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Drivers of the finance market

Michael Riches
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Sydney

The Australian finance market has continued its strong recent growth pushed along by the significant M&A activity in Australia in the past 12 months. All segments of the banking sector have been strong with the growth in leveraged finance being the predominant feature. The establishment or re-establishment of the lending offices of a number of global banks and investment houses, and the creation of a number of subordinated debt funds, has expanded the capacity and depth of the market. This has allowed many deals to be funded onshore that previously would have had to be distributed offshore.

An influx of equity

The leveraged finance sector has seen extraordinary growth in 2007. A significant proportion of M&A activity in Australia and New Zealand has been fuelled by the strong interest of private equity. Bank lending strongly supported private equity investment in 2007. Even as debt multiples increased, banks remained committed to funding strong private equity sponsors into ever larger buyouts.

Two key features have driven the leveraged finance market in the past 12 months. The first has been the emergence of the interest of large global buyout firms such as KKR, Carlyle, CCMP, Bain Capital, Blackstone and TPG in the Australian market – this may have been influenced by the recent tax changes making investment in Australia more attractive. Together with the continued strong activity of local and long-term overseas firms such as CVC, CHAMP, Archer, PEP and Ironbridge, there has been a significant amount of equity capital available in the Australian market.

By its nature this influx of equity has resulted in the amount of bank lending increasing exponentially. In the financial year 2006 there were only two completed leveraged finance transactions that had committed bank debt in excess of A\$1 billion. In 2007 there were more than 10 leveraged finance transactions that had committed bank debt in excess of A\$1 billion, with more than five resulting in completed transactions.

The second feature, and partly as a function of the first phenomenon, has been the expansion of buyout activity into the public markets where we have seen attempted takeovers of Coles and Qantas, two iconic brand names, together with successful takeovers of DCA Group, Rebel Sport, Repco and the joint ventures with private equity of PBL and the Seven Network. This has resulted in 2007 seeing the largest leveraged financings ever experienced in this market. The size of the Coles and Qantas transactions exceeded the volume able to be placed in the Australian market and were the first leveraged finance transactions where significant use of the global debt markets was required for origination as well as syndication. This is likely to become a trend.

The private equity phenomenon is not expected to abate in 2008 with the amount of available equity funds continuing to increase. Bank lending in this market remains extremely competitive with the large US and European banks underwriting through Australia and using their global distribution networks to syndicate the facilities predominantly throughout Asia-Pacific but also into Europe and the US. One of the key issues in 2008 will be what impact the tightening of credit in the US in particular has on the availability of debt in Australia. Already it seems this has been a major factor in the private equity consortium bid for Coles not proceeding.

More buoyancy to come

Although leveraged finance and private equity have been the talk of the market, the strength

in corporate borrowing and refinancing has remained very strong. Acquisitions such as Toll's takeover of Patrick, the merger of Alinta and AGL (and subsequent proposed takeover of Alinta by Babcock & Brown), and the refinancing of Westfield's corporate debt facilities has ensured a strong base of core lending in the market. Banks have found this sector particularly tough however, with margins being squeezed as corporate borrowers take advantage of the supply of available capital.

Property finance continues to be a key feature of the Australian banking market. Although the extent of residential development finance has slowed, it has been replaced in the past 12 months by considerable investment lending as key properties are acquired and funded through bank lending. This year saw the beginning of what is widely tipped to be a consolidation in the listed property sector, from which we expect to see significant acquisition finance relating to property. The recently announced takeovers of Investa Group and Multiplex represent the start of this likely trend with the acquisitions being funded by bank debt as well as commercial mortgage-backed security (CMBS) programmes and the debt capital markets.

The asset finance sector remains constrained by limited tax advantages and low interest rates. However, in certain sectors, particularly yellow goods (supported by the booming resources sector), there have been some significant transactions undertaken, including Leighton Holdings' \$750 million operating lease facility.

The mezzanine and subordinated debt market has become deeper with the establishment of a number of new funds and a rapid increase in participations in subordinated debt: the \$300 million institutional sub debt placement on the DCA leveraged buyout was twice as large as any recent subordinated debt issue in the market other than the listed hybrid instruments being offered for a number of major listed corporates.

The boom of 2007 looks likely to continue into 2008, although much will depend on the continued strength of equity markets, the maintenance of a low interest rate and the ability of private equity to continue to source highly leveraged debt. Unless there is a major tightening of credit, resulting from increasing defaults in Australia or globally, there is no expectation of a substantive shift that would constrain strong growth in the banking sector in 2008.

Capital markets – equity

Recommended firms
Tier 1
Allens Arthur Robison Freehills Mallesons Stephen Jaques
Tier 2
Blake Dawson Clayton Utz Minter Ellison
Tier 3
Baker & McKenzie
Tier 4
Arnold Bloch Leibler Corrs Chambers Westgarth Gilbert + Tobin

Equity raising surged with Australian debt capital markets effectively closed throughout much of the past year. The financial crisis underscored the fundraising needs of over-gear corporates, and debt covenants and balance sheets required everyone's attention. Placements and accelerated rights offers provided many companies the best means to raise cash.

Australia has been a test case for new offering structures that have helped capital raising transactions keep pace with shifting and unstable markets, having made innovative changes streamlining disclosure and due diligence to capture narrow windows of opportunity in the market to raise equity.

For simple, fast, low risk and reliable capital raising, private placements have retained popularity, though most companies need more money than Australian Stock Exchange listing rule limitations on private placements permit.

Accelerated rights offers have also taken off in Australia's markets over the past year. In the uniquely Australian structure, which was put into legislation a year earlier, the institutional

aspect of a rights offer is completed quickly on a placement timetable.

Although capital has been slow to move, practitioners have found a way to get it moving again after the Australia Securities and Investment Commission permitted disclosure relief for accelerated rights offers for institutional investors.

Australian equity markets have remained alive as others across Asia Pacific are moribund thanks in part to accelerated offerings, and some have suggested that an injection of Australian-style fund raising structures could revive capital markets in other jurisdictions.

Allens Arthur Robison

Allens Arthur Robison is a fixture in Australia's equity capital markets, picking up roles on several of the year's market-shaking deals. One client sums up his choice of firm: "In recent times we've done a hell of a lot of capital raising work in this part of the world, whether placements, underwrites or hybrids, and Allens is a clear choice."

Stuart McCulloch is a "very pragmatic solution-oriented lawyer with a lot of experience in both equity capital markets and M&A," says one client, who has similar praise for Victoria Poole. "She's detail-oriented but also very quick and pragmatic," the client says.

One of the firm's highlights saw it represent Wesfarmers on its May 2008 A\$2.5 billion (\$2 billion) and subsequent A\$2.8 billion capital raising in January 2009 – deals making Australian history as the second-largest secondary equity raising in the country, and 2008's largest.

In another landmark transaction, Allens' team acted for CSL on its A\$1.74 billion equity placement in August 2008 to fund its purchase of Talecris from Cerberus Partners and Ampersand Ventures.

In March 2009, Allens also assisted Macquarie Capital Advisors and Goldman Sachs JBWere as joint underwriters of an A\$515 million institutional placement by Lihir Gold.

Leading lawyers

Alex Ding

Freehills

Freehills remains atop the equity capital markets rankings, winning respect and praise from clients and competitors after having captured a number of the most complex and noteworthy transactions in another standout year for the practice.

One highlight saw Philippa Stone advise the Commonwealth Bank of Australia on its

A\$2 billion (\$1.6 billion) placement in October 2008, which was completed to fund its acquisition of Bankwest.

The Freehills team also acted for GIC Real Estate, an investment arm of Singapore's sovereign wealth fund, on all aspects of its cornerstone investment in GPT Group, including GPT's A\$1.8 billion capital raising in October 2008 by way of an A\$1.6 billion entitlement offer and an A\$250 million convertible bond issue.

Amid the capital raising rush, Freehills took a unique role advising Macquarie Media Group on a \$50 million buyback programme that included a tender buy-back of stapled securities. This innovative tender buyback structure was the first done by a stapled entity that included a managed investment scheme, and required special regulatory relief.

Leading lawyers

Tony Sparks
Philippa Stone
Michael Ziegelaar

Mallesons Stephen Jaques

Mallesons Stephen Jaques has been at the forefront of innovative equity capital raising structures and has been responsible for bringing a number of the year's biggest and trickiest deals to market.

One client praises Nigel Hunt for his fund raising, corporate and regulatory work. "We use him a lot and would ring him up for any sort of question," the client says. "Nigel is very commercial, approachable, efficient – all the things you want in external lawyers."

The firm acted on the issuers' side in a string of private placements, which included assisting Westfield Group to place \$A2.9 billion (\$2.3 billion) in ordinary stapled securities in February and a \$3 billion equity capital raising by NAB in November 2009. The firm also acted for the Commonwealth Bank on its \$2 billion December 2009 capital raising via an institutional placement, and advised on an innovative Volume-Weighted Average Price structure and \$500 million placement by AXA Asia-Pacific.

Mallesons' team tackled considerable disclosure and strategic challenges assisting Primary Health Care to raise capital for its acquisition of Symbian. The accelerated documented renounceable rights issue was the first time an equity capital raising was done in the context of a hostile takeover bid.

Mallesons acted for Primary Health Care in its accelerated documented renounceable rights issue to raise capital for Primary's acquisition of Symbian Health. This was the first time in Australia a prospectus was issued during a hostile bid by the bidder.

Leading lawyers

David Friedlander
Greg Golding

Blake Dawson

Blake Dawson has remained a strong force in equity capital markets, where many clients say the firm performs best. “[They are] good commercially and build good relationships,” says one client. “Elspeth Arnold is very good, very responsive and knows the law completely. She is able to respond quickly to commercial questions.”

The firm has a strong underwriters’ practice, advising Merrill Lynch on a 24-hour timetable to fully-underwrite the A\$1.74 billion (\$1.5 billion) equity placement by CSL to fund its proposed acquisition of Talecris from Cerberus Partners and Ampersand Ventures. The team also acted for the underwriters on Wesfarmers’ A\$2.5 billion capital raising via accelerated renounceable entitlement offer, nearly Australia’s largest secondary equity raising.

On the issuers’ side, Blake Dawson assisted Lihir Gold in raising A\$515 million through an institutional placement followed by a share purchase plan that allowed subscriptions of up to \$5,000. More recently, the team advised BlueScope Steel on a capital restructure in May 2009, which included an accelerated non-renounceable entitlement offer of up to A\$1.41 billion.

Leading lawyers

Elspeth Arnold
Sarah Dulhunty
Bill Koeck

Minter Ellison

Minter Ellison has kept up a strong pace of equity capital market deals, working on one of the rare IPOs that made it to market in the second half of 2008 and utilising the new low-documentation provisions for equity raisings.

Jeremy Blackshaw leads the equity capital markets group from Melbourne, while Bart Oude-Vrielink is seen as a leading name in the practice.

One highlight saw the team assist Mirvac Group with an A\$500 million equity (\$400 million) fundraising in November 2008, which comprised of an A\$72 million institutional placement and an A\$428 million accelerated non-renounceable entitlement offer. The offer is an example of early use of the Corporations Act’s low-documentation provisions.

In another noteworthy role, Minters advised on an A\$625 million IPO in August for Ivanhoe Australia. The transaction was

notable as it was a landmark value for Australian mining exploration companies, and one of the few IPOs to come to market in late 2008.

Other work for the firm included assisting FKP Property Group with an A\$105 million issue of stapled securities in November, and advising Toll Holdings to divest its 63% shareholding in Virgin Blue by issuing an A\$330 million demerger dividend in August 2008, which protected the freight business from exposure to fluctuations in the passenger aviation market.

Leading lawyers

Jeremy Blackshaw
Bart Oude-Vrielink

For analysis of the other leading law firms in Australia’s equity capital markets please visit the website at www.iflr1000.com

Capital markets – debt**Recommended firms****Tier 1**

Freehills
Mallesons Stephen Jaques

Tier 2

Blake Dawson
Clayton Utz

Tier 3

Allens Arthur Robinson
Minter Ellison

The financial crisis took a bite out of Australian debt capital markets in 2008, when activity in this sector turned sharply from issuance to restructuring and buybacks; from wholesale to retail debt; and from a yield to a security outlook.

The intervention of the Government Guarantee Scheme for Australian bank issuers has enabled Australian banks to expand their reach beyond what volumes and spreads market conditions would have permitted. Of course, the majority of issuance has come out of Australia’s four leading banks.

The wholesale notes market has been accessible only with great difficulty for even AAA-rated corporate issuance, opening up a retail corporate bond market the jurisdiction hasn’t tapped for over two decades. Several corporate bond transactions have been successfully marketed to retail investors in recent months.

The main activities in the debt capital markets throughout the year include government-guaranteed issues, hybrid securities, public-private partnership bond financing transactions and corporate restructurings.

But combined with the new window for retail investors and a resurgence of interest in the US Rule 144a and private placement markets, 2009 could be a more promising year for issuers and investors.

Freehills

Freehills’ debt capital markets team gave a superior performance again this past year, easily maintaining its tier one position in the market despite a lapse in debt capital markets work overall.

One highlight saw Andrew Booth counsel BHP Billiton on updating both BHP’s Australian and Euro MTN programmes. BHP has also undertaken a €2.5 billion Euro MTN issue and a \$3.25 billion US bond issue.

Booth also assisted a number of financial institutions on their applications for the Government Guarantee Scheme to cover their programmes, and the amendment of programme documentation.

Several other team members featured in notable work: Peter Rowe acted for Australian Executor Trustees as trustee on Tabcorp’s domestic listed bond issue; David Walton advised Moly Mines on a bond issue for the development, construction, start-up and operation of mining projects in the Pilbara region of Western Australia; and Fiona Gardiner-Hill, Patrick Lowden and Philippa Stone represented GIC Real Estate regarding its cornerstone investment in the GPT Group.

Leading lawyers

Andrew Booth
Tessa Hoser
Patrick Lowden
Lachlan Roots
Peter Rowe

Mallesons Stephen Jaques

Mallesons Stephen Jaques tackled a heavy workload of debt capital market transactions, working round the clock to bring tricky deals that were even more time sensitive than usual to market successfully.

Greg Hammond is praised by one client for his strong knowledge of the international aspects of the debt market. “[He is] the leader of the pack in Australia. He has a good understanding of capital markets internationally, in particular with European and US markets, not only Australia,” the client says. “Greg’s head and shoulders above everyone else in his capital solutions and depth of understanding.”

Another client champions Ian Paterson: “I think he’s probably one of – if not the most – outstanding capital markets lawyers in the

country,” says one client. “Ian’s technically excellent, [and] works incredibly hard. I couldn’t fault him.”

Greg Hammond and Ian Paterson teamed up to act for the Australian banks throughout the government-run guarantee scheme for large deposits and wholesale funding, advising on its applications to individual banks’ debt programmes.

One transactional highlight saw the firm act on an \$A300 million (\$240 million) retail bond issue for AMP, which consisted of new subordinated unsecured debt securities issued by AMP Group Finance Services.

Mallesons’ team also helped ANZ Bank generate A\$600 million Tier 1 capital through convertible notes issued from its New York branch under considerable time constraints. On another time-sensitive matter, the firm assisted Suncorp in raising A\$735 million Tier 1 capital, through convertible preference shares issued to retail and wholesale Australian investors.

Leading lawyers

Ken Astridge
Greg Hammond
Ian Paterson

Blake Dawson

Blake Dawson gave a solid performance in the debt capital markets this year, adding the Commonwealth Bank, Bankwest and Coca-Cola to its list of clients.

One highlight for the firm this year was assisting the Commonwealth Bank to establish a combined MTN and TCD (transferable certificates of deposit) programme with BankWest. The firm backed this up by advising the Bank of Tokyo-Mitsubishi UFJ in setting up an A\$3 billion (\$2.4 billion) TCD programme.

Blakes Dawson’s team counselled Coca-Cola on the update of its EMTN programme, and acted for a number of firms applying for Australian government debt security guarantees. The team also advised Rabobank in relation to the first issue of notes by a corporate in Australia in 2009 that were not backed by the government guarantee.

Leading lawyers

Richard Fawcett
Paul Jenkins
David Mason
James Morris
Jamie Ng
Bruce Whittaker

Clayton Utz

Clayton Utz has been active in the debt capital markets this year, holding its tier two posi-

tion despite a slightly smaller team at the partner level. The firm added Ben Sandstad in October 2008 from Linklaters’ Hong Kong office supplementing the group after several departures. Brian Salter moved in-house to AMP Group in May 2008, while Trevor Robinson retired from the partnership in the same month.

The firm handled a heavy load of debt programme work last year, which included helping Bank of Queensland to update its MTN programme in December 2008 to consider the government guarantee scheme.

The team also advised Suncorp Metway on a series of updates for its domestic MTN, transferable deposit and other debt programmes last November, including an update to its \$15 billion Euro commercial paper programme. In March 2009 the team assisted Suncorp to set up a \$15 billion MTN issuance programme to account for the government guarantee scheme.

Another highlight for Clayton’s team was acting for Boral on its \$82 million placement of senior unsecured notes to North American institutions, and advising Leighton Holdings on its US private placement of \$80 million senior unsecured notes.

Leading lawyers

Stuart Byrne
Greg James
Louise McCoach

For analysis of the other leading law firms in Australia’s debt capital markets please visit the website at www.iflr1000.com

Capital markets – structured finance and securitisation

Recommended firms	
Tier 1	Allens Arthur Robinson Clayton Utz Mallesons Stephen Jaques
Tier 2	Blake Dawson Freehills
Tier 3	Henry Davis York Minter Ellison

The ongoing financial crisis continues to bedevil the Australian securitisation market, but there are positive developments. Two mitigating forces are a surge in the number of deals underwritten by investments in RMBS by the Australian Office of Financial Managements, and the widened range of

securities acceptable to the Reserve Bank of Australia as eligible collateral under repos.

Another government initiative, the Australian Business Investment Partnership – the so-called Rudd Bank – may help with the refinancing of issued CMBS that are maturing during 2009, although at the time of writing this injection still faces a number of political hurdles.

There have been numerous private transactions funded wholly or partly by bank balance sheets, demonstrating the ongoing use of securitisation structures and displaying a recognition that this funding technique is still sound. Australian securitisation practitioners have also kept busy restructuring transactions where the original sponsors have entered insolvency and the role of captive trustee, servicer and manager has been shifted to third-party providers.

Given the shortage of liquidity in the banking market, commentators note that securitisation will remain a vital force to meet the large demand for credit origination that is necessary for a sustained recovery in Australian economic growth.

Allens Arthur Robinson

Allens Arthur Robinson’s securitisation and structured finance expertise is sought out by a number of clients. One describes Andrew Jinks as “a very experienced securitisation lawyer who knows all the structures backwards, works very fast and does very good work”.

However, the retirement of senior leading lawyer Mark Wormell from the practice may be impacting the team. But for now sources report they see Allens as much as ever and that the team’s remaining talent is plenty strong enough to support a strong work flow.

The firm took a leading role advising the Australian government on its urgent establishment of an SPV providing liquidity to car dealer financiers from January 1 2009, following GE Money Motor Solutions and GMAC Financial Services’ dramatic exit from the market. Australia’s four leading banks financed the SPV structure with government-guaranteed subordinated debt.

Leading lawyers

Andrew Jinks
Tim Lester

Clayton Utz

While the firm lost Brian Salter to an in-house position at AMP Group in July 2008, Clayton Utz is still seen by the market as one of the leading securitisation practices in Australia.

Clayton Utz's structured capital markets group has done exceptionally well adjusting to the great loss of several key individuals through the year, but overall activity quietened down. Senior lawyers Brian Salter and Trevor Robinson left the firm last year – Robinson opted for retirement, while, as mentioned above, Salter went in-house to AMP. However, market commentators are confident in the younger team's abilities and anticipate the practice will soon be back on its feet.

Highlights for the firm included acting on the restructuring of Allco's securitisation exposures and assisting many clients in their participation in six government-funded securitisation transactions in Australia, on both the sponsor and arranger sides.

The firm's recent work for Macquarie Group is another strong example of its profile. Clayton's team counselled Macquarie Group on establishing its A\$460 million (\$368 million) Smart Series 2008-1E trust, where Macquarie Leasing was the issuer to the nine tranches of asset-secured notes.

Clayton Utz also assisted Macquarie to set up its award-winning ARC Funding Programme to repackage two tranches of euro notes under the Smart Series trust.

Mallesons Stephen Jaques

Mallesons Stephen Jaques kept up an active practice despite the chill in the structured finance and securitisation markets.

One highlight saw Berkeley Cox and Paul Smith advise cornerstone financiers ANZ, the National Australia Bank (NAB), Commonwealth Bank and Westpac in the Australian government's guaranteed auto dealer floor plan initiative. The programme was created to alleviate funding pressure in the dealer financing industry.

Ian Paterson assisted NAB in setting up the National RMBS Trust 2008-2 – a Reserve Bank of Australia (RBA) repo trust designed to repackage NAB-originated residential mortgages as notes available for the RBA to purchase.

Scott Farrell advised NAB on a risk management strategy regarding its \$1.6 billion exposure to synthetic CDOs in its conduit portfolio, where the bank entered long-dated hedges with a large global bank counter-party. The strategy helped to strengthen NAB's position and reduce the risk of CDO-related losses.

Leading lawyers

Stuart Fuller

Blake Dawson

Blake Dawson has sustained a securitisation deal flow even through the difficult months of late 2008. Paul Jenkins is lead counsel to the Commonwealth Bank regarding the restructuring of numerous Allco-related securitisation transactions, including transitions to new trustees, new servicers and new trust/series managers. Also, he has been advising on the establishment of a number of warehouse transactions from October 2008.

In another of the firm's most noteworthy deals, Jenkins advised Bank of Tokyo-Mitsubishi UFJ on two separate equipment finance securitisation facilities for Japanese equipment manufacturers and financiers in September 2008. Jenkins later acted for Perpetual as trustee on the establishment of a special purpose financing structure in January 2009 set up by the Australian government to provide liquidity to car dealer financiers.

Bruce Whittaker was also active, representing ING Bank Australia in October 2008 in establishing its first Australian securitisation programme. Whittaker backed this up by advising ING as manager in establishing the IDS Trust 2008-1 and securitising approximately \$A7.5 billion (\$6 billion) of ING's existing Australian loan book via the trust. The trust issued Class A notes eligible as asset-backed securities for the Reserve Bank of Australia's repurchase agreements.

Leading lawyers

Paul Jenkins
Jamie Ng
Bruce Whittaker

Freehills

Freehills' strong structured finance and securitisation team saw a variety of work over the year, including a large number of restructuring mandates. A client comments: "We didn't really need any securitisation work this year but once we do again it's always Freehills. They just have so many good people there who do it, we'll ask our other Freehills counsel to fix us up with someone."

One highlight for the team this year saw Lachlan Roots advise Members Equity on the establishment of its equitable title securitisation programme under the Superannuation Members Home Loans programme.

Tessa Hoser was also active, advising Westpac on small and medium enterprise-based receivables financing for 180 Capital. Patrick Lowden counselled Commonwealth Bank on securitisation structures acquired with its purchase of Bankwest, and Wendy Gwyn advised Everest Financial Group on the restructuring of its various funds, both wholesale and retail, and their related derivative

products. The funds are linked to offshore synthetic-investment absolute-return funds through structured derivative products.

Leading lawyers

Tessa Hoser
Lachlan Roots

For analysis of the other leading law firms in Australia's structured finance and securitisation markets please visit the website at www.iflr1000.com

Banking

Recommended firms

Tier 1

Allens Arthur Robinson
Freehills
Mallesons Stephen Jaques

Tier 2

Blake Dawson
Clayton Utz
Minter Ellison

Tier 3

Gilbert + Tobin
Henry Davis York

Tier 4

Arnold Bloch Liebler
Baker & McKenzie
Corrs Chambers Westgarth
Deacons

The international liquidity crisis has siphoned leveraged buyouts from the Australian markets. Capital constrained banks have restricted access to all but the most secure and expensive credit, and participate with only minimum underwriting exposure, dramatically reducing new deal flow and size.

An uptick in asset finance and leasing transactions was a product of financiers' increasing wariness and desire for greater security. Liquidity drained borrowers of every grade, with many struggling to secure enough funds to refinance. Meanwhile acquirers have waited patiently for the most opportune use of their cash.

Acquisition financing has turned towards the distressed markets, with many deals involving a restructure of the target's existing facilities. Lawyers expect this trend to continue as the bank debt market contracts further as purchasers acquire highly-leveraged distressed targets.

Allens Arthur Robinson

Allens Arthur Robinson is a force to be reckoned with on banking and finance deals, and

can be typically found acting on the most noteworthy transactions in the market. The names Philip Cornwell, Andrew Jinks, Ian Wallace, Robert Cornish and Catherine Parr attract accolades from clients and competitors time and again.

Clients praise the firm for its combination of skill and experience: "We don't go to a firm for its name," says one client. "They've got to have specific individuals with the experience and knowledge to back it up."

Stephen Spargo also attracted a lot of praise from clients this year. "When we need someone quite good in banking and finance, Stephen Spargo is one guy we like to use," says another client. "Steve can understand the nature of our business. We never have to worry he'll over-service," notes another client.

Leading lawyers

Philip Cornwell
Catherine Parr

Freehills

While Freehills suffered a blow by losing John Schembri to Gilbert + Tobin in 2008, it has responded to the loss, making up partners Hayley Neilson and Lucy McCullagh in July 2008, demonstrating continued commitment to its banking practice.

Freehills has retained its position in the banking market due to its deep bench of quality practitioners. Gemey Visscher is praised by one client for her combination of commercial and technical skills: "Gemey Visscher is very good on the finance side, especially transactional banking work," says one client. "She's balanced on the commercial and the legal sides."

At the same time, the firm's steady relationships with its broad client base of banks, financial institutions and borrowers kept up the deal flow through a challenging year. In a landmark corporate financing in the Australian loan market, Freehills represented ANZ, BNP Paribas and NAB as joint lead arrangers and underwriters of the A\$10 billion facility to fund Wesfarmers' takeover of Coles Group.

The team also took on one of the larger acquisition debt finance deals the illiquid debt markets permitted in 2008, acting for the arrangers of A\$2.4 billion (\$1.9 billion) debt facilities provided to Incitec Pivot to finance its acquisition of explosives manufacturer Dyno Nobel by scheme of arrangement. It later assisted with the partial refinance of A\$1.68 billion through a syndicated bank debt facility.

Asset finance is a well known strength of the practice. "Freehills still has a lot of the very

best asset finance lawyers in Australia," affirms a competitor.

The firm handles a great deal of strategic work for Commonwealth Bank of Australia (CBA) and has assisted on a variety of asset leasing transactions since last year, including several for an aircraft carrier, a railway fund and a mining equipment manufacturer. It similarly acted for National Australian Bank (NAB) as arranger and financier on the construction of locomotives by a subsidiary of Downer EDI.

Leading lawyers

Andrew Booth
Patrick St John

Mallesons Stephen Jaques

The calibre of instructions received by Mallesons Stephen Jaques' banking and finance group was uninterrupted by the market downturn, which is strong evidence of a flight to quality in the Australian market. While John Stumbles moved to a consultancy position with the firm this year, clients continue to seek out Mallesons for high-profile banking work. One admits: "I notice a consistency of quality with Mallesons that is not always guaranteed with other firms once you go beyond the obvious names. It definitely sets them apart."

Several clients praise Katherine Forrest: "She's great for retail banking regulatory work, anything in that field," says one. Ros Grady and Roger Featherston are also singled out by clients for their banking regulatory expertise.

Mallesons assisted a number of clients financing the purchase of companies or assets in distress. The firm advised Champ Private Equity on the financing of its purchase of Alleasing from Allco, which was in receivership at the time. In March 2009, the firm counselled Champ on restructuring of the debt facilities of its distressed acquisition target Centric Wealth, thus avoiding insolvency.

The firm has been well positioned to act on much of the large-scale, complex refinancing work being undertaken given its experience putting together the original financing documentation. Yuen-Yee Cho revisited PBL Media Group's facilities, this time assisting senior lenders with buybacks and the restructuring of existing loans.

Not to be outdone on the corporate finance side, Mallesons represented Incitec Pivot's interests regarding the A\$1.68 billion (\$1.34 billion) syndicated facility agreement for the partial refinance of debt accrued during its June 2008 purchase of Dyno Nobel.

Mallesons also acts as sole legal counsel on a recent initiative by the Australian govern-

ment and big four banks to create a funding vehicle designed to support commercial property refinancing deals that are at risk of the withdrawal of one of the banking syndicate.

Leading lawyers

Ken Astridge
Jeff Clark
Peter Doyle
Ian Patterson

Blake Dawson

Blake Dawson continues to attract high-profile work in the banking and finance sector. Martin Coleman leads the group that serves more and more big name clients by the year. Coca-Cola Amatil turned to the firm in 2008 for financing work on several corporate facilities around the region, and Bluescope Steel has instructed Blake Dawson on corporate treasury work throughout the past year.

One client singles out leveraged and acquisition finance specialist Steve Smith for his pragmatic approach to transactions: "[He's] a smart guy, very commercial and on a par with anyone else we'd consider using," the client says. Another client finds Martin Coleman "very good on the transaction financing side".

There were a few personnel movements at Blake Dawson this year, with Matt Stott promoted to the partnership in July 2008 and new Perth partner Stephen Skinner joining the team in December. Balancing the arrivals, the firm lost Jodi Fullarton-Healey to an in-house position at ANZ Bank in August 2008, while Nyla Bacon retired from the practice last year.

Martin Coleman has led a series of matters for ANZ, including the A\$304 million (\$243 million) syndicated refinancing for Northern Territory Airports, representing all of the big four banks in the syndicate. Steve Smith acted for lead arrangers National Australia Bank, Bank of Scotland (Ireland) and Natixis on an A\$100 million facility to Champ Private Equity for its purchase of Lindores Bros, a crane and mining equipment company.

Another highlight for Blakes was its work on a five-year \$435 million revolving credit facility for Oil Search (Papua New Guinea) that involved negotiations with 16 banks. The facility is secured against oil asset cash flows, and a large portion was committed without political risk insurance cover.

Qantas Airways has kept John Field and Matt Stott busy with a string of financing facilities since June 2008, which cover 13 new and recently-acquired aircraft, altogether worth A\$1.5 billion.

Recently, the firm earned an appointment to the Australian Securities and Investments Commission's national legal services panel.

Leading lawyers

Martin Coleman
John Field
David Mason
Steve Smith
Philip Trinca

Clayton Utz

Clayton Utz's banking team gave a solid performance throughout the past year. The firm suffered a blow when Leah Chick retired from the practice in December 2008, but Kathy Santikos was promoted to the partnership and Nick Poole joined the firm as partner from Mayor Brown JSM in Hong Kong in February 2009 to boost the firm's debt restructuring abilities.

One highlight this year saw Michael Riches lead a team assisting the mandated lead arrangers, underwriters and bookrunners on an A\$250 million (\$200 million) senior secured facility in relation to the acquisition of MYOB by Archer Capital and Harbourvest Partners. The deal was complicated by the group's subsequent restructuring.

Jason Huinink acted as lead counsel to the Leighton group on a three-year revolving unsecured credit facility guaranteed by Leighton Holdings and jointly underwritten by ANZ, Commonwealth Bank and National Australia Bank in October 2008.

CVC Asia Pacific and PBL Media mandated the firm on the complex restructuring in December of its \$2.6 billion senior and mezzanine debt arrangements, which involved one of Australia's largest banking syndicates.

The firm also advised the financiers on an A\$650 million syndicated loan facility providing funds to the Diversified Utilities and Energy Trust (a subsidiary of Macquarie Bank) on a corporate refinance deal that required a unique security structure.

Leading lawyers

Angela Flannery
Grant Fuzi
Graeme Gurney
Jason Huinink
Michael Riches

Minter Ellison

While Minter Ellison has the ability to act as both lenders' and borrowers' counsel, market commentators note that its bank-side work is its particular strength. John Mosley is singled out by clients, who describe him as a "very commercial lawyer with a strong support team. He willingly provides additional services at no extra cost".

In November 2008, Minter Ellison acted for the borrower on A\$1 billion (\$800 million) of syndicated senior facilities to two

secured funds owned by AMP Capital with interests in shopping centres across Australia and New Zealand.

After assisting the mezzanine syndicate on PBL Media's leveraged buyout of Ticketek and Acer Arena in 2007, Goldman Sachs and JBWere mandated the firm on the complex December 2008 debt restructuring to recapitalize the troubled media firm.

Another mandate saw ANZ, as agent for the syndicate, instruct the firm on a significant REIT (real-estate investment trust) restructuring of A\$1.8 billion of facilities advanced to ING Industrial Office Fund – a large international property fund with multi-national assets.

In addition, Minter Ellison acted for an RBS and ABN Amro-led syndicate in February 2009 to restructure A\$2.32 billion of facilities granted to Primary Health Care for its acquisition of Symbion Health in 2008.

Leading lawyers

Theo Kindynis
Daniel Marks

For analysis of the other leading law firms in Australia's banking market please visit the website at www.iflr1000.com

Mergers and acquisitions**Recommended firms****Tier 1**

Allens Arthur Robinson
Blake Dawson
Clayton Utz
Freehills
Mallesons Stephen Jaques

Tier 2

Gilbert + Tobin
Minter Ellison

Tier 3

Baker & McKenzie
Corrs Chambers Westgarth

Tier 4

Arnold Bloch Leibler
Atanaskovic Hartnell
Chang Pistilli & Simmons
DLA Phillips Fox
Henry Davis York
Johnson Winter & Slattery

The Australian M&A market has certainly changed since the heyday of 2007/2008 when the *IFLR1000* breathlessly reported that "there has never been a more exciting time to be in the Australian M&A market".

However the downturn couldn't be a better playground for strategic shopping, and

strong-armed Aussie corporates have jumped in. Heavy bouts of capital raising have shored up many companies' purchasing power. A share placement even directly financed at least one hostile takeover this year. "Instead of M&A, you better call it 'mergers and disposals'," quips one lawyer, referring to the ruthlessly popular take-control transactions.

Australia's neighbours have of course also spied opportunity in the country. "Japanese and Chinese acquirers have been prowling Australia looking for resources and other acquisition opportunities," says one lawyer. But another counters: "The only reason foreign investment sticks out is that nothing else is happening." European and US players have if anything been vendors – liquidating assets to repatriate cash where possible to shore up their home bases.

Rio Tinto's about-face from a government-sanctioned \$19.5 billion deal with China's state-owned Aluminium Corporation concerning a rights issue joint venture with former aggressor and competitor BHP Billiton has shaken up Australia's M&A market again. BHP Billiton's \$58 billion tie-up with the former takeover target is the region's biggest M&A transaction yet, but is also a potential setback for foreign direct investment in the resources-rich country if it discourages other Chinese firms from investing in the country.

Allens Arthur Robinson

Many clients contend that Allens Arthur Robinson's corporate group takes the cake as the legal counsel of choice on bold, high-stakes, high-end deals. Clients praise the firm's partners, with Steve Pemberton singled out for his pragmatic skills: "He's very commercial and cuts through to the underlying issues," says one client. "Steve is just a very, very smart guy and he can cut through complex legal issues pretty easily."

Greg Henderson also gets a nod from one loyal M&A client: "Greg is just a very good lawyer – very commercial and understanding of our company." The client adds: "He gets the business he's taking instructions from, so he doesn't over-serve."

The firm is best known for representing Anglo-Australian iron-ore miner Rio Tinto in its heated and high-profile negotiations in February 2009 with China's state-owned Aluminum Corporation of China (Chinalco) to reach an agreement on a strategic alliance. Chinalco then famously pulled-out in July 2009 to form a joint venture covering iron-ore production with rival BHP Billiton.

Leading lawyers

Ewen Crouch

Blake Dawson

Blake Dawson has had a tremendous year in M&A, nailing two of the biggest deals – both of which involved heated political debate as well as complicated business considerations.

Perhaps such success is best attested by a client who lauds the firm's "practical approach to negotiations, efficient deployment of resources, ability to manage M&A work and outside support seamlessly, [and its] ability to communicate complex issues clearly".

Carl Della-Bosca rejoined the partnership in January 2009 following his five-year leave of absence at Slaughter and May in London, while David Ryan was promoted to partner in January 2009.

Making history as Australian legal advisors to BHP Billiton, the firm negotiated the surprise joint venture between the world's largest miner and Chinalco's would-be prize, Rio Tinto. The \$5.8 billion arrangement increases BHP Billiton's stake to 50% and covers the former rival's iron ore production and exploration assets in Western Australia.

On another landmark investment bid, the firm represented China Minmetals in its embattled but spectacularly successful acquisition of struggling local miner Oz Minerals. A shareholder vote recently sealed the deal, handing the Chinese state-owned firm the majority of its target's assets through a private treaty for A\$1.7 billion (\$1.36 billion).

If that weren't enough, the team has also been assisting Kirin Holdings since April 2009 regarding its proposal to buy out the remaining 53.8% in Lion Nathan that the Japanese brewery does not already own by scheme of arrangement for A\$3 billion. At the time of writing, the Australian Competition and Securities Commission (ACSC) had stamped its approval on the deal.

Leading lawyers

Bill Koeck
Marie McDonald
David Williamson

Clayton Utz

Clayton Utz landed several plumb roles on corporate M&A transactions in the past year. Perhaps the heftiest deal the team acted on was representing HBOS in its sale of its Bankwest and St Andrew's wealth and insurance businesses to the Commonwealth Bank. M&A partners Rod Halstead and Karen Evans-Cullen led the team to complete the A\$2.5 billion (\$2 billion) transaction between October and December 2008.

In a very complicated piece of work, Clayton Utz advised Fortescue Metal Group on its approximately A\$645 million deal with Hunan Valin Iron and Steel Group Company,

a leading Chinese steel mill, in which Valin acquired a nearly 16% share in Fortescue under a share subscription agreement. The transaction completed in April 2009 after receiving the Australia's Foreign Investment Review Board's approval.

Leading lawyers

Rod Halstead
Michael Parshall

Freehills

Freehills holds its position at the top of the rankings after a strong performance on some very complicated and time-sensitive deals, while transitioning seamlessly through some substantial changes.

Mark Rigotti moved to a client management position in 2008 and Richard Loveridge now heads the corporate practice group. Star partner Braddon Jolley left the firm for Corrs Chambers Westgarth, however the promotion of five new corporate M&A partners over the year across its Melbourne, Brisbane and Perth offices has kept the practice from slipping.

Freehills attracts much praise from clients. Rodd Levy is praised by one recent client for his transactional skills: "Rodd is a good lawyer because he understands the needs of a company and takes a very commercial approach," the client says.

Another client singles out Mark Crean: "[He's] a highly technical and experienced lawyer, a good negotiator and a good fit for our culture," the client says. Other clients happily vouch that Tony Damien is very good on the M&A side. "If he recommends something, we trust him," says one client.

The team was still able to reel in a choice piece of work opposite Blake Dawson, representing Oz Minerals in selling \$1.75 billion in key assets to China Minmetals. For now, the deal – recently approved by both government and shareholder votes – represents China's largest stake in Australian mining resources.

In another outstanding performance, Freehills represented local oil and gas producer Santos on its A\$7.7 billion (\$2.5 billion) partnership with Malaysian state-owned oil enterprise Petronas to develop the Gladstone liquefied natural gas (LNG) project.

In the heat of the global financial crisis, the team advised the Commonwealth Bank (CBA) on HBOS' A\$2.1 billion divestment of Bankwest and St Andrews. CBA provided A\$17 billion in replacement funding to HBOS to acquire the banking businesses, in addition to A\$2 billion more via a concurrent capital raising.

Leading lawyers

Baden Furphy
Rodd Levy
Rebecca Maslen-Stannage

Mallesons Stephen Jaques

Mallesons Stephen Jaques took roles on a spread of the year's most debated and discussed M&A transactions. Most notably, the firm advised Aluminum Corporation of China (Chinalco) on its proposed investment in Rio Tinto. Valued at A\$19.5 billion (\$15.6 billion), the deal would have consisted of direct investment into Tier 1 mining assets around the world and the largest-ever proposed outbound investment by a Chinese state-owned enterprise.

Clients value the firm for the quality of its people. "Craig Semple is an incredibly good lawyer who knows us very well, what our risk appetite is," says one client. "He comes up with the solutions we need when we need them; and when he tells us there are no solutions, he tells us why we don't need them. The client adds: "He also brings an understanding of the personalities and foibles of our business."

"I've got a lot of time for Stephen Minns," says one public M&A client. "Stephen is just a good quality lawyer, one of those sturdy lawyers – very reliable, very experienced."

The M&A team advised global chemicals company Incitec Pivot throughout negotiations regarding its A\$3.3 billion acquisition of global explosive manufacturer Dyno Nobel by a scrip-based scheme of arrangement in June 2008, working closely alongside Mallesons' competition, finance and environment teams.

The firm took another prime role counselling Hunan Valin Iron and Steel Group on its acquisition of a 17.4% stake in Fortescue Metals Group – one of Australia's top iron ore producers – through a share purchase from Harbinger Capital, a US-based hedge fund and one of Fortescue Metals' existing shareholders. Valin's entire investment in Fortescue Metals, including the share subscription with Fortescue Metals and the share purchase from Harbinger Capital, totals just over A\$1.2 billion.

Leading lawyers

Peter Cook
David Friedlander
Greg Golding
Stephen Minns

Gilbert + Tobin

Gilbert + Tobin remains a key player in the Australian M&A market. The commercial sensibilities of the firm's partners are particularly well-regarded by clients: "Gary Lawler is probably one of the most seasoned and canny, practical M&A lawyers we've dealt with," says one

client. "He just fills you with confidence and he's as able working through the business issues as the legal ones."

The team's most impressive performance over the year was advising Westpac Banking on its merger with St Georges Bank. The deal was the largest corporate merger done in Australia, creating the biggest financial services institution in the country.

In another notable role, the firm acted for AGL Energy on its November 2008 disposal of its 22% stake in Queensland Gas, valued at more than A\$1.2 billion (\$960 million).

Leading lawyers

Garry Besson
Phillip Breden
Gary Lawler
John Williamson-Noble

Minter Ellison

Minter Ellison's M&A team is a solid performer in the market, with the firm taking part in a selection of important matters this past year.

Advising the target, Minter Ellison tackled the A\$1.3 billion (\$1 billion) off-market takeover of Midwest Corporation by Sinosteel Ocean Capital, a wholly-owned subsidiary of China's Sinosteel, in September 2008. The company was the first Chinese state-owned entity to make an unsolicited takeover bid for an Australian listed resources company.

From October 2008 to January 2009, the team acted on the A\$1.02 billion Airport Divestment Programme, which involved the co-ordinated sale of Cairns International and Mackay Airports, and a 12.4% shareholding in Brisbane Airport.

In a reverse takeover last July, the firm assisted Qantas Airways with an A\$750 million spin-out of its Qantas Holidays and Qantas Business Travel businesses into listed travel group Jetset Travelworld in exchange for a controlling equity stake.

In August 2008, Minter Ellison acted on the privatisation of Macquarie Capital Alliance Group (MCAG), a Macquarie Group listed specialised fund. The take-private transaction was completed by an interdependent Australian scheme of arrangement, Bermudian scheme of arrangement and an Australian trust scheme.

Leading lawyers

John Steven
Bart Oude-Vrielink

For analysis of the other leading law firms in Australia's M&A market please visit the website at www.iflr1000.com

Project finance

Recommended firms

Tier 1

Allens Arthur Robinson
Freehills
Mallesons Stephen Jaques

Tier 2

Blake Dawson
Clayton Utz
Minter Ellison

Tier 3

Corrs Chambers Westgarth
Gilbert + Tobin

The global financial crisis has the Australian project finance market in a bottleneck. Social infrastructure development under public-private partnerships (PPPs) dominated Australian project finance activity over the past year. However, energy-sector initiatives, in particular liquefied natural gas (LNG), proved resilient to the worst of the downturn, allowing several projects in the resources and energy sector to power through the tight markets thanks to alternative funding.

For now, most new lending deals have been stymied by the paucity of debt funding, as financial markets in Australia are as liquidity-starved as elsewhere. In the meantime, business is looking to new directions for equity investment, including government partnership and overseas sources, with China being a major player.

In October 2008, the government increased its more than A\$2 billion (\$1.64 billion) commitment to infrastructure investment initiatives by an additional A\$76 billion. The coming years will see those funds, in addition to state-driven programmes, help develop roads, railways, ports and high-speed broadband facilities across the country.

Innovative structures, such as the supported debt model financing used successfully to cut costs and complete the south east Queensland Schools PPP, may take the mid-size PPP market in new directions. But a wealth of large-scale projects on the table means participation from the private sector will become increasingly important as the Australian project finance market meets the challenges ahead.

Freehills

Freehills remains a dominant player in Australian project finance endeavours and has been particularly active in energy. "Brendan Quinn is one guy who seems to be cropping up quite a bit in project finance," says a competitor. Another agrees: "[He is] very good

acting for major resource companies on the finance side."

Recently, Quinn acted for the underwriters and arrangers on a limited recourse project financing of the approximately A\$700 million (\$570 million) construction and term facility for Griffin Group's development of a new coal-fired cogeneration plant in Worsley, Western Australia.

Bill Glover assisted ERM Power and Arrow Energy to raise A\$365 million in limited recourse debt financing to build the greenfield 450MW Braemar 2 Gas-fired Power Station in Queensland. Another of the project's challenges was to negotiate a long-term gas supply and electricity sale agreements with Queensland's leading energy providers

The firm acted for the government on the South East Queensland Schools PPP project, which pioneered the less costly supported debt model of financing. The project utilised borrowed lower-rate government funds during the less risky operating phase.

Leading lawyers

Brendan Quinn
Patrick St John

Mallesons Stephen Jaques

Mallesons Stephen Jaques' project finance team won roles on a slew of the season's finest projects and has been active on PPPs (public-private partnerships), refinancings and new project financings.

In Sydney, Mallesons represented the successful consortium on the Royal North Shore Hospital PPP in New South Wales.

In a complex cross-border resources and mining sector project financing, Mallesons represented BNP Paribas as mandated lead arranger for an \$80 million facility funding the development Masbate gold mine in the Philippines. Mallesons advised on the risk and security issues, and assisted the borrower group and local counsel with due diligence.

The team also acted for banks on a number of new private sector project financings, both domestically and abroad. These included Bluewaters Power Stations, the expansion of the Dampier-to-Bunbury Natural Gas Pipeline, the expansion of the Epic Energy's south west Queensland Pipeline and the Khandke wind farm financing in India.

Leading lawyers

Jeff Clark
Peter Doyle

Blake Dawson

Blake Dawson is lead adviser to a consortium of 16 coal producers, including BHP Billiton,

Rio Tinto Coal Australia, Vale (Brazil) and Xstrata Coal, on the project financing for the Wiggins Island coal export terminal in Gladstone. The A\$5 billion (\$4 billion) project is Australia's largest greenfield project of 2008/2009, and Blake Dawson is advising on all aspects of the financing and construction of the terminal.

Blake Dawson is the lead legal advisor to the Queensland government-mandated consortium developing the A\$1.5 billion Surat Basin rail project, advising on the project's risk profile and all aspects of documents and contracts, including state agreements, construction and finance documents. The firm also acted for Leighton Holdings on the Brisbane Airport Link – Australia's largest road public-private partnership.

The firm advises on a wide range of matters, including concessions, development and construction documents, debt financing arrangements and regulatory matters.

Leading lawyers

Joanne Evans
David Mason

Clayton Utz

Clayton Utz's project finance team stood out for its excellence in the PPP (public-private partnership) area, and as usual nabbed the government role on several of the most coveted infrastructure projects.

The team acts for Aquasure consortium on its current bid to design, build and operate a 150GL desalination plant in Victoria, Queensland – a project the government hopes will help to address the effects of climate change. The firm has advised the consortium on the deal structuring, equity and debt financing and negotiation of project and downstream documentation.

Clayton Utz drafted the tender and related project documents for the New South Wales Health Department on its \$950 million public tender for the Royal North Shore Hospital redevelopment, one of the state's largest PPP projects to date. The firm provided additional advice on drafting tender and project documents for the new Acute Services Hospital, a community health centre, and also for the refurbishment and maintenance of existing buildings and grounds.

The Queensland government has appointed the firm to advise on the Airport Link PPP, US\$3.2 billion Northern Busway and Airport Roundabout upgrade projects. Clayton Utz also provides legal advice to a separate company established by the government to manage the procurement process for the Airport Link PPP on its behalf.

Leading lawyers

Doug Jones

Minter Ellison

Minter Ellison had a strong year in project finance, acting on two successful PPP (public-private partnership) bids and pioneering alternative financing structures.

Minter Ellison acted for Axiom Consortium, including ABN Amro, Abigroup and United Group, on its winning bid for the Victorian Bundled Schools PPP. The A\$250 million (\$204 million) project, comprising 11 new super schools, successfully obtained financing within six weeks from tender.

Minter's team won a bid to advise the Victorian Department of Justice regarding its Ararat Prison PPP – a plan to deliver a new 350-bed medium-security prison next to the current facility. The firm will assist with legal documents and contracts, and will advise on project delivery through to tender, completion and commissioning.

The firm also represented the Aspire Schools consortium on its winning bid to build and run six schools for the South East Queensland Schools PPP, which featured supported debt model financing for the first time in Australia. This alternative financing structure cut borrowing costs by using state government debt to fund the project at the low-risk operational stage.

Leading lawyers

Paul Paxton
Fred Tinsley

For analysis of the other leading law firms in Australia's project finance market please visit the website at www.iflr1000.com

Restructuring and insolvency

Recommended firms	
Tier 1	
Blake Dawson	
Henry Davis York	
Minter Ellison	
Tier 2	
Allens Arthur Robinson	
Clayton Utz	
Mallesons Stephen Jaques	
Tier 3	
Baker & McKenzie	
Corrs Chambers Westgarth	
Deacons	
Freehills	
Kemp Strang	
Tier 4	
Arnold Bloch Leibler	
DibbsBarker	
Gadens	

As the global financial crisis gained momentum, Australian restructuring and insolvency practitioners started to get busy on a considerable amount of corporate rescue work. Firms report a vast increase in activity in the pipeline, with a lot of legal assistance behind the scenes in informal restructurings and workouts. There has been an uptick in the volume of formal appointments over the past six months – Allico Finance Group, ABC Learning and Octavia among the collapsed.

However insolvencies have been thinner on the ground than expected, with more going to restructuring and workouts, and employing less traditional methods like debt and equity swaps. Banks are still nursing distressed creditorships to avoid formal insolvency because of the worry of finding buyers for assets.

This is largely down to the work of lawyers, banks and governments, who have been carefully co-ordinating the unfolding of the crisis to avoid a deluge of formal appointments. Regardless, R&I specialists will be in high demand for some time. "Collapses will inevitably increase and, all efforts to manage prices notwithstanding, it's going to get uglier before gets better," says one partner.

Blake Dawson

Even competitors can agree on the fine quality of insolvency partners at Blake Dawson. The team has participated on the front lines of some of Australia's biggest fallouts since the global financial crisis hit, acting predominantly for insolvency consulting firms, but also advising private-sector clients on receiver-

ships, voluntary administrations and liquidations.

On the administration of Allco Finance Group, the firm acted for McGrathNicol as administrators, providing advice regarding securitisation structures, noteholder claims and insurance matters.

Blake Dawson also acts for PPB on the administration of Lehman Brothers Australia, advising on substantial claims made by a number of local government council investors relating to CDOs purchased from Lehmans. The firm also assists the voluntary administrators of Babcock & Brown, which owes major creditors, mostly retail noteholders, in excess of A\$600 million.

The firm was also appointed by Deloitte to act on the administration of de-listed property group Octaviar and its subsidiaries, which has debts exceeding A\$2 billion.

Leading lawyers

Ray Mainsbridge
James Marshall
Tony Ryan

Henry Davis York

Henry Davis York is a go-to firm in this market, particularly on complicated insolvency proceedings. With the past year full of such work, it's no surprise the practice had a busy time of it. "Henry Davis York would be my first choice for insolvency dispute resolution. If you want someone in Sydney to resolve a complex insolvency matter, they are particularly good at it," says one competitor. "They may focus on litigation, but you'll see John Martin and John Evans now involved in most of the high-profile cases around restructuring and insolvency."

The firm is acting on the receivership of former childcare operator, ABC Learning, advising both the syndicate of banks in relation to A\$1 billion (\$815 million) exposure and also acting for the receivers and managers.

Henry Davis York is also mandated by Westpac, ABN Amro and Commonwealth Bank regarding some of the largest individual exposures of the banking syndicate to Allco Finance Group in its restructuring of more than A\$1 billion syndicated and bilateral facilities. The team also advises the banks on lesser bilateral exposures to various Allco satellites.

Another project for Henry Davis York is counselling the 25 banks in the syndicate providing A\$150 million additional funding to Babcock & Brown in relation to the complex restructuring of A\$3 billion debt facilities. The team additionally acts for McGrathNicol as receivers and managers of Commander

Communications regarding approximately A\$350 million owed to the banks.

Leading lawyers

Philip Crawford
John Evans
John Martin

Minter Ellison

Insolvency is one of Minter Ellison's strengths and its specialist lawyers are among the very best. Alex McLean left the practice in August 2008 to take up a commercial manager position at Clough, but the team is large and is held in high regard by clients and competitors.

The firm advises ANZ on the collapse of Opes Prime Stockbroking, which specialised in stock and margin lending and held debts of more than A\$700 million (\$570 million) to ANZ at the time of its collapse. The firm also acts in defence of ANZ on claims Opes clients have initiated that will rule on the legality of passing legal and beneficial title to shares in Australia.

Minter took on the collapse of Centro Property Group and its A\$3 billion bank debt owed through complex structures and funding arrangements to numerous companies, listed property trusts and stapled securities. The team has negotiated the deed for Commonwealth Bank and advised on the extension of individual bilateral facilities to entities in the Centro Group as well as the continuation of senior facilities for the restructuring period. The team also advised ANZ regarding its exposure.

Minter's team acts for Commonwealth Bank and Korda Mentha on the collapse of Environment Group, a public company with managed investment scheme liabilities of A\$150 million. The R&I partners have combined with the firm's dispute resolution and real-estate practices on the matter.

The firm also assists PPB as voluntary administrators in the Lehman Brothers Australia insolvency in relation to Queensland assets.

Leading lawyers

Michael Hughes
Ian Walker
Brendon Watkins

Clayton Utz

Clayton Utz added to its restructuring and insolvency capabilities this year, hiring Nicholas Poole from Mayer Brown JSK in Hong Kong during February. Poole joins a team that is well regarded by clients, with one

singling out Karen O'Flynn for her handling of complex insolvency litigation.

The firm plays several roles in ABC Learning Centres' insolvency, acting for Morgan Stanley as a majority shareholder and creditor, and representing the Commonwealth and its court-appointed receivers regarding the government rescue package to restructure more than 250 unprofitable childcare facilities.

On the front lines of another insolvency, the firm acts for Ferrier Hodgson as receivers of Australian Discount Retail Group, which operated hundreds of discount variety stores across the country until its January 2009 collapse. The firm has assisted in selling the network of businesses within a very short time, affording security to the affected employees, landlords and supply chains.

Other notable work this past year included advising PPB as administrators of Lehman Brothers Australia, particularly on Australian aspects of Lehman's international asset sale. Clayton's team has also assisted the administrators of the Monto Group to liquidate mining and other assets, and continues to play a role in relation to the listed company's potential recapitalisation.

Leading lawyers

David Cowling
Karen O'Flynn

Mallesons Stephen Jaques

Mallesons Stephen Jaques may be stronger in banking and finance, but the firm is a capable and trusted advisor of both debtors and creditors in administrations, receiverships and liquidations. The firm's particular strengths are workouts, corporate reconstruction and schemes of arrangement, recovery planning, managing credit risk and enforcing rights for secured lenders.

One of its strongest mandates saw Tony Troiani advise the liquidators on the administration of Opes Prime and return of more than A\$250 million (\$204 million) to the group's investors. Considering the substantial risk of protracted litigation, the firm has facilitated a multi-party mediation between key stakeholders involving a scheme of arrangement.

The firm advises Westpac as facility agent for the banking syndicate regarding loans to the Commander Communications group of companies. Mallesons has held several roles in Pure Logistics Group's insolvency and restructuring, acting first for Bos International (Australia) and ANZ, then later for Korda Mentha as receivers. The firm assisted and documented the sale of under-performing businesses, and advised the banks on long-

term plans to realise the value of the troubled group's ongoing business.

Leading lawyers

Beau Deleuil
Linda Johnson
Tony Troiani

For analysis of the other leading law firms in Australia's restructuring and insolvency market please visit the website at www.iflr1000.com