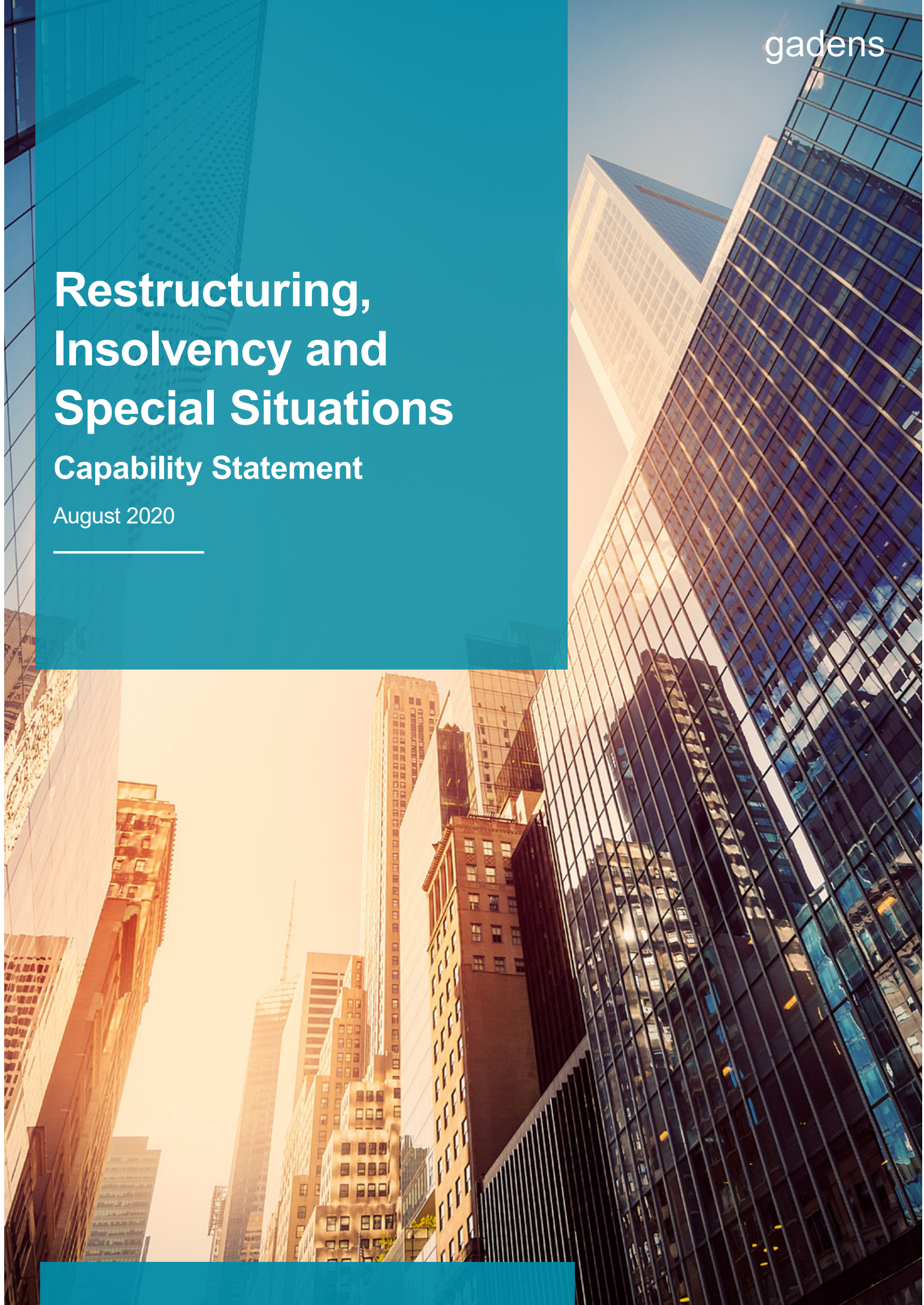


gadens

Restructuring, Insolvency and Special Situations

Capability Statement

August 2020



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Executive summary

Gadens is an independent Australian law firm. We deliver excellent legal services and practical advice, tailored specifically to meeting our clients' commercial and strategic objectives.

Gadens specialises in banking and finance, insolvency, corporate advisory, debt and equity restructuring, tax, real estate, financial services regulation and related disputes.

Gadens' restructuring, insolvency and special situations team

Gadens has a specialist team dedicated to advising clients in relation to all aspects of distressed situations.

The team draws together the firm's expertise across restructuring and insolvency, banking and finance, real estate, corporate advisory and tax.

Our expert team has an established record in delivering innovative solutions for our clients including banks and other institutional creditors, corporates, international and domestic investment funds, insolvency practitioners, shareholders and company directors.

We have significant experience in completing consensual distressed (and performing) debt restructurings. This includes debt trading and sub-participation arrangements.

Where a consensual restructuring is not possible, Gadens has one of Australia's largest insolvency and enforcement teams and we are adept at moving quickly to protect our clients' positions.

This document sets out our restructuring, insolvency and special situations team's capabilities and recent experience.

We include contact details for our key team members across:

- restructuring and insolvency;
- banking and finance;
- corporate advisory (distressed M&A and equity restructuring);
- real estate;
- tax; and
- disputes.



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Capabilities

Restructuring and insolvency

Our dedicated restructuring and insolvency lawyers act for many of Australia's leading financial institutions in relation to impaired exposures, and insolvency practitioners in relation to all forms of external administration, including informal workouts and pre-insolvency appointments.

We also regularly act for and advise company directors and SMEs through to large corporates in relation to all aspects of distressed situations.

Some examples of our team's recent experience include:

LJ Hooker

Acting for KPMG as administrators of various holding entities in the LJ Hooker Group. This included considering and advising upon multiple alternative deed of company arrangement (DOCA) (and share sale) proposals and negotiating and implementing the successful DOCA proposal in respect of the holding entities of the underlying franchise business. Our team also considered and advised upon numerous contentious and competing creditor claims during the course of the administrations.

Australian Whisky Holdings

Acting for Australian Whisky Holdings (and related entities), an Australian listed whisky distilling group, in relation to the Group's position with respect to the collapse of the Nant whisky investment program including the appointment of administrators (PwC) to two of the Nant entities.

Cashel Financial Service P/L

Acting for Cashel Financial Service P/L in relation to the collapse of the Rubicor Group of Companies, which were located throughout Australia, Singapore and Hong Kong. We drafted and advised Cashel, which also represented various shareholder interests on various proposals for a DOCA.

DCF Asset Management Pty Ltd

Advising DCF Asset Management Pty Ltd on the finance and acquisition of distressed assets from Rapid Securities Ltd, which was implemented pursuant to the terms of a DOCA. Our restructuring and insolvency, banking, and corporate advisory lawyers advised on the drafting and negotiation the terms of the DOCA (including liaising with the administrators at Deloitte) and the other corporate and debt agreements including the relevant sale and purchase agreements and the shareholders agreement.

Deloitte

Acting for the liquidator of a large national security business in relation to pursuing a substantial claim based on statutory unconscionability under the ASIC Act against the company's former invoice financier in the Supreme Court of New South Wales, with the financial support of the Commonwealth Government and a well-established litigation funder.

Freemantle Media Australia

Acting for Freemantle Media Australia in respect of the administration of the Ten Network Group, generally in its position as a creditor and in particular the proposed DOCA. The engagement involved the review of existing licensing arrangements, the continuation of those arrangements during the administration of the company and negotiation of ongoing arrangements with the proposed purchaser of the business.

KordaMentha

Acting for KordaMentha as the administrators in connection with all aspects of the administrations of ILH Group (a publicly listed company) and its various subsidiaries including in relation to the sale of the shell company and the various business and assets previously acquired by ILH back to their original owners (primarily professional service partners).

LM First Mortgage Income Fund

Acting for BDO, the court appointed receivers of a number of large and complex managed investment schemes. This included advising the receivers on the realisation of significant development land and trading assets, including healthcare and retirement villages.

Perpetual Investment Management

Acting for Perpetual Investment Management Ltd in relation to the wind-down of a managed property pool including the sale of distressed assets including shopping centres in Queensland. Gadens also advised in relation to the restructuring of the underlying loans of A\$110m to enable the divestment of assets without a formal insolvency procedure.

Silver Heritage Group Ltd

Acting for KPMG as the administrators of the ASX-listed Silver Heritage Group Ltd, including considering and advising upon multiple alternative DOCA proposals to recapitalise the listed shell.

Banking and finance

We have a team of front end banking and finance specialists with significant debt restructuring expertise from the post global financial crisis recovery period in Australia, London and New York where we regularly advised on secured creditors' reservations of rights, debt standstill arrangements, consensual work-outs and complex debt restructurings and related asset disposals.

We have a strong and stable client base that covers each of the four major Australian banks, as well as many of the other major Australian financiers and non-bank lenders, and key insolvency firms and practitioners.

Some examples of our team's recent experience include:

Advising lenders:

AXA REIM SGP

Advising AXA REIM SGP and a syndicate of senior lenders in relation to the restructuring and amendment and restatement of a £320.73m and €71.96m senior facility (and related intercreditor arrangements) made available for financing the acquisition of a portfolio of hotels located throughout the UK and Ireland and associated operating businesses.

Deutsche Bank AG

Advising Deutsche Bank AG, London on the restructuring of an Opco/Propco financing with a Propco loan amount of approximately £450m involving 188 pub properties in England, Wales and Scotland.

Metropolitan Life Insurance Company

Advising Metropolitan Life Insurance Company in relation to the restructuring and amendment, restatement and partial novation of a £133.25m facility made available for the acquisition of a portfolio of distribution centres in the UK.

National Australian Bank (NAB)

Advising NAB on numerous front end and distressed transactional matters on a broad range of instructions from NAB's development finance, corporate, special situations and in-house legal teams.

Confidential clients

Advising a banking syndicate to the DFO Group on the restructuring of its debt and completion of the South Wharf project.

Advising a mortgage broker in relation to a dispute with its aggregator in connection with the payment of the commissions. This has involved advising on the provision of pre-insolvency advice and consensual restructuring options.

Advising a bank in relation to its COVID-19 hardship and other relief programs for its business and consumer clients.

Advising sponsors:

Canary Wharf Group

Advising the Canary Wharf Group in relation to the title restructuring and related amendment of its approximately £155m facility relating to the development of Parcel BP-2, Canary Wharf, London and ultimately the disposal of same.

Advising the Canary Wharf Group in relation to the restructuring and amendment and restatement of its approximately £350m facility relating to a portfolio of Canary Wharf retail properties.

DCF Asset Management Pty Ltd

Advising DCF Asset Management Pty Ltd on the finance and acquisition of distressed assets from Rapid Securities Ltd, which was implemented pursuant to the terms of a deed of company arrangement (DOCA). Our restructuring and insolvency, banking, and corporate advisory lawyers advised on the drafting and negotiation the terms of the DOCA (including liaising with the administrators at Deloitte) and the other corporate and debt agreements including the relevant sale and purchase agreements and the shareholders agreement.

Extended Stay

Advising Extended Stay in relation to its US\$4bn sale to an investment group (including Centerbridge Partners, Paulson & Co. Inc. and Blackstone) pursuant to a chapter 11 plan.

GM Holden

Advising GM Holden in relation to a number of workout arrangements with troubled Australian suppliers.

MSREF

Advising MSREF on the standstill arrangements for its approximately €700m of debt secured on a portfolio of InterContinental hotels throughout Europe and ultimately the restructuring of the same and associated sale of the portfolio.

Steve & Barry's

Advising Steve & Barry's in relation to the distressed sale of substantially all of its assets to Hilco and Gordon Brothers for US\$163m.

The Sharper Image

Advising The Sharper Image in relation to the distressed sale of substantially all of the assets of The Sharper Image to a joint venture between Hilco and Gordon Brothers for US\$50m.

Washington Mutual

Advising Washington Mutual on all corporate advisory and distressed M&A matters during Washington Mutual's chapter 11 bankruptcy (at the time, the second largest bankruptcy in U.S. history, at US\$328bn).

Confidential matters

Advising an agri-fund based in Singapore to effect a US\$55m debt and equity restructure of 25 group entities. This involved implementing a deed of company arrangement on the operating entity and negotiating standstill arrangements for all group entities.

Advising investment managers on a consensual debt and equity restructure in connection to domiciled funds. This involved negotiating with senior financiers, subordinated debt providers, unsecured creditors, institutional counterparties and stakeholders, and equity holders.

Advising a brewing company in relation to the refinance of its corporate debt facilities and its related restructuring matters.

Corporate advisory

M&A, equity capital restructures and recapitalisations

Our Corporate Advisory Team is focused on providing premium and commercially-minded mergers & acquisitions, equity capital markets and all other corporate legal services in an expeditious and cost-effective manner to our clients. We specialise in corporate restructures and have an impressive track record of assisting large corporates and SME companies recapitalise in order to strengthen their balance sheets when business activity is depressed. We are experts in corporate governance and directors' duties and are the 'trusted corporate counsel' to a broad array of listed entities and privately-held mid-market corporates as well as international and domestic investment funds.

Some examples of our team's recent experience include:

Black Diamond Capital Management

Advising Black Diamond Capital Management in connection with the global restructure of Emeco Holdings involving a creditor scheme of arrangement and subsequent recapitalisation by way of a rights issue.

Channel 9

Advising a consortium of creditors in the restructure and recapitalisation of Channel 9 by way of a scheme of arrangement (led by Oaktree Capital and Apollo Global Management) resulting in the consortium holding 25% of the equity.

Chinatrust Financial

Acting for Chinatrust Financial on its offers to purchase Nan Shan Life Insurance from AIG (Taiwan) in 2009.

Deloitte

Advising Deloitte in relation to various complex distressed asset sales including conducting public examinations and Supreme Court proceedings.

Export Finance Australia

Advising Export Finance Australia (previously Export Finance and Insurance Corporation) in relation to its impaired exposures including preparing all of its training and user guides, and otherwise advising several corporate entities in connection with restructuring, refinancing and general commercial matters.

ING

Acting for ING on its post GFC sale of ING Life Insurance (Taiwan) to Fubon Financial Holdings (including the issuance of A\$340m in unsecured subordinated debentures).

Mitre 10

Advising in relation to the purchase of assets and business of a franchisee of Mitre 10 in voluntary administration, in addition to a proposed Deed of Company Arrangement. We advised on the insolvency aspects of the sale agreement and the impact on the secured creditor in relation to the Deed of Company Arrangement.

Surfstitch

Acting for Surfstitch (in administration) in relation to the sale of sales of: Surf Hardware International (to Gowings), Magic Seaweed to Surfline, Rolling Youth Magazine to management, Surfdomo to Internet Fusion (UK); and Surfstitch Ltd to Alceon.

Temasek

Acting for Temasek on its purchase of US\$3.4bn of Merrill Lynch common stock in their July 2008 US\$8.5bn public offering and Merrill's subsequent merger with Bank of America in January 2009.

Vicinity Centres

Advising the Board of Vicinity Centres (previously Centro Group) in relation to the corporate restructure of the Centro Group and acted for the non-executive directors in actions commenced against them by ASIC and in the class actions against the Centro Group in the Federal Court.

Confidential matters

Acting for an agri-fund based in Singapore to effect a \$55m debt and equity restructure of 25 group entities. This involved implementing a deed of company arrangement on the operating entity and negotiating standstill arrangements for all group entities.

Acting for an Australian fund manager on structuring a single registered managed investment scheme with umbrella structure comprising multiple underlying projects.

Distressed real estate

We have one of the largest legal real estate teams in Australia and was awarded *Real Property Law Firm of the Year 2021* by Best Lawyers. We have extensive experience across all property asset classes and also expertise in construction. This enables us to provide strategic assistance in the sale and management of distressed real estate assets and developments. We have acted for distressed borrowers as vendors, and by appointment of all major banks along with mezzanine financiers and corporate advisory firms to assist with Receiver and Manager, Liquidation and Mortgagee in Possession disposals, and ongoing real estate asset management and development.

Some examples of our team's recent experience include:

Eynesbury Property Development

Advising on the structuring and sale of the Eynesbury Property Development, a 828 hectare residential development site as a distressed asset. This was a significant and complex transaction which involved over 20 documents and took over four years to realise, with settlement completing in December 2019.

Ferrier Hodgson

Advising Ferrier Hodgson (now part of KPMG) on behalf of Commonwealth Bank of Australia on the distressed asset sale of The Palace Theatre, a well-known Melbourne venue.

FTI Consulting

Advising FTI Consulting on the sale of a distressed industrial complex with significant environmental and building notice issues.

Advising FTI Consulting (as liquidators) on the realisation of a dormant property portfolio by appointment of ASIC, which includes over 50 property titles.

Advising FTI Consulting (as Receiver and Manager) on the completion of a boutique development and sale of the units in Northcote, Victoria.

Advising FTI Consulting on the sale of unique parcel of land on French Island.

Grant Thornton

Advising Grant Thornton (as Receivers and Managers) on the completion of a development and sale of apartments for a waterfront apartment complex in Geelong.

ING REDA Holdings

Advising ING REDA Holdings on the disposal of the Harbour Town Shopping Centre, Icehouse skating arena and adjoining developments sites as part of ING's restructuring following off shore credit requirements.

KordaMentha

Advising KordaMentha on behalf of the Westpac Banking Corporation – on the disposal of a A\$30m green fields site.

Advising KordaMentha on the disposal of a distressed asset sale of an iconic Melbourne hotel.

Advising KordaMentha on the ongoing development of "Hidden Harbour" Martha Cove, a vacant land and house development. The appointment was for a number of years and the development was completed under the Receiver and Manager appointment.

Perpetual

Advising Perpetual on the preparation of the Contract of Sale for the sale of DFO Cairns and advising in respect of the sale of DFO Cairns and DFO Brisbane generally.

PPB Advisory

Advising PPB Advisory (now part of PWC) on behalf of National Australia Bank on the disposal of a distressed asset sale of a dairy farm.

Wanneroo Shopping Centre

Advising the vendor/borrowers on the distressed asset sale of the Wanneroo Shopping Centre in Western Australia.

Disputes

Awarded *Dispute Resolution Firm of the Year* at the 2018 Lawyer International – Global Awards, our Litigation Team is well recognised for our ability to handle complex and commercial disputes across a range of industries and sectors. With specialist expertise spanning all types of litigation, our team offers unrivalled experience when it comes to conducting proceedings, negotiations and settlements through court, mediations and arbitrations. Our experience includes advising clients in relation to intellectual property, government investigations, complex litigation, regulatory compliance and general commercial disputes.

We focus on delivering the best possible outcomes for our clients to ensure their ongoing success. As such, we are invested in completely understanding businesses so that we can proactively assist with implementing long-term strategies that reduce risk and ensure our clients remain compliant in the highly regulated and competitive environments in which they operate.

Some examples of our team's recent experience include:

Australian Prudential Regulation Authority (APRA)

Acting for APRA, representing its interests in the high-profile Hayne Royal Commission. Following publication of the Royal Commission's Final Report and referral of a number of matters to APRA for further investigation and action as determined may be appropriate, we have been engaged on an ongoing basis to assist and advise APRA in the conduct of its further investigations.

Advising in relation to APRA's investigations and the commencement of claims in the Federal Court of Australia following the collapse of Trio Capital and a variety of associated issues, including negotiating and obtaining enforceable undertakings; working with the trustee appointed by APRA; considering and pursuing claims concerning the standards of conduct expected of directors, officers, managers and responsible entities; issues of independence and conflict; access to the statutory compensation scheme for beneficiaries of the failed funds; claims for reimbursement and indemnity by an acting trustee, information sharing and investigations across government agencies.

Australian Securities and Investments Commission (ASIC)

Advising and representing various organisations and individuals reporting to and working with ASIC in its investigations, including in connection with ABC Learning Centres (in liquidation) and BBY (in liquidation).

Vocation Ltd

Advising Vocation Ltd (in liquidation) on defending three shareholder class actions, which were granted leave to proceed, and focused on alleged misleading conduct concerning Vocation's IPO and alleged VET regulatory breaches.

Confidential matters

Advising London based banks in relation to significant disputes with material exposures arising from the global financial crisis and individual litigation.

Advising UK and Australian banks on the implementation of the Banking Executive Accountability Regime and UK Senior Managers & Certification Regime.

Acting for a major UK bank in regulatory investigations spanning the US, UK, Hong Kong, Japan, Singapore and Australia connected with financial markets manipulation.

Acting for several financial services firms subject to current ASIC investigations stemming from the Hayne Royal Commission and in connection with ASIC's 'Close and Continuous Monitoring' regime.

Acting for a large FX brokerage firm in relation to an ASIC investigation concerned with misleading and deceptive conduct and in parallel to both US and UK investigations.

Firm history and profile

Gadens is a leading independent Australian national law firm with over 850 people, including 100 partners. The firm regularly undertakes highly complex legal matters for a wide range of clients from offices located in Adelaide, Brisbane, Melbourne, Perth and Sydney. These include major Australian and multi-national organisations – Gadens is advisor to more than a quarter of the Top 200 companies listed on the ASX – as well as other corporate and institutional investors.

With our history dating back to 1847, our vision is to be a pre-eminent, independent firm renowned for providing outstanding client service, innovative solutions and value.

Our aim is to help our clients achieve their objectives – providing an outstanding client experience for every client, every time. This is underpinned by our intense focus on understanding our clients, their needs and expectations and building meaningful, long-term relationships – a number of which span decades.

Our core values are the firm's foundation and reflect the essence and character of the firm – they define how we interact with one another and our clients.

Market-leading expertise

We have a strong reputation and are well regarded for our specialist, market-leading practices in advisory, transactional and disputes work. We work with clients across an extensive number of industry specialisations.

Our significant breadth and depth of expertise encompasses property and construction, banking and finance, corporate advisory and tax, dispute resolution, employment advisory, government, intellectual property and technology, private clients, planning and environment, and recovery and insolvency.

Other areas complementing our Insolvency & Restructuring practice include:

Employment advisory

We are experienced in all aspects of industrial relations, employment law and workplace health and safety, and can assist in managing the full range of employment and safety issues. Our services range from assisting with issues during recruitment, preparing individual employment and executive contracts and collective agreements, anti-discrimination, equal opportunity and advising on individual and large scale terminations. We provide practical and effective advice about WHS including how to meet your legislative requirements and dealing with enforcement action.

Intellectual Property & Technology (IPT)

Our IPT Team has broad experience across all facets of intellectual property, information technology, commercial contracting, clean technology, corporate advisory, and the associated competition and consumer law issues that confront business today. We advise all levels of government, major telecommunications companies, computer software and web development companies, telehousing companies, participants in the cryptography and defence industries, financial institutions, retailers, and companies in the transport and electricity industries.

Taxation

Our team has specialist knowledge across all aspects of tax law and the way in which the various taxes interact. We provide advice on all aspects of taxation law both in the context of specific tax investigations and as part of broader transactions. Our clients range from individuals to large corporate groups, superannuation funds and financial institutions. Our experience encompasses income tax, capital gains tax, international tax, indirect tax, complete tax structuring advice and tax due diligence for transactions of all sizes and industry sectors.

Our team

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