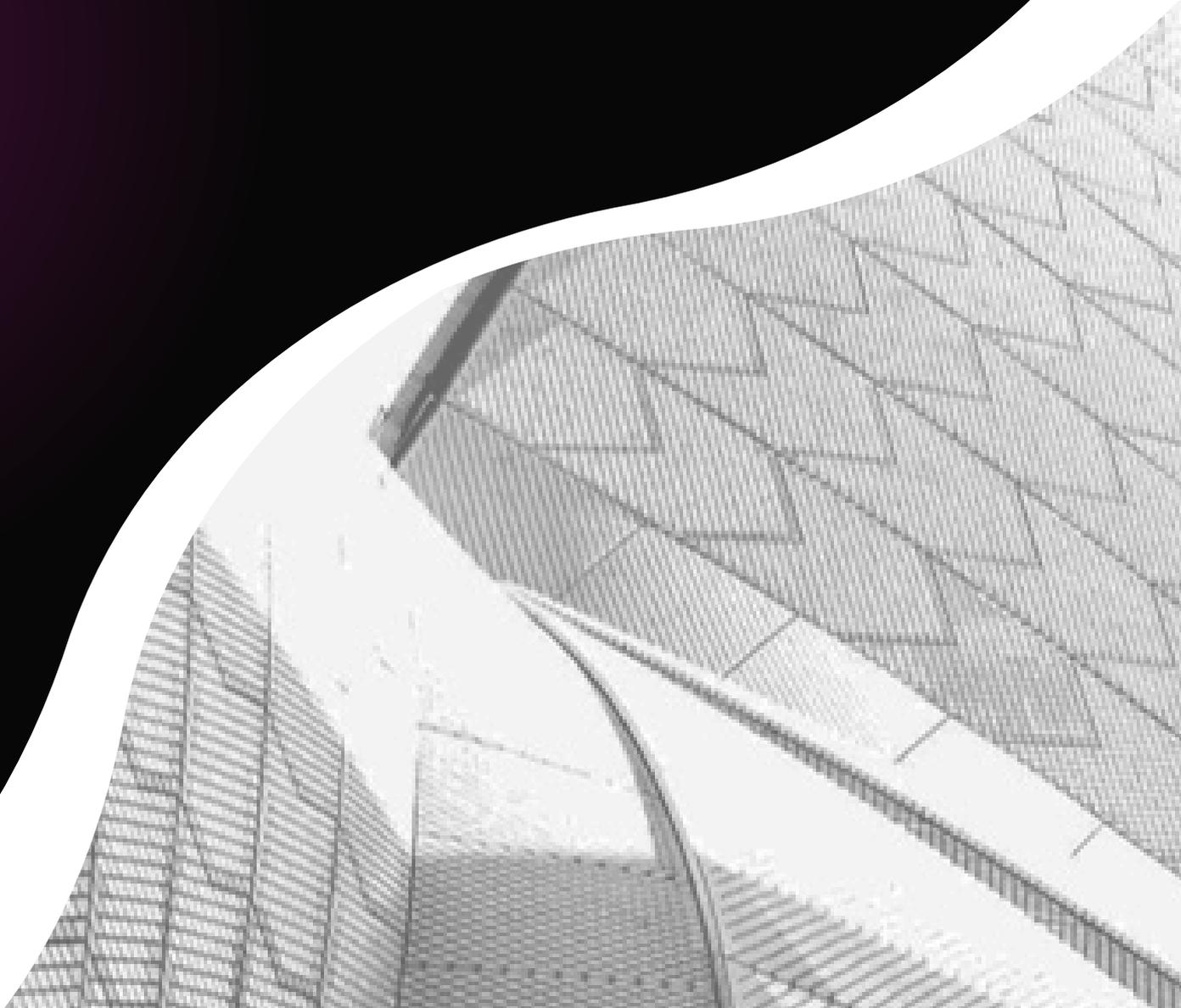

SAFE HARBOUR





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DIRECTORS MAY BE HESITANT TO TAKE FINANCIAL RISKS DUE TO FEAR OF PERSONAL LIABILITY FROM INSOLVENT TRADING

One of the key hurdles hindering a director's willingness to take on financial risk has been the threat of personal exposure as a result of insolvent trading.

No one deliberately plans for corporate failure, but it does happen. How directors react to it can determine whether the result is a financial disaster or recovery.

Safe Harbour is an informal restructuring process that encourages directors of distressed companies to proactively address issues, whilst providing them with a level of personal protection.

Safe Harbour should be viewed as a risk mitigation strategy, offering an additional level of support for directors during periods of rapid and significant change. It should also be viewed as an additional level of protection for issues that may fall outside the scope of D&O policies.

UNDERSTANDING SAFE HARBOUR

Put simply, the Safe Harbour legislation allows directors to stay at the helm of their organisation when implementing a plan, whilst mitigating the consequences that may flow from any insolvent trading during the implementation of that plan.

Safe Harbour is suitable for companies who face the following issues:

- Cash flow shortages
- Breach of debt covenants
- Significant asset divestment programs
- Demergers/ or distressed M&A activity
- Raising further capital or accessing finance, considerable short-term debt.

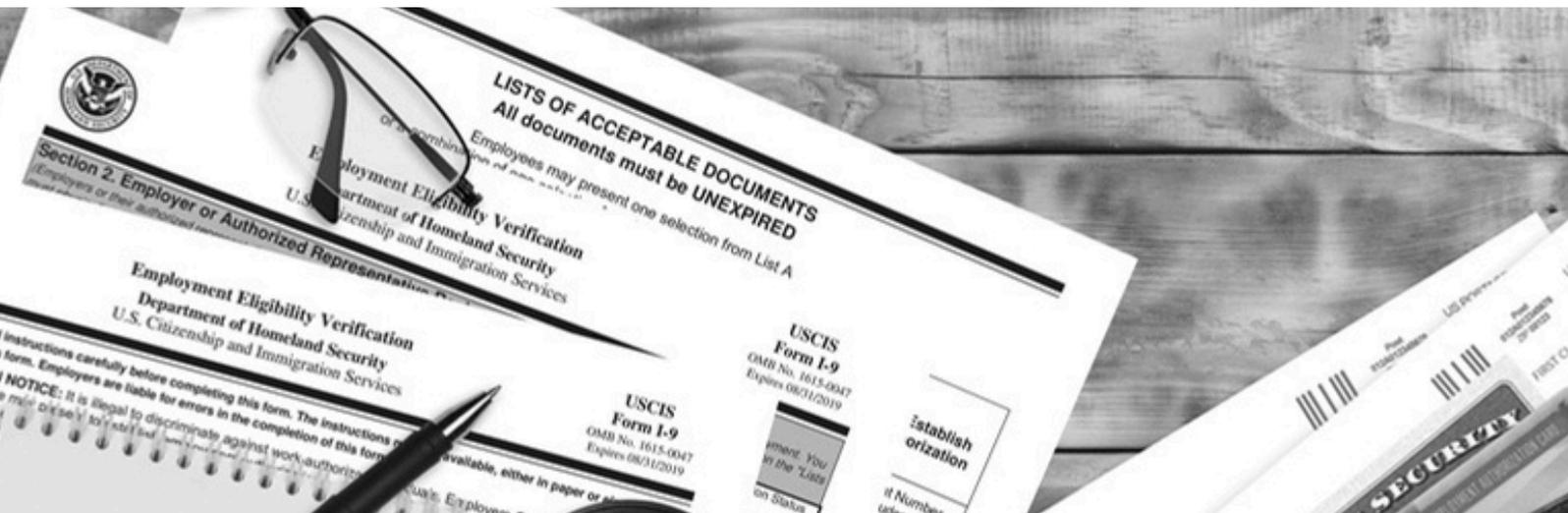


ELIGIBILITY

Directors can use the Safe Harbour process to absolve any personal liability if:

- Employee entitlements (including superannuation) are paid up to date
- The company has maintained and lodged all notices and reporting obligations under tax law.

Olvera's Safe Harbour programmes are operated through either the Board or Company legal advisers to ensure that legal professionalism is maintained or all clients.



BENEFITS OF THE SAFE HARBOUR REGIME

Safe Harbour is an informal restructuring process that encourages directors to proactively tackle issues. It offers directors and their businesses the following benefits:



RISK MITIGATION

Engagement of Safe Harbour affords a level of comfort to directors for personal liability during a restructure.



CONTROL

The board remains in control of the process with the support of experienced professionals.



PROFESSIONAL & QUALIFIED SUPPORT

Directors can receive accurate and professional advice in effectively utilising Safe Harbour.



COMPLIANCE WITH DIRECTORS' DUTIES

Safe Harbour allows directors to avoid severe penalties as a result of insolvent trading



SUPPORTS TURNAROUND & VIABILITY

Supports long term organisational viability and value retention.



CONFIDENTIAL

Safe Harbour is a private affair that protects a company's reputation and enterprise value.

MEANINGS AND DEFINITIONS

EXPLORING THE LEGISLATION

“**Better Outcome...**” means an outcome that is better for the company than the appointment of an administrator or liquidator to the company

Section 588GA

Safe Harbour Provisions. It is defined as taking a course of action that is reasonably likely to lead to a better outcome for the company’.

Section 5588G

(director insolvent trading provisions; do not apply to a person and a disposition (action), if

- a. At a particular time after the person starts to suspect that the company may become or be insolvent... the person starts developing one or more courses of action that are reasonably likely to lead to a better outcome for the company, and;
- b. The debt is incurred, or the disposition is made, directly or indirectly in connection with any course of action during the period starting at that time but ending;
 1. Fails to take such course of action within a reasonable period.
 2. Course of action ceases
 3. Appointment of an external administrator

Working out whether course of action is reasonably likely to lead to a better outcome – regard may be had to whether the person;

- a. Is properly informing him/herself of the company’s financial position (or)
- b. Taking inappropriate steps to prevent any misconduct (or) by officers and employees that could adversely affect the company’s ability to pay all it’s debt
- c. Taking appropriate steps to ensure the company is keeping appropriate financial records consistent with the size and nature of the company.
- d. Is obtaining advice from an appropriate entity who was given sufficient information to give appropriate advice
- e. Is developing on implementing a plan for restructuring the company to improve its financial position.

Matters that must be done

The act does not apply in relation to a person and either a debt or disposition if;

- a. When the debt is incurred or disposition made, the company is failing to do one or more of the following matters;
 - Pay the entitlement of its employees by the time they fall due
 - Lodging appropriate and necessary notices, statements with the Australian Taxation Office; and...
 - The non lodgement, amounts to less than substantial compliance
 - Is one of 2 or more failures by the company to do an or all of their matter during the 12-month period ending when the debt is incurred.
 - (Unless there is an order... that failure is in force under sub-section 6.) - Court satisfied that failure were due to exceptional circumstances or its in the interest of justice to make the order.

HOW DO I ENTER INTO SAFE HARBOUR



DIRECTOR DISCUSSIONS AND ADVISOR APPOINTMENTS

- Directors consult with advisors to appoint a qualified practitioner to act as the Safe Harbour expert.
- The expert will facilitate the program and compile a Safe Harbour plan.



INTERVIEWING QUALIFIED PRACTITIONERS

Conduct an interviewing process to select suitably qualified practitioners.

ENGAGEMENT LETTER

The preferred Safe Harbour advisor issues an engagement letter to the board, confirming the following details:

- **Background and Purpose of the Engagement:** Outline the reasons for engaging the Safe Harbour advisor.
- **Scope of Work and Deliverables:** Specify the services to be provided.
- **Other Informative Items:** Detail reporting and timing requirements
- **Information Requirements:** List the necessary information to be provided by the company.
- **Responsibility for Deliverables:** Identify who will perform the deliverables and be responsible for the tasks.
- **Professional Fees:** Detail the fees for the advisory services.
- **Acknowledgement and Retention:** Obtain acknowledgment and retention of the engagement letter by a nominated director, chairperson, or CEO.

WHO CAN BE APPOINTED AS A SAFE HARBOUR EXPERT



Registered liquidator



**Lawyer /Counsel -
privilege**

The Directors of the legal advisors appoint a qualified professional to prepare a restructuring plan which demonstrates that the cause of action proposed by the directors provides and satisfies the better outcome thereof.

HOW WE CAN HELP OUR SERVICES

Olvera's safe harbour programme has been used by a number of companies since it commenced to manage their restructuring programme successfully. With decades of restructuring experience, Olvera prides itself on its client confidentiality.

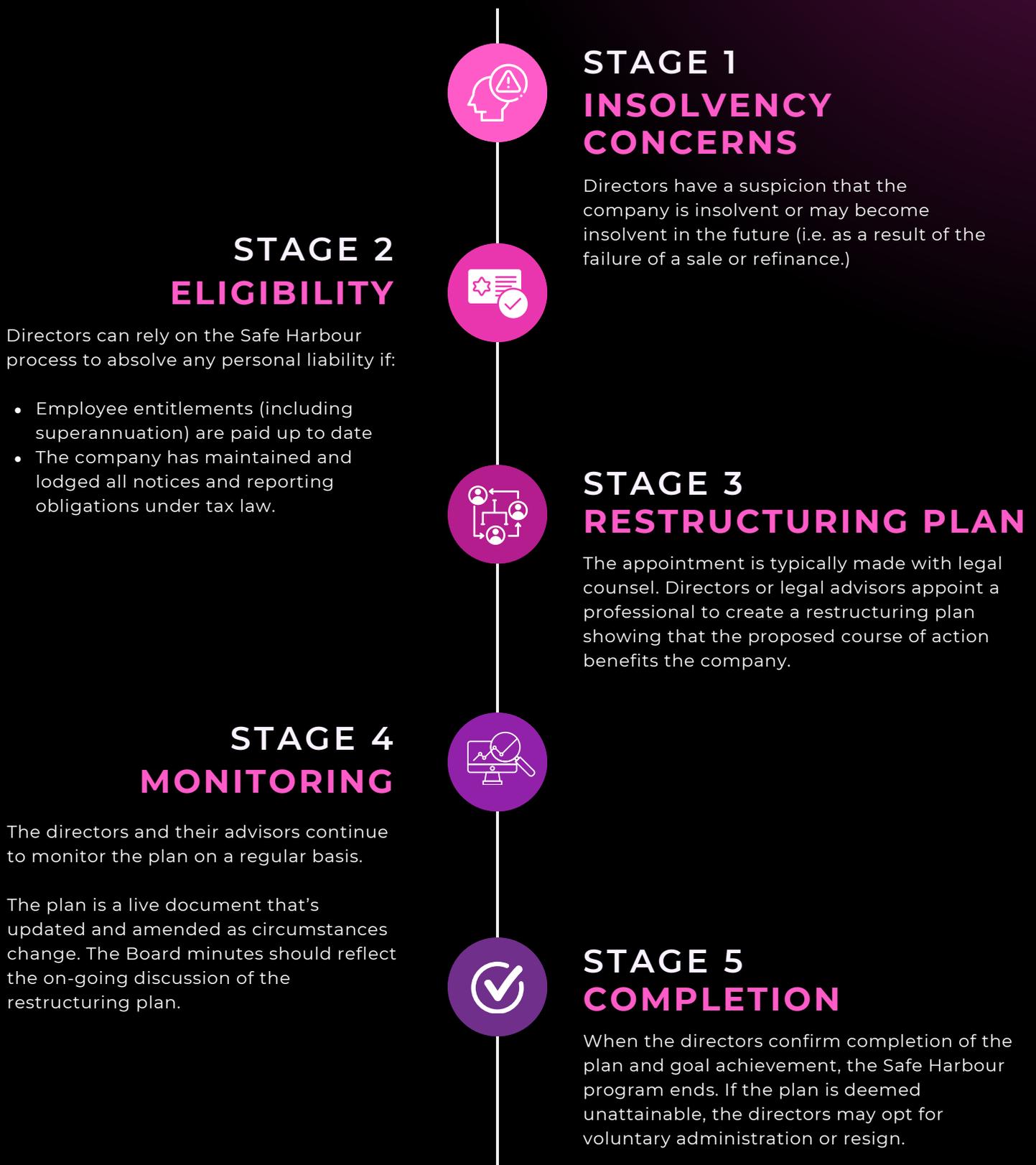
Our services include:

- Preparation of review of client eligibility review;
- Development and delivery of the restructuring plan
- Identification and agreement of key milestones in the restructuring plan;
- Board advisory and monitoring of milestones under the restructuring plan



STAGED APPROACH AND TIMETABLE

The table below sets out the programme timeframes and stages for the completion of an orderly safe harbour programme.



OUR CASE STUDIES

Olvera's lead advisors have relevant knowledge and experience across many industries and regions. Here are some of our experience as business advisors for Australian companies.

Bootooloo Farms

AGRICULTURE

Appointed as voluntary administrators for Bootooloo Farms following business closure after a failed harvest and cyclone damage. We secured and sold the company's farming assets and legal claim, achieving a sale price above valuation and allowing the secured creditor to recover approximately \$7 million.



SERVICES / ARBORICULTURE

Appointed as voluntary administrator of Kupang Limited, a listed mining company facing governance failures and director misconduct. Through forensic investigation, stakeholder alignment, and a court-approved debt-for-equity swap, we restored organisation integrity, resolved complex claims, and secured a fair outcome for creditors under a Deed of Company Arrangement.



INDUSTRIAL & MINING

Olvera Advisors successfully stabilised Sydney Arbor Trees through a short-term trade-on during administration, recovering significant debts and preserving key client contracts. Through active stakeholder engagement, disciplined cash management, and strategic contract assignments, we repaid first-ranking secured creditors in full and allowed employees to receive a dividend, achieving a far better outcome than liquidation.

Procuret

LENDING / FINANCE

Guided Procuret Group, a leading B2B lending platform, through financial distress via voluntary administration. By stabilising operations, preserving key contracts, and managing a successful sale and DOCA, we achieved continued business operations, employee retention, and superior creditor returns, ensuring the company's innovative platform remained active under new ownership.



RETAIL / TECHNOLOGY

Guided Kaddy Group, a beverage tech and fulfilment business, through voluntary administration and a DOCA. By closing underperforming sites, managing creditors and suppliers, and running a targeted sale process, we preserved operations, retained staff, secured permits, and delivered a superior return to creditors, allowing the business to continue trading under new ownership.

MEET OUR EXPERTS

Our team of experts are here to develop a solution that's right for you. Talk to us today about Safe Harbour or other our solutions that can support your business.



Neil Cussen

PRINCIPAL

Neil is a respected expert in the Insolvency and Reconstruction industry, bringing a substantial tenure of over 35 years. As a Chartered Accountant and Registered Liquidator.

Neil's expertise:

- Asset Tracing
- Business insolvency
- Business recovery & turnaround
- Debt advisory



Michael Billingsley

PRINCIPAL

With over 20 years of international experience in Insolvency and Reconstruction, Michael has distinguished himself as a trusted advisor for various stakeholders including banks, alternative lenders, and government departments.

Michael's expertise:

- Business recovery & turnaround
- Debt advisory
- Forensics & Financial Investigations
- Safe Harbour



Kate Barnett

PRINCIPAL

Kate is a well-regarded financial professional and FCA with a 25+ year career in professional services.

Kate's expertise:

- Financial Services
- Not-for-Profit & Public Sector
- Listed Company
- Property & Construction



Damien Hodgkinson

PRINCIPAL

Damien develops strategic solutions for groups dealing in crisis management and/or distress investment. He has over 30 years of experience working with distressed companies in the financial assessment, recoverability, and sustainability of risk assets.

Damien's industry and strategic expertise focuses on two key markets:

- Retailing – Clothing and General Merchandise
- Property and construction

OUR LEADERSHIP TEAM



Tony Wright

PRINCIPAL

Tony is a highly experienced restructuring professional with over 15 years expertise in various restructuring and investigative engagements.

Tony's expertise:

- Independent Business Reviews
- Forensics & financial investigations
- Asset & money tracing
- Examinations and litigation



Rajiv Goyal

PRINCIPAL

Raj brings over 24 years of specialised experience in restructuring, turnaround, and insolvency.

Rajiv's expertise:

- Formal Insolvency
- Independent Business Reviews (IBRs)
- Recovery & Turnaround
- Safe Harbour
- Debt Advisory



Robyn Karam

PRINCIPAL

Robyn specialises in forensic accounting and expert witness engagements and has been appointed to lead our Forensic practice.

Robyn's expertise:

- Business recovery and turnaround
- Business insolvency
- Forensics
- Property and construction



Kate Foy

PRINCIPAL

Kate Foy has over 25 years of experience in public service, having just retired from the NSW Government and completed her 12 months service exclusion in July 2024.

- State Government, Local Government, Federal Government
- Transport, Infrastructure
- Emergency Services and Telecommunications
- Property and Construction
- Not-for-Profit Sector



CONCLUSION

“Olvera believes that a **good project team** is made up of **specialists with a key focus** on the core issues. “

Financial distress is avoidable through a proactive, bespoke solution that’s right to your own unique needs.

Our team brings independent specialists to a project to ensure that we have the experience and knowledge necessary to provide our clients and partners with the most practical and executable recommendations.

Our people deliver sound and effective outcomes based on their personal market knowledge and transactional experience.

Contact our team of experts for a confidential discussion.



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