

Preliminary Flyer

Après-GFC **the regulatory and responsibility hangover**

The 27th Annual Banking & Financial Services Law & Practice Conference

**Millenium Hotel, Queenstown, New Zealand
Sunday 15 & Monday 16 August, 2010**

Presented by



27th Annual Banking & Financial Services Law & Practice Conference Queenstown 15-16 August 2010

Dear Colleagues

Two years ago in Queenstown the theme of the Conference was "The Financial Markets Bungee – Ensuring we spring back after taking the plunge". Last year at the Gold Coast the theme was "Crumble in the Jungle – lessons from the crunch". We return to the beautiful city of Queenstown in New Zealand for our Conference this year and the theme is "Après – GFC the regulatory and responsibility hangover".

The Planning Committee has worked extremely hard this year putting together what I believe to be a truly exceptional program.

We are delighted to have Lord Hoffmann as a keynote speaker this year. We are equally delighted that the Judiciary from both New Zealand and Australia continues its strong support for our Conferences. The President of the New Zealand Court of Appeal, Justice William Young, Justice Julie Ward from the Supreme Court of NSW and Dr Robert Austin, recently retired from that Court, are speaking this year.

We have a packed program. In keeping with our regulatory and responsibility theme, we have Bob Pickel from ISDA in New York and Jane Diplock, Chair of the New Zealand Securities Commission speaking on regulation after the GFC, two PPSA topics, our first ever session on Islamic financing and many other sessions including cross border insolvency, secondary debt trading, syndicated loan arrangements, AML and anti-terrorism laws and the new consumer credit laws.

This year's Conference will commence with a welcome reception including a substantial selection of food from the buffet on Saturday evening at Skyline Queenstown which is at the top of the chair lift overlooking Queenstown and Lake Wakatipu.

I encourage you all to support the BFSLA and our Conference by contacting Jenny and booking your place at what is going to be a memorable Conference.

I look forward to seeing you all in Queenstown.

John Evans
President
BFSLA

Millennium Hotel



Copthorne Hotel



CURRENT PROGRAM

(subject to change)

Saturday 14th August, 2010

4.00pm **Registration Millennium Hotel conference level**

6.30pm **Welcome Reception at the Skyline Gondola Restaurant**

Sparkling wine offered at the base to enjoy during your ride to the top. Meet fellow delegates and speakers during the two hour reception enjoying fine food and drinks.

Sunday 15th August, 2010

8.45am **Opening Plenary**

Interpretation of Contracts: United Kingdom vs Australia

This session will consider the approach to the interpretation of contracts in the United Kingdom and Australia and discuss the divergence of English precedent from Australian precedent, and the reasons for this.

Chair: Diccon Loxton, Partner, Allens Arthur Robinson, Sydney

Speakers: **Lord Hoffman**, UK
2nd speaker to be announced

10.30am Morning break

11.00am **Concurrent Session 1a**

PPSA Topic 1 – Panel Session

This session addresses some of the conceptual and other general issues that arise out of the new Australian Personal Property Securities Act 2009, such as:

- Does the PPSA create some new type of statutory fixed charge, or does it simply change the rules that apply to relationships that fall within the descriptive definition of "security interest"?
- How will courts handle the interaction between security interests and other types of interests in personal property (eg under a declaration of trust)?
- How does an all-assets security interest under the PPSA stack up against a fixed and floating charge under current law?
- The use of subordination or priority agreements.

Chair: Steve Edwards, Director, CreditWise, Sydney

Panellists: **Sheelagh McCracken**, Professor of Finance Law, University of Sydney, Sydney

Murray Tingey, Partner, Bell Gully, Auckland

Craig Wappett, Partner, Piper Alderman, Brisbane

Sunday 15th August, 2010 continued

11.00am **Concurrent Session 1b**

Unravelling Guarantor groups

Lending to a group of companies can often involve an intricate web of loans, guarantees and securities and with some loans being subordinated to others. In this session the speakers untangle this web and look at the recent High Court decision in Bofinger's case dealing with rights of subrogation, contribution and indemnity between guarantors and debt subordination pre and post insolvency. The effectiveness of no competition clauses and the difference between turnover subordination and contractual subordination will be examined as well as the interaction between an ASIC Class Order cross guarantee and the other guarantee, security and subordination arrangements entered into by the group companies. Pari passu clauses and payment sharing mechanisms pre and post insolvency will be considered together with the duties owed by a first ranking mortgagee to a second ranking mortgagee on discharge of the first ranking security.

A case study will be used by the speakers to provide the factual context for their examination of these issues.

Chair: Alan Maclean, Partner, HWL Ebsworth, Melbourne

Speakers: **Peter Collinson** SC, VicBar, Melbourne

Matt Kersey, Partner, Russell McVeagh, Auckland

Rowan Russell, Partner, Mallesons Stephen Jacques, Sydney

12.30pm Lunch break

1.30pm **Concurrent Session 2a**
New Consumer Credit Laws – Panel Session
Unfair Contracts- Responsible Lending

Chair: Paul Rogerson, Head Of Group Compliance, Westpac Banking Corporation, Sydney

Speakers: **Steve Edwards**, Director, CreditWise, Sydney

Mark Sneddon, Partner, Clayton Utz, Melbourne

Greg Kirk, Senior Executive Leader - Deposit takers, credit and insurance providers. Melbourne

Concurrent Session 2b
Islamic Financing

Islamic Financing favours transparent financial instruments, avoids speculation and prefers to share in the profit (or loss) of a project rather than charging mere interest. In the post GFC world this model is examined and its value in financing potential Australian projects is assessed. Neil Miller of Norton Rose and Dato' Dr Nik Norzrul Thani of Malaysia's Zaid Ibrahim both world renowned experts in the field explore this topic and its features including the various structures common to Islamic financing transactions and their possible application in Australia.

Chair: Nino di Bartolomeo, Partner, Norton Rose Australia, Sydney

Speakers: **Neil Miller**, Partner, Norton Rose, Dubai

Dr Nik Norzrul Thani, Zaid Ibrahim, Kuala Lumpur, Malaysia
3rd speaker to be announced

3.00pm Afternoon break

Sunday 15th August, 2010 continued

3.30pm **Concurrent Session 3a**

Penalties and other general restrictions on freedom of contract

This session will look at such developments, particularly also survey the current law in relation to termination payments of leases, hire purchase arrangements and like, default interest and other penalties look at other traditional limitations on contractual freedom such as clogs and fetters on equity of redemption following the lift capital case.

Chair: Paul Rogerson, Head Of Group Compliance, Westpac Banking Corporation, Sydney

Speakers: **Justice Julie Ward**, Supreme Court NSW, Sydney
John Sheahan SC, 5 Wentworth Chambers, Sydney

Concurrent Session 3b

Knowledge: How much knowledge is a dangerous thing?

This topic will cover the degree to which banks and other institutions can be legally affected by the activities and knowledge of others (including clients).

Dr Austin's presentation, from the Australian perspective, will explore the decision at first instance in the Bell Group case, as well as statutory liability for knowing involvement under the Corporations Act, including potential liability of a financier for its client's failure to comply with continuous disclosure rules.

Justice William Young's presentation will address other circumstances in which actions or knowledge of third parties may be attributed to a financier.

Chair: Jonathan Oldham, Partner, Mallesons Stephen Jaques, Sydney

Speakers: **Prof. Bob Austin**, Visiting Fellow & the Challis Lecturer in Corporate Law, The University of Sydney, Sydney
Justice William Young, President of the New Zealand Court of Appeal, Wellington

5.15pm **BFSLA AGM** The AGM will be followed by a General Committee Meeting and a Board Meeting

7.00 pm **Pre dinner drinks and dinner**

Monday 16th August, 2010

8.00am Breakfast session (optional)

Opinions Committee Report

Speaker: **Diccon Loxton**, Partner, Allens Arthur Robinson, Sydney

Monday 16th August, 2010 continued

9.00am

Plenary session
Cross Border Insolvency

Insolvency practitioners are increasingly coordinating their efforts across borders, court to court communications are occurring internationally, attempts are being made to enforce insolvency judgments in foreign jurisdictions, and foreign insolvency laws are affecting the local enforcement of commercial agreements where a counterparty from that foreign jurisdiction becomes bankrupt. Judges are responding to these challenges by applying the UNCITRAL model law and common law principles. The speakers will examine how the courts are developing practices and legal principles in order to respond to the challenging international aspects of insolvencies, and will discuss the ability of the UNCITRAL model law and the common law to deliver cross border harmony and cooperation.

Chair: John Evans, Partner, Henry Davis York, Sydney

Speakers: **Lord Hoffman**, UK

John Martin, Partner, Henry Davis York, Sydney

Prof. Rosalind Mason, Head – School of Law, QUT, Brisbane

10.30am

Morning break

10.45am

Regulation after the GFC

The world is coming to terms with the aftermath of the largest financial crisis in living memory. Many are asking how the GFC happened and more importantly, how its recurrence can be prevented. Inevitably calls for more market regulation have been heard. While many would argue that it is not more but better regulation that is required we are nonetheless entering into a new global regulatory landscape. In this session Bob Pickel, Executive Vice Chairman of the International Swaps and Derivatives Association and Jane Diplock Chairman of the New Zealand Securities Commission and Chairman of the Executive Committee of IOSCO examine recent and proposed regulatory changes and how this will affect future transactions and products with a particular focus on markets and financial instruments.

Chair: James Connell, Legal Counsel, Australian Executor Trustees Limited, Sydney

Speakers: **Jane Diplock**, Chair – NZ Securities Commission, Wellington

Bob Pickel, Executive Vice Chairman of the International Swaps and Derivatives Association, USA

12.15pm

Lunch break

1.00pm

Concurrent session 4a
PPSA 2 - Paper presentations: Getting specific

The second session on the Australian PPSA is a more practical set of short presentations on how aspects of the Australian PPSA will affect specific industries and practices, with commentary from a New Zealand perspective. Topics are:

- Leasing
- investment instruments and investment entitlements
- how life will be different for liquidators.

Chair: Bruce Whittaker, Partner, Blake Dawson, Melbourne

Speakers: **Adam Hopkins**, Deputy General Counsel, GE Capital, Sydney

Patrick Lowden, Partner, Freehills, Sydney

David Proudman, Partner, Johnson Winter & Slattery, Adelaide

Michael Arthur, Partner, Chapman Tripp, Auckland

Monday 16th August, 2010 continued

1.00pm

Concurrent session 4b

AML/Anti-Terrorism Financing Laws: Extra Territoriality of Financial Services Legislation

This topic explores the breadth of New Zealand's financial services and AML legislation, how it may impact foreign entities dealing with New Zealand customers and what techniques might exist to mitigate the administrative burdens it carries with it

Chair: Michael Robinson, Partner, Simpson Grierson, Auckland

Speakers: **Scott Able**, Senior Associate, Buddle Findlay, Auckland

David Ireland, Partner, Kensington Swan, Wellington

Tim Williams, Partner, Chapman Tripp, Auckland

2.15pm

Afternoon break

2.30pm

Concurrent Session 5a – Panel Presentation

Secondary Debt Trading

The secondary debt market, and distressed debt trading -documentation, risk allocation, restrictions, insider trading and confidentiality considerations, buy-back by borrowers and sponsors The extent of the distressed debt investing market in Australia

- Key issues arising where some or all syndicate members change from par to distressed holders
- LMA standard documentation - key points
- Insider Trading Issues

Chair: Nicholas Dunstone, Partner, Henry Davis York, Sydney

Panellists: **Lachlan Edwards**, Managing Director – Head of Restructuring, Asia and Australia, Goldman Sachs, Sydney

James Marshall, Partner, Blake Dawson, Sydney

John Nestel, Partner, Freehills, Sydney

Concurrent Session 5b

Syndicated Lending: changing relationships

This session will focus on recent changes in relationships in syndicated loan arrangements, particularly the relationship between lenders and agent. Who should have responsibility for AML checks? Should the agent have the ability to veto sell-down? What happens if a lender is subject to sanctions? New developments in syndicated lending will be analysed, including dealing with the defaulting lender or impaired agent, syndicate voting and decision making – how selfish can the majority be, the duties and role of the agent and the arranger, confidentiality of bank-agent correspondence, non-responsive banks, the virtues and vices of "snooze-you-lose" and "yank-the-bank" clauses, and debt buy-backs.

Chair: Jason Morris, Partner, Allens Arthur Robinson, Melbourne

Speakers: **Tom Fail**, Partner, Minter Ellison Rudd Watts, Auckland

Steven Klimt, Partner, Clayton Utz, Sydney

Steve Pemberton, Allens Arthur Robinson, Melbourne

4.00pm

Hypothetical –

Chair: **Diccon Loxton**, Partner, Allens Arthur Robinson, Sydney

5.00pm

Closing remarks and announcement of location for 2011
