remainder of this year, and beyond?

A: Our view is that there will be a significant increase in restructuring activity as COVID-19 government restrictions are lifted in the second half of 2020. Many companies will emerge from hibernation to face a new reality with additional debt on their balance sheets from deferred payments to lenders, landlords, tax authorities and suppliers. Companies and directors will try to 'hang on' but it will be hard for many, from both a financial and psychological perspective. As companies re-emerge and seek to rebuild their balance

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sheets, de-lever and reinvest, there will be increased restructuring activity, including consensual and informal restructuring, and formal insolvency appointments. □

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ANKURA is a global business advisory firm specialising in strategy, M&A, turnaround and restructuring, compliance, investigations, forensics and risk management. Ankura is a firm that is defined by how it solves challenges. Whether a client is facing an immediate challenge, trying to opportunistically increase enterprise value, or protect against future risks, Ankura formulates and executes tailored solutions with the right combination of expertise. The firm has the knowledge and experience to guide companies through the turbulence back to stability. The turnaround & restructuring team in Australia combines local knowledge and experience with a global presence and industry expertise.

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