Webinar Series

Impacts and issues for GTA Members

1 April 2020

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Introduction and recap of last week

Pat O'Shannassy
CEO Grain Trade Australia

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GRAIN TRADE AUSTRALIA HFW Grant Thornton An instinct for growth™

Special Webinar Series on COVID-19 impacts and issues for GTA Members brought to you with the assistance of Grant Thornton and HFW.

26 March 2020
11am (AEDT)

Introduction to webinar series
Pat O'Shannassy – CEO Grain Trade Australia

Political landscape & market overview
Pat O'Shannassy – CEO Grain Trade Australia

Advisory perspective
Tony Pititto, Partner & National Head of Agribusiness, Food & Beverage, Grant Thornton

Stakeholder management
John McInerney, Partner Financial Advisory, Grant Thornton

Employment issues
Stephen Schoninger, Special Counsel HFW Australia

Q&A – online
Collation & response to key questions & themes

1 April 2020
11am (AEDT)

Political landscape & market overview
Pat O'Shannassy – CEO Grain Trade Australia

Safe harbour advisory & Ipso Facto
John McInerney, Partner Financial Advisory, Grant Thornton

Force Majeure
Stephen Thompson, Partner HFW Australia

Q&A – online
Collation & response to key questions & themes

8 April 2020
11am (AEDT)

Political landscape & market overview
Pat O'Shannassy – CEO Grain Trade Australia

Voluntary Administration
John McInerney, Partner Financial Advisory, Grant Thornton

Help with Insolvency Laws
Ranjani Sundar, Senior Associate HFW Australia

Q&A – online
Collation & response to key questions & themes

Each webinar is 40 min long. Register online here or on GTA website

Covid19

- Covid19 Industry Working Group
- Government Engagement
- Essential Service
- Technical Committee Meetings
- Force Majeure
- Member Input
- Covid19 Safety Guidelines
- Communication

Safe Harbour Advisory & Ipso Facto

John McInerney
Partner, Financial Advisory
Grant Thornton Australia

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Directors' duties – COVID 19 considerations

- 6 month relief from personal liability for insolvent trading
- Fiduciary duties not relieved:
  - Company still liable for debts incurred
  - "Care & Diligence" + "Good Faith"
- Opportune time to reposition your business

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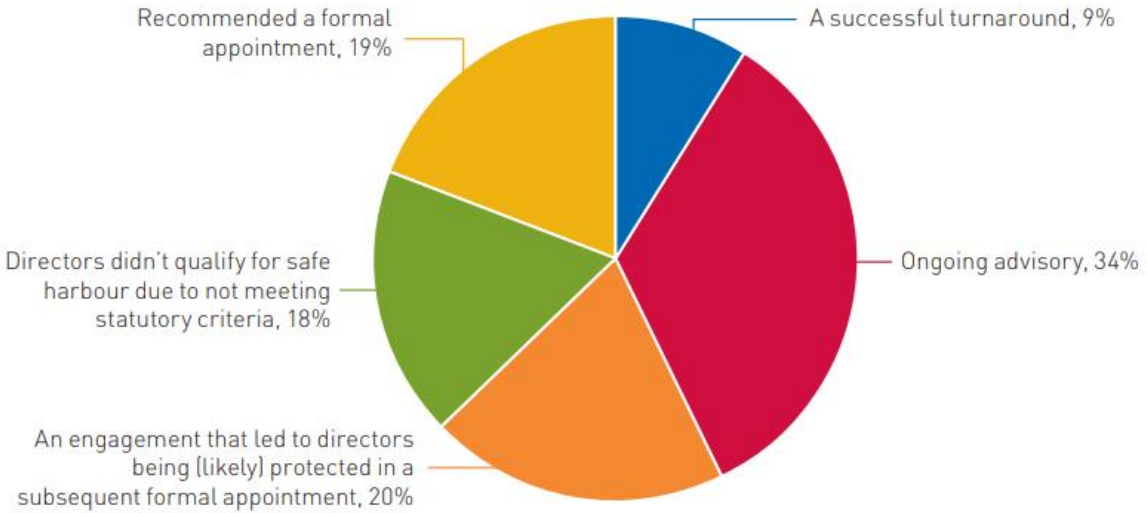
Safe Harbour is a great restructuring tool



Measure: Outcomes from Safe Harbour discussions since introduced in September 2017
Source: Australian Restructuring Insolvency & Turnaround Association Journal June 2019

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What is Safe Harbour?

- Directors can restructure their business outside a formal insolvency
- Protection beyond the 6 month temporary relief
- Directors remain in control
- Restructuring advisor engaged by the Company and assists directors

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Navigating safe harbour

1. Conduct initial assessment of financial position
2. Assess availability of Safe Harbour & resolve to enter
3. Develop & approve a turnaround plan
4. Implement turnaround plan & regularly monitor performance
5. Assess the success or failure of the course of action taken

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“

…taking a course of action…that is reasonably likely to lead to…a better outcome… than a formal insolvency

”

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Post Ipso Facto: Implications & Benefits

From 1 July 18 new contracts cannot be terminated due to insolvency

All other contractual rights of termination exist

Promote turnaround culture

Preserves value and avoids reputation risk

Likely to interrupt supply chain & delivery

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FORCE MAJEURE COVID-19

GRAIN TRADE AUSTRALIA

STEPHEN THOMPSON | PARTNER | COMMODITIES | SYDNEY

1 APRIL 2020

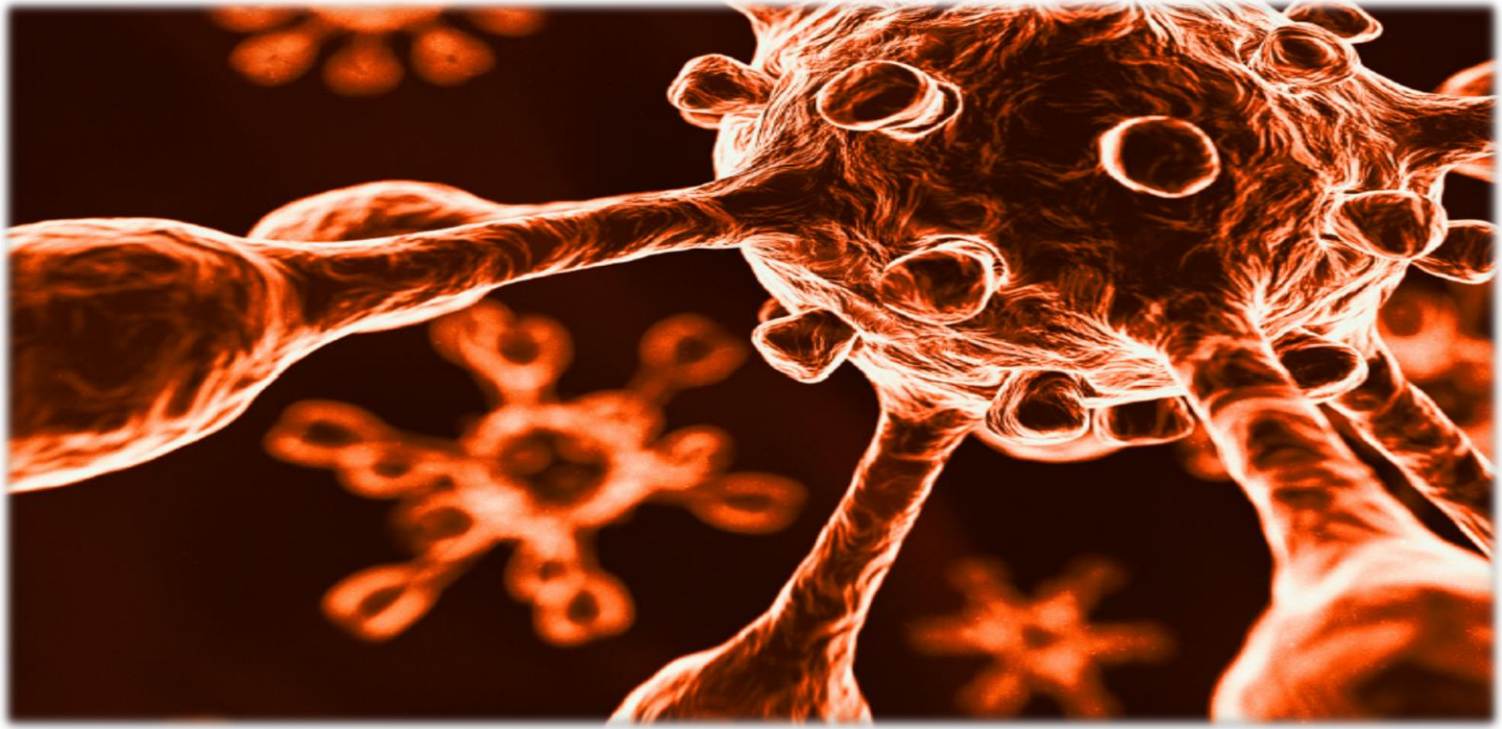
- **FM is a specific contractual right excusing one or both parties from performing the contract.**
- **If there is no FM clause, there can be no FM event or immunity.**

A party must show the FM event:

- falls within definition of FM as contained in the contract; and
- prevents/delays performance; and
- is outside that party's control.

What can constitute Force Majeure?

Can Covid-19 be a Force Majeure Event?



Rule 21.0 FORCE MAJEURE

Rule 21.1 Conditions of Force Majeure

1) Neither the Buyer nor the Seller shall be responsible for delay in Delivery or Shipment of goods or any part thereof occasioned by any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/ or shipping strike), lock-out, combination of workers, or civil commotion which is not due to said party's own acts or negligence, which constitute Force Majeure.
2) The loss of a commodity due to production risks or crop failure does not constitute force majeure.

GTA – FORCE MAJEURE CLAUSES
GTA NO.4 DCT

Clause 17 FORCE MAJEURE

"Event of force majeure" means:

(a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the load port or ports named herein is/are situate, restricting export, whether partially or otherwise, or

(b) blockade, or

(c) acts of terrorism, or

(k) act of God, or

(l) unforeseeable and unavoidable impediments to transportation or navigation (including but not limited to congestion at the export container terminal), or

(m) **any other event comprehended in the term "force majeure".**

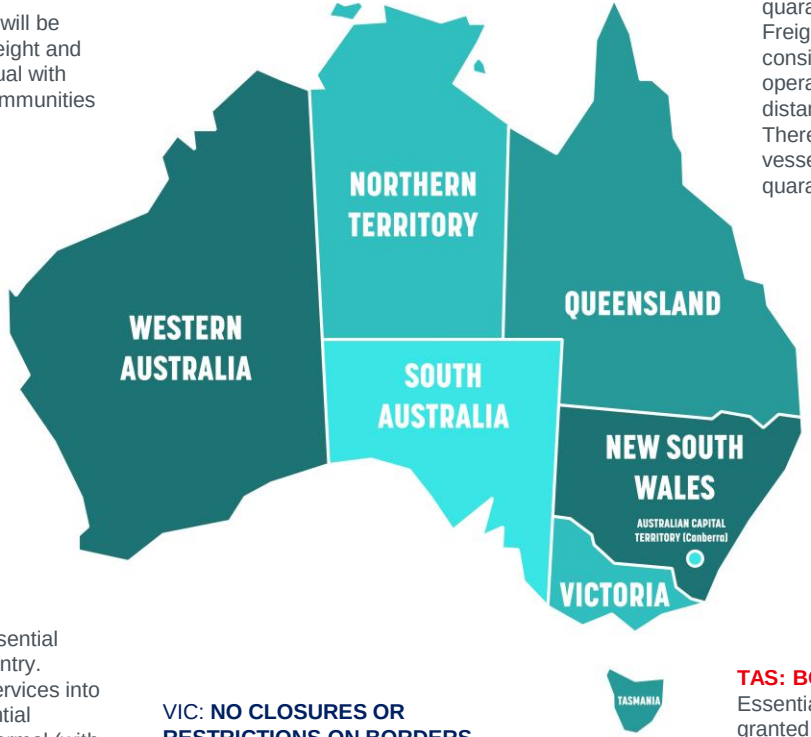
What's happening in the market?

- THIRD PARTY FM CERTIFICATES
- LETTERS OF CREDIT/DOCUMENT DELIVERY
- ABILITY TO FUMIGATE
- PHYTOSANITARY CERTIFICATES
- AMENDMENT OF PAYMENT CLAUSE/TRANSFER OF RISK
- THE ASIAN MARKETS

NT: BORDERS ARE CLOSED
Essential workers travelling to NT will be granted quarantine-free entry. Freight and logistics industry to operate as usual with considerations given to remote communities who are in lockdown

QLD: BORDERS ARE CLOSED
Essential workers travelling to QLD will be granted quarantine-free entry.
Freight and logistics services into and out of QLD are considered to be essential services and businesses are to operate as normal (with the consideration of social distancing and safe practices).
There are strict restrictions in place for international vessels and crew who are required to adhere to a 14 day quarantine period.

WA: BORDERS ARE CLOSED
Essential workers travelling to WA and essential services will be granted quarantine-free entry.
Primary Industries, freight and logistics services into and out of WA are considered to be essential services and workers are to operate as normal (with the implementation of social distancing and safe practices). There are restrictions of movement into remote communities.



NSW: **NO CLOSURES OR RESTRICTIONS ON BORDERS**
Primary industry production, freight and logistics are not impacted by COVID-19 restrictions. Businesses are to operate as "business as usual" with appropriate social distancing practices.

ACT: **NO CLOSURES OR RESTRICTIONS ON BORDERS**
Freight and logistics are not impacted by COVID-19 restrictions. Businesses are to operate as "business as usual" with appropriate social distancing practices. ACT is working with NSW and VIC with its restrictions.

SA: BORDERS ARE CLOSED
Essential workers travelling to SA and essential services will be granted quarantine-free entry.
Primary Industries, freight and logistics services into and out of SA are considered to be essential services and workers are to operate as normal (with the implementation of social distancing and safe practices).

VIC: **NO CLOSURES OR RESTRICTIONS ON BORDERS**
Freight and logistics companies coming in and within the state are to operate as "business as usual".

TAS: BORDERS ARE CLOSED
Essential workers travelling to TAS will be granted quarantine-free entry, however, they will be required to apply to the Government for the exemption to apply.
Freight and logistics services into and out of TAS are considered to be essential services and businesses are to operate as normal (with the implementation of social distancing and safe practices).

PENALTIES & FINES

Fines and penalties for individuals, businesses and corporations who do not abide by the various restrictions in place by the Federal and State governments include:

- fines up to **$1,000 - $11,000** for individuals; and/or
- up to **12 months' imprisonment**; or
- fines up to **$9,913.00** to **$333,625.00** for businesses.

HELPFUL LINKS FOR UPDATES

- https://www.australia.gov.au/
- https://www.health.gov.au/news/health-alerts/novel-coronavirus-2019-ncov-health-alert
- https://covid19.homeaffairs.gov.au/
- https://www.dpc.nsw.gov.au/
- “Coronavirus Australia” app on phones that are downloadable

Stephen Thompson
Partner
Sydney

stephen.thompson@hfw.com
+ 61 2 9320 4646

Ranjani Sundar
Senior Associate
Sydney

ranjani.sundar@hfw.com
+ 61 2 9320 4609

Owen Webb
Senior Associate
Melbourne

owen.webb@hfw.com
+ 61 3 8601 4526

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It should not be considered as legal advice.

Q&A

Please submit your questions.

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Presenters

Pat O'Shannassy

CEO

Grain Trade Australia

D +61 2 9235 2155

E pat.oshannassy@graintrade.org.au

John McInerney

Partner - Financial Advisory

Grant Thornton Australia

D +61 2 8297 2504

E john.mcinerney@au.gt.com

Stephen Thompson

Partner

HFW

D +61 (0)2 9320 4646

E stephen.thompson@hfw.com

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