



BFSLA

32nd Annual Conference
5 September 2015

**Providing Additional
Flexibility to Businesses in
Financial Difficulty -
Law Reform on the Agenda**

Michael Owen
Partner
PPB Advisory

Providing additional flexibility to businesses in financial difficulty - Law reform on the agenda

1. PPB Advisory response to Productivity Commission
2. U.S. case example

PPB Advisory Response to Productivity Commission

Supportive of:-

- Targeted reforms, not wholesale change
- Not adopting Chapter 11 regime
- Suspension of ipso facto clauses during Administration moratorium and 'safe harbour' periods
- Safe harbour for Directors and Advisors
- Pre-appointment sales of distressed businesses
- Unique Director IDs

PPB Advisory Response to Productivity Commission

Not Supportive of:-

- Administration only for potentially rather than actually insolvent companies
- Pre-appointment sales potentially being overturned in Administration
- Changing 420A obligation

U.S. Case Example

Facts

- Appointed to RE of ASX listed property trust
- Owned US REIT with 19 Government tenanted properties in the U.S.
- One property under construction
- Commercial real estate loan portfolio
- Approx. 50 U.S. based entities
- Lock up action by debt holders
- Inability to meet interest commitments
- No D&O coverage resulting in Directors of all US entities resigning
- U.S. REIT entities ultimately file Chapter 11 proceedings
- Stalking Horse proposal rejected
- Alternate re-organisation plan ultimately adopted



Transit Centre, Miami, Florida



US Secret Service, Miami, Florida



Federal Bureau of Investigation, Kansas City, Missouri

U.S. Case Example

Issues/Benefits of Chapter 11

1. Directors of nearly 60 entities resign
 - Cessation of construction on 90% complete transit centre
 - Impact on US Chapter 11 filing
2. Class of creditors
 - Impaired v unimpaired
 - Cram down
 - Bond holder debt trading
3. DIP not independent practitioner
4. S.363 Stalking Horse provisions
5. Exclusivity period
6. DIP Financing
7. US Court process