

Doing Trans-Tasman Business

The good, the bad and the things you just
can't change.

**Millennium Hotel Queenstown
Concurrent 5B**

Close proximity, a common language, similar economies and the PPSA – there are good reasons why Australia is New Zealand's most significant trade partner. But all is not what it seems and there are a number of challenges with trans-Tasman transactions, not least of which is the tendency to assume that what works at home will also work abroad. This panel session brings together leaders from both New Zealand and Australia to discuss the progress of PPSA; our similarities and differences and how we can learn from each other to achieve successful business transactions. They will also discuss what happens when transactions don't go so well and the issues associated with having assets in both jurisdictions. With a focus on PPSA and how both jurisdictions have developed the legislation, the panel will provide the practical insights into how the laws work when operating across the Tasman and how to ensure the best outcomes for all. They will also look at what else can be done and if there was such a thing as 'best practice' legislation what would it look like.

Panelists

James Taylor

Head Counsel, Country Banking Legal, Rabobank, Sydney

James qualified in Sydney in 1994 and worked in commercial law firms in Sydney. In 2001 James re-qualified in British Columbia (Canada), and eventually became a partner in a national Canadian law firm, acting for lenders in commercial transactions. In 2009 James returned to Sydney, and commenced with the internal legal team at Rabobank Australia. James heads up one of the transactional legal teams at Rabobank, and was involved in their PPSA-readiness program. In 1999 and 2000 James worked as a legal officer, dealing in war reparations, with the United Nations in Geneva.

Scott Abel

Partner, Buddle Findlay, Auckland

Scott is a partner in Buddle Findlay's insolvency and financial services teams. His practice includes insolvency and debt restructuring, corporate and structured finance, and specialist credit recovery and PPSA advice. He has advised and acted for domestic and foreign banks, insolvency professionals and other organisations on receiverships, liquidations and workouts.

Jeff Baker

Partner, DibbsBarker, Brisbane

Jeff is a partner in DibbsBarker's financial services team. Based in Brisbane, his practice focusses on advising Australian and offshore based lender and borrower clients in respect of corporate, structured, property and project financing transactions.

Aaron Delacey

Head of Legal, BNZ Partners, Bank of New Zealand, Auckland

Aaron has 20 years experience in corporate, banking and financial services law. He has been at Bank of New Zealand for 7 years and he leads the team providing legal advice and support to BNZ's institutional and business banking division. Prior to BNZ, he worked in private practice in New Zealand, Jersey and London.

Chair

Charlotte Davis

Special Counsel, McCullough Robertson Lawyers, Brisbane

Charlotte is Special Counsel in the finance group at McCullough Robertson. She has a broad depth of experience in both Australia and the United Kingdom in the negotiation and preparation of commercial and financial documents and has advised both lenders and borrowers from numerous industries and backgrounds in transactions including debt, equity, syndications, multi-jurisdictional arrangements and cross-border lending, tax effective transactions, risk management, derivative transactions and regulatory compliance.

Fact pattern

1 White Delight Limited (**WDNZ**):

- (a) a New Zealand company producing sauvignon blanc;
- (b) sells its product locally and overseas, including that it ships product to Australia for sale;
- (c) ships both bulk and bottled wine to Australia;
- (d) has an Australian subsidiary - White Delight Aust Pty Ltd (**WDAU**);
- (e) WDAU buys the bulk and bottled wine (from WDNZ) to re-sell in Australia;
- (f) WDAU contracts with a third party (**BotCo**) to bottle, in Australia, the bulk wine. To do this, WDAU delivers the bulk wine to BotCo, and it is held for a few months and bottled and labelled by BotCo;
- (g) once bottled, the wine is returned to WDAU and held with the bottled wine purchased from WDNZ;
- (h) WDAU operates a warehouse and related facility near Melbourne;
- (i) WDNZ used a second Australia subsidiary called White Delight Holdings Pty Ltd (**WDH**) to purchase the warehouse and related facility near Melbourne. WDH is the trustee of the White Delight Unit Trust (**WDTrust**). WDH, as trustee of WDTrust, leases that facility to WDAU;
- (j) WDH has issued shares to WDNZ and they are certificated, with those certificates held by Sue, Litigate and Run, being the law firm in Melbourne which WDNZ used to incorporate the subsidiary and generally provide Australian legal services to it; and
- (k) WDAU distributes the wine around SE Australia, including that it consigns about 1/3 of it to a merchandiser in Sydney, who holds it and sells it on consignment.

2 Smooth Rouge Pty Ltd (**SRAU**):

- (a) an Australian company producing shiraz;
- (b) it sells its product locally and overseas, including that it ships product to New Zealand for sale;
- (c) it ships both bulk and bottled wine to New Zealand, with most of it being bulk and only a small proportion of it being bottled;
- (d) in New Zealand it elects to not use a subsidiary, but rather it uses a branch of the Australian entity, Smooth Rouge New Zealand Branch (**SRNZB**); and
- (e) SRAU arranges for the shipment of bulk and bottled wine to New Zealand via SRNZB and, in relation to the bottled wine shipped by SRAU to SRNZB, it is held in a storage facility near Wellington, with SRNZB selling it direct to a limited number of customers. SRNZB is not a lessee of that site, but operates under a 'Storage Agreement' from the owner.

- 3 WDNZ and SRAU are unrelated companies, but they are on friendly terms.
- 4 Each of WDNZ and SRAU registered their own trademarks in both New Zealand and in Australia.
- 5 WDNZ banks with White Bank, a New Zealand Bank. White Bank has taken a mortgage over WDNZ's vineyards and winery in New Zealand, as well as a General Security Agreement from WDNZ. White Bank has taken a guarantee from each of WDAU and WDH, and is considering taking a mortgage from WDH and GSAs from WDAU and WDH.
- 6 SRAU banks with Red Bank, an Australian Bank. Red Bank has taken a mortgage over SRAU's vineyard and winery in South Australia, and also a GSA. Red Bank is not sure how Smooth Rouge bottles the bulk wine which it ships to New Zealand.
- 7 SRAU is in financial trouble and seeks finance from White Bank in New Zealand. It offers all inventory in New Zealand as security for a working capital facility in New Zealand from White Bank.
- 8 Assume all relationships arose after 30 January, 2012.

BFSLA DIAGRAM



