
How banking and finance lawyers can turn legal blind spots into actionable insights with visualisation

Wayne Johnson ENCOMPASS

Banking and finance lawyers understand that a critical aspect of their job is to provide advice based on the full picture of the matter at hand. This involves not only a detailed analysis of an abundance of available information, but also the time-consuming and difficult task of collating and examining information from multiple information providers, credit bureaus and regulatory sources. Careful analysis is required to avoid blind spots, in advertent errors or omissions, which all carry the risk of significant and even catastrophic financial losses to their clients and potentially their own practices. However, where there is risk, there is opportunity. Visualisation technology allows banking and finance lawyers the opportunity to drive measurable success in transaction management and turn linear data into actionable insights, thereby mitigating risky blind spots.

Information overload is not the only challenge faced by banking and finance lawyers in their everyday working lives, whether they work in private practice or in-house. While big data is transforming the world one megabyte at a time, lawyers and their clients alike are becoming more and more connected, with over 2.5 billion people expected to be connected to the internet for the very first time in the next five years.¹ Connected clients are informed clients, and informed clients have higher expectations from their legal service providers. They seek and expect an enhanced client experience. The lawyer-client relationship has long been recognised as a fiduciary relationship. “Fiduciary” means trust, and clients place their confidence, good faith, reliance and trust in the lawyers whose advice is sought.² And, in most cases, this relationship is a long-term one. The informed and connected clients, therefore, not only raise the bar when it comes to the quality of the lawyer-client relationship, but also create the need for banking and finance lawyers to stay one step ahead of them. After all, these days, the reputation of a bank, an individual lawyer or a law firm is only as good as the client’s last tweet.

There are many circumstances in which lawyers can be sued, given that they have a high duty of care to clients, particularly in high-end commercial work.³ There

are two key questions that all banking and finance lawyers need to ask themselves when it comes to preparing advice:

1. Do I reasonably know everything that should be known?
2. Would my advice change if other key facts were discovered?

Answering “no” to, or being unsure of, the first question is not good enough for banking and finance lawyers when delivering advice that can be incorrect in a matter of fact. This inevitably means that the answer to the second question must be “yes”. Therefore, proper due diligence is critical in order to ensure that neither the client nor the lawyer is exposed to risk due to any hidden or subtle piece of information that has been overlooked in a pile of words. It may sound like standard process, but it is not uncommon for critical details to be missed. Information overload, new regulatory requirements and changing legislation all add time, cost and difficulty to the process of ensuring that advice is based on a solid understanding of the full picture.

A relevant example of such legislative change is the introduction of the personal property securities (PPS) regime in January 2012. This has fundamentally altered the law applying to securities in Australia. The PPS legislation stipulates a regime for registration of security interests within a certain timeframe on the Personal Property Securities Register (PPSR) in order to ensure their priority in case of insolvency proceedings. While currently the courts appear to be adopting a pragmatic approach in granting extensions of registration time for security interests under s 588FM of the Corporations Act 2001 (Cth), timely registration remains the best approach in order to avoid confusion and, potentially, very serious consequences.⁴ But timely registration and, similarly, proper documentation of security interests can only take place if lawyers have all the facts, and a lawyer’s error, whether in advertent or not, could result in loss.

Not only do banking and finance lawyers need to ensure that they are adequately protecting their client’s

position by registering security interests correctly and in the right timeframe, they also need to ensure that they fully understand the other entities involved in a transaction and how to correctly determine who holds priority over which assets. Registration dates, rights of subrogation and other critical details can all have an impact and all need to be considered. Even the smartest lawyers can only provide the best advice when they have all the facts in front of them to base it on.

For banking and finance lawyers, it is always critical to understand organisational structures, directorships and assets and to identify the relationships between these clearly. Although it can seem fundamental, proper investigation is a key part of due diligence and may lead to risk exposure if overlooked. It is important not to be misled by or to misinterpret the information contained in a myriad of linear, text-heavy reports where important aspects — such as class of shareholders, priorities, timing of transactions and related patterns — may not be highlighted, and therefore may be easily missed. The risk is not just in terms of potential litigation from clients, but also the reputational risk and monetary implications when it comes to the affected law firm's insurance premiums.

Visualisation technology provides significant help when it comes to proper due diligence and mitigating the risk of errors, as outlined above. The reason visualisation works better than numbers or letters is that the majority of humans are inherently visual processors of information. Symbols, pictures, charts and images not only make more sense to us, but they also show us more detail at a glance than do words or numbers. In recent years, visualisation solutions for data have proliferated in the market and they are saving professionals significant time and resources when it comes to understanding their internal corporate data.

However, where banking and finance lawyers are concerned, it is more important to understand data acquired from multiple disparate sources, such as reports from information providers and credit bureaus. A technological platform that creates interactive links, layers linear data in a pictorial format, and consolidates the acquired information from multiple sources can prove to be extremely valuable for banking and finance lawyers by helping to eliminate legal blindspots. This can help them answer the two key questions above and satisfy themselves that they have a multidimensional view of information at hand, and that their advice is not going to change or be rendered incorrect due to uncovering another vital link, such as the existence of a security interest, at a later stage.

So, what are the five main steps that every banking and finance lawyer can take to avoid legal blind spots?

1. Always ensure that the technology being used to do company search reveals any previous company names for a thorough and comprehensive PPSR search.
2. Conduct company relational searches to become aware of underlying subsidiaries, if any.
3. Check the nature of the securities in question in relation to the date and priority of other securities.
4. Check carefully that any persons who are reported to be part of a company are actually linked to it.
5. It is always best to conduct an Australian Securities and Investments Commission search on each individual. This shows relationships that may affect the transaction and the transaction structure.



Wayne Johnson

CEO

Encompass

waynej@encompasscorporation.com

www.encompasscorporation.com

About the author

Wayne Johnson has over 30 years of experience in the Australian information industry. He is the co-founder and CEO of Encompass Corporation, a cloud-based commercial information management solution for banking professionals and the professional services industry.

Footnotes

1. P Dinham "The risky new world of virtual currencies: security caution" *IT Wire* 21 January 2014, available at www.itwire.com (accessed on 21 January 2014).
2. Law Society of New South Wales "Solicitors' duties to clients", available at www.lawsociety.com.au (accessed 31 January 2014).
3. M Papadakis "Court in spotlight: lawyers are watching closely as John Symond sues law firm Gadens for negligence over tax advice" *Business Review Weekly* 22 February 2013, available at www.brw.com.au (accessed 31 January 14).
4. A Flannery and K Lee "Application to extend registration time for security interests under the corporations act — implications from recent cases" (2013) 24 *Journal of Banking and Finance Law and Practice* 311.