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Where Regulators Meet Restructuring;

Roles, Risks, and Realities

Meet the Panelists

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Where Regulators Meet Restructuring; Roles, Risks, and Realities

Even in the most straightforward insolvency processes, and even where all parties agree, regulatory considerations or the heavy and unexpected hand of a rogue regulator can too often disrupt otherwise sound schemes, plans, and agreements. History has shown the power of regulators, and cooperation with them can be key to success. The manner in which insolvency professionals interact with regulators can vary significantly across jurisdictions. What better forum than Triple I to explore these differences?

About This Panel

This panel will explore regulatory issues that arise in restructuring among varying jurisdictions, including sectors such as mining, energy, and telecom.

- Jurisdictions represented: USA, Netherlands, UK, Canada, Australia
- Typical regulatory interference in each; and
- Lessons from the past on how historical these interactions have played out
- Tools for the future on how best to interact with the regulator

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Industry

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Industry Regulators: Intervention or Oversight?

Intervention

- Step into proceedings
- Assert claims or objections
- Influence outcomes

Oversight

- Monitor compliance
- Set rules and standards
- Supervise industry conduct

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Financial Services

Can Fines or Regulatory Liabilities be Restructured?

Example: SNS Bank & Insurer

- State owes damages to the shareholders

SNS REAAL

Insurance

- Funeral insurance coverage
- Aboriginal targets
- Two separate funds overseen by two separate industry regulators
- Risk of overcompensation
  - Treatment of surplus

Consumer Protection

The Case for Regulatory Involvement

- Securities commission
- Financial services regulator
- Consumer protection objectives
- Restructuring authority
- Regulatory intervention as a safeguard

Consumer Protection (cont'd)

Tensions and Constraints

- Arguments against regulator involvement
- Putting consumers at risk
- Tension with restructuring objectives
- Regulator can push through regardless

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Consumer Protection (cont'd)

Case Studies

Bridging Financial (Private Credit)

- Security Commission appointed receiver

Australia

- Government as most common creditor
- Pays unpaid employees rights
- Aggressive participant in liquidation

Steel Smelter

- Business taken by government
- Voluntary administration appointed by company
- Secured creditor could appoint
- Government was majority creditor

Pension Protections

Nortel

- Pension plan as creditor
- Pension-related payments

Suitability

SEC Receiverships

- Basis for regulatory intervention
- Investor protection considerations

Industry-Specific Challenges

Travel, Leisure, and Oil & Gas

- COVID-19's impact
- Pipeline restrictions and their effect on cases

Environmental Challenges

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Key Issue:

- Balancing sustainability interests with creditor demands

Case Studies:

- Claims of health impacts in the steel industry
- Keeping power station operational for flood protection in Wales
- Effective disclaimer of environmentally problematic assets

New Trends:

- Private credit and consolidation

Government as a Creditor

The Power to Intervene

Yukon Receivership

- Current management was displaced
- Loan of up to $220 million provided by the government for repair efforts
- Ore contamination cause catastrophic environmental consequences

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Tax Regulator

Government Priorities Across Jurisdictions

Australia

- No priority for government claims
- Government can still be crammed down during restructuring

Canada

- Regulators asserting authority
- Super-priority status for certain claims

USA

- Priority for government claims
- Often neglected in restructuring planning

Europe

- Varying treatment of government as creditor
- Divergent approaches to priority, cram-downs, and special treatment

Special Treatment

United Kingdom

- New decision!
- Update from Felicity

The Netherlands

- Government claims have priority
  - Policy: claims are primed for voting purposes
  - Case study: Gym Restructuring
- Industry regulations
  - Enforcement varies by sector and country

Benefits of Regulatory Assistance

Challenges of Regulatory Intervention

Weighing Interests

Australia

- Decisions are not always made in the best interest of the creditors
- Similar issues arise across jurisdictions

Netherlands

- Balancing concept of labor vs. financial outcomes
- Healthcare:
  - Local authorities can block creditor interest rights
  - Claims processes that conflict with standard creditor processes

General

- Fear of decision-making

Further Insights

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Best Practices

- To Engage or Not to Engage?
  - Fact pattern for each approach

Be On The Lookout!

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Areas of Concern

- Risks to monitor
- Impact on restructuring plan

Solvency

Handling Solvency When Regulators Intervene

- Balancing solvency and compliance
- Effects of regulatory sway on financial stability

Key Prognostications

Questions?

When Regulators Meet Restructuring: Roles, Risks and Realities

Course Planner/Moderator and Panelists:

Joel Cohen (Moderator)
Stout, Managing Director and New York Regional Leader

Michelle Grant (*confirmed*)
PwC Canada, Partner, Vancouver Practice Leader
Vancouver, Canada

Lucas Kortmann (*confirmed*)
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Stewart Maiden (*confirmed*)
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Description:

Even through the most straight forward insolvency processes, with all parties agreeing, too often regulatory considerations or the heavy and unexpected rule of a rogue regulator can throw off the best schemes, plans and agreements. History has shown the power of the regulator and how cooperation can be key to success. The manner in which the insolvency professionals interact with the regulator can be quite different among jurisdictions. What better a forum than triple I to explore these differences.

This panel will explore regulatory issues that arise in restructuring among varying jurisdictions, including sectors such as mining, energy, and telecom.

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I. Brief introduction to the panel chat topic (**JEC**)

a. Topic

b. Purpose

c. Panelist intros

II. Level Set (**JEC**)

a. Survey Room

b. Introduce Jurisdictional Approach to Panel (**JEC**)

III. Industry

a. Concept of Industry Regulators

- Introduction (**JEC**)
- (a) Intervening
- (b) Regulator as creditor

b. Financial Services

- Ability to restructure fines (**Lucas**)
  1. SNS Bank and Insurer (one of the top five)
     a. State owes damages to shareholders

c. Insurance (**Stewart**)

- Funeral insurance coverage
- Aboriginal targets
- Two separate funds from two separate industry regulators (politically charged)
- Overcompensation?
  1. How to handle the surplus?

d. Consumer Protection (**Michelle**)

- Securities Commission (CAN)
- For and Against Regulator
  1. Financial Services Regulator
  2. Restructuring Authority
  3. Putting Consumers at Risk
  4. Regulator Can Push Through Regardless
  5. CASE STUDY: Bridging Financial (Private Credit) (**Michelle**)

a. Security Commission put in Receiver

- CASE STUDY: (**Stewart**)
  1. Steel Smelter – Business Taken by Government
     a. Volunteer Administration – appointed by company, but secured creditor could appoint (government was majority creditor)
  2. AUS - Government is most common creditor
     a. Pay unpaid employee rights
     b. Aggressive participant in liquidation

e. Pension Protections (**Felicity**)
- Nortel
  1. as creditor
  2. Payments

f. Suitability
- SEC Receiverships (**Joel**)

g. Travel / Leisure
- COVID 19

h. Oil and Gas (USA)
- Pipeline restrictions have crushed cases

i. Environmental
- Sustainability Interests (OPEN)
- Steel Industry (**Lucas**)
  1. Claims of health impact
- Baglan (UK) – keeping on a power station for the benefit of flood protection (Wales)
- Effective Disclaimer of Environmentally problematic assets (Stuart)
- Private Credit / Consolidation (USA)

j.

IV. Government as Creditor

a. Government Can Wave Big Stick (**Michelle**)
- CASE STUDY: Receiver in Yukon
  1. Yukon Government put in Receiver

a. Displace management

b. Remediate repair

2. Government has provided a loan of up to $220m

3. Ore put into the water

a. Catastrophic consequences

V. Tax Regulator

a. Around the Panel for each jurisdiction

■ Australia

1. No priority

2. Cram down

■ Canada

1. Regulators Inserting its Authority

a. Super priority

■ UK (**Felicity**)

1. New decision!

2. Update from Felicity

■ USA

1. Priority

2. Regularly neglected in planning

■ The Netherlands (**Lucas**)

1. Priority

a. Policy – prime with priority for voting

b. CASE STUDY: Gym

2. Industry regulations

a. Country specific enforcement

■ Europe

b.

VI. Benefits of Regulatory Assistance

a. Discussion across the panel

[Assistance vs. Intervention]

VII. Challenges of Regulatory Intervention

   a. AUS – decisions made are not always in best interest of Creditors
      - Public interests v. Creditor interests
         1. "Benefit"
         2. Labor vs. $$ (Netherlands)
   b. Fear of making decision
   c. Netherlands
      - Healthcare (**Lucas**)
         1. Local authorities can block interest rights (Netherlands)
         2. Claims processes
            a. In conflict with creditor process

VIII. Further Insights (**ALL**)
   a. Best Practices
      - To Engage or Not to Engage?
         1. Fact Pattern for each approach

IX. Be On The Lookout! (**ALL**)
   a. Areas of Concern

X. Solvency (**JEC**)
   a. How is this handled when Regulatory sways solvency

XI. Key Prognostications (**ALL**)
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ADDENDUM (Netherlands)

- Judgment in Slotervaart case where City of Amsterdam tried to interfere in a hospital bankruptcy to obtain the land (to make a profit at the expense of the healthcare);
- Judgment of Supreme court in the SNS bank case: under Dutch bankruptcy law, the state can intervene and did in 2013, when it disappropriated shareholders of SNS, a large bank & insurer, to avoid a bankruptcy of that bank. Ultimately the Supreme Court held the State liable for damages towards shareholders;
- An article on the conference our firm organized in November 2025 on Sustainable Restructuring, which dealt amongst others with the question who can represent public (environmental) interests and whether environmental tort claim can be restructured through insolvency plans. Paragraphs 6 and 7 are on those topics specifically. Speakers were also from US (Casey), Germany (Schillig) and UK (Mevorach, Mokal) so the article also provides some input on US and English position (e.g. Thames Water)
- The bylaw that sets out the official policy of the Dutch tax authority that the tax authority will accept (and thus vote in favour of) an insolvency plan in which it receives double the percentage of ordinary creditors (which means that the tax authorities will be worse off than in liquidation and accepts a deviation to the APR, given that its claim has priority).