

## Large and complex bankruptcy - Maximising returns for creditors





A large and complex personal bankruptcy can provide creditors with a good opportunity for significant recoveries, and to assist in the investigation of the bankrupt's related entities thereby increasing total recoveries.

The key to success is the appointment of a proven and experienced Bankruptcy Trustee who is adequately funded.





Mark Robinson of de Vries Tayeh (a division of dVT Group) is a leading Trustee and has a solid track record of achieving sizeable recoveries from large and complex bankruptcies, including assisting Liquidators and Receivers to maximise recoveries from companies and other entities associated with the bankrupt.



A snapshot of Mark's experience of large and complex bankruptcies is detailed in the table below:

Name	Position	Related Companies	Key Outcomes	Return To Creditors
 <p><b>Ray Williams</b></p>	<p>Chief Executive Officer</p>		<ul style="list-style-type: none"> <li>» Made significant recovery of properties held by family members, including the bankrupt's wife.</li> <li>» Achieved through detailed and effective consideration of the Family Law Act and its interaction with the Bankruptcy Act.</li> <li>» Effective information sharing with the Receivers of HIH Insurance to maximise recoveries.</li> </ul>	<p>\$2 million</p>
 <p><b>John Cummins QC</b></p>	<p>Queen's Counsel</p>		<ul style="list-style-type: none"> <li>» Obtained recovery of a significant interest in the matrimonial home transferred by the bankrupt to his wife 12 years before bankruptcy.</li> <li>» Achieved through successful proceedings in the High Court of Australia.</li> <li>» Effective information sharing with the ATO to maximise recoveries.</li> </ul>	<p>\$3 million</p>

A snapshot of Mark's experience of large and complex bankruptcies is detailed in the table below: (cont'd)

Name	Position	Related Companies	Key Outcomes	Return To Creditors
 <p><b>Eddie Groves</b></p>	<p>Chief Executive Officer</p>		<ul style="list-style-type: none"> <li>» Made recoveries from discretionary trusts associated with Eddie Groves.</li> <li>» Achieved by forensic accounting and recovery of key documents detailing that the trusts were alter egos of the bankrupt.</li> <li>» Effective information sharing with the Receivers of ABC Learning Centres and CBA to maximise recoveries.</li> </ul>	<p>\$1 million</p>
 <p><b>Dr Geoffrey Edelsten</b></p>	<p>Medical Centre Entrepreneur</p>	 <p>Medical Centres in the USA</p>	<ul style="list-style-type: none"> <li>» Made recoveries on behalf of the Trustee from Florida USA.</li> <li>» Achieved by Australian Court application utilising the Model Law on Cross-Border Insolvency.</li> <li>» Leveraged my experience as Past President of INSOL International, the international association of national insolvency associations.</li> </ul>	<p>\$1.5 million</p>
<p>200+ business people and professionals</p>	<p>Executives Professionals</p>	<p>500+</p>	<ul style="list-style-type: none"> <li>» In 1996, Mark was appointed a Trustee in Bankruptcy.</li> <li>» From 1996 to date, Mark has been appointed to more than 200 bankrupt estates of business people, professionals and guarantors, achieving high returns for creditors.</li> </ul>	<p>Significant \$ million</p>

Drawing on his significant experience as a Bankruptcy Trustee, Mark addresses five key questions often asked of him by creditors and their legal advisors:

### 1. Why do large and complex bankruptcies require a proven and experienced Bankruptcy Trustee?

The Trustee has to draw on significant experience and insight to address the following features typical of such bankruptcies:



Complexity arising from a large number and different types of legal entities that have different documentation, legal frameworks and accounting systems.



It is expensive to conduct adequate investigations and examinations, so effective planning and budgeting of the investigation by the Trustee is critical.



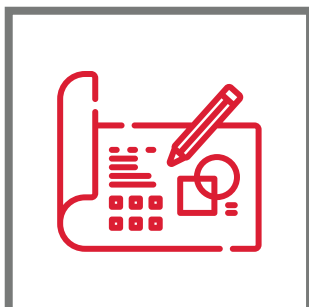
The bankrupts and their associates are usually advised by experienced legal practitioners.



Initial investigations and examinations require funding. The Trustee requires effective communication with indemnifying creditors and statutory authorities, to obtain and retain their support.



Associated entities of the bankrupt are often uncooperative and located in various jurisdictions, including overseas. Accordingly, strong interview skills are required, as is knowledge of overseas jurisdictions.



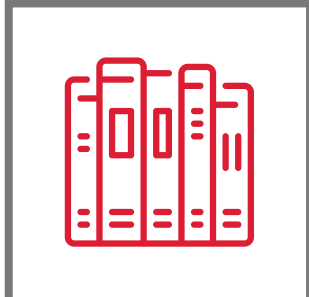
The bankrupts and their associates have 'big' personalities and high profiles. Consequently, the Trustee requires the gravitas to manage them and familiarity with effective media management practices.

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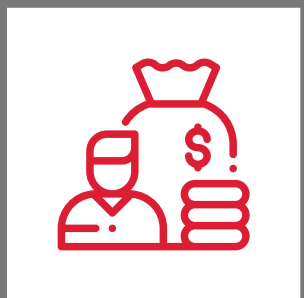
## 2. What are some of the important lessons learned from your experience of large and complex bankruptcies?



By utilising a Bankruptcy Trustee with the required skills and experience, together with providing adequate funding for the Trustee to conduct preliminary investigations, creditors can secure significant recoveries from large and complex bankrupt estates.



A Bankruptcy Trustee, and the Official Trustee, have quasi-judicial powers of examination and recovery of books and records. These powers are significantly more powerful and less expensive to use than the powers available to a Liquidator or Receiver of companies related to the bankrupt. Accordingly, judicious exercise of the Bankruptcy Trustee's powers can significantly help Liquidator's and Receiver's recoveries from related companies.



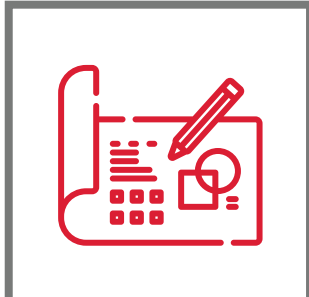
High profile bankrupts have complex personal affairs, often incorporating discretionary trusts, phoenixing of businesses, wives/children holding assets/receiving income, offshore transfers of assets and businesses. Accordingly the Bankruptcy Trustee has to possess the firepower, forensic skills and extensive network to be able to 'break through' and identify recoverable assets and income.



Significant funds have usually passed through the bankrupt's and associates' hands over time. Often, a significant portion will have 'found a home' at some point in real estate, offshore accounts, equities and/or other assets.



Family Law is often used to muddy the waters – by diverting assets and income to wives/children. Often it's a 'sham'. Accordingly, the Bankruptcy Trustee has to have detailed knowledge of the interaction of Family Law and Bankruptcy Law.



High profile debtors often pre-plan for bankruptcy with experienced legal advisors. Consequently, the Trustee has to have the knowledge and experience to 'see through' such pre-planning. There is often a chink in the armour that can be exploited.

Drawing on his significant experience as a Bankruptcy Trustee, Mark addresses five key questions often asked of him by creditors and their legal advisors: (cont'd)

**3. What are some good tips for creditors considering appointing a Trustee to a large and complex bankrupt estate?**



Ensure that the creditor has a legal advisor with sound knowledge and experience of insolvency and personal bankruptcy.



Appointment of the Trustee is best made as soon as possible after related corporate appointments, thereby maximising the effectiveness of pooled knowledge, resources and funding.



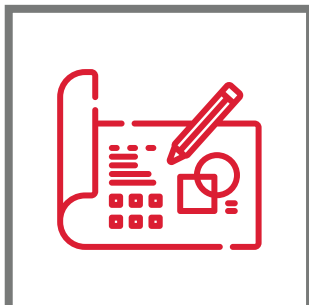
Ensure that the prospective Bankruptcy Trustee has the necessary experience and track record.



Funding of the Trustee must be sufficient for the agreed investigation and examination tasks. Otherwise the work risks being futile and a waste of resources.



Pre-appointment; spend the time and resources necessary to fully brief the prospective Trustee, so that an effective investigation and examination plan and budget can be drafted and agreed, to be implemented immediately after the appointment is made.



The agreed examination and investigation program should include a timetable with clearly defined milestones. This gives the funding creditor important financial control and helps the Trustee to manage expectations.

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#### 4. What are typical costs and timing in appointing a Trustee to a large and complex bankruptcy?



Trustee's usually bill on a time charge basis. Managing funding risk can be achieved by the Trustee agreeing to bill time up to a capped amount that aligns with the agreed funding budget and investigation milestones.









Funding creditors typically obtain priority payment from resulting recoveries into the bankrupt estate, both for reimbursement of expenses funded by them and for their underlying creditor claim.



Each large and complex bankruptcy is unique and consequently the recovery strategies, plans and timetables are bespoke. However, the initial steps can be illustrated as follows:



## The initial steps, costs and timings in appointing a Trustee:

Step	Task Name	Task Description	Cost \$	Time
1st	 Pre-appointment meetings	<ul style="list-style-type: none"> <li>» Meetings held to fully brief the prospective Trustee.</li> <li>» The prospective Trustee drafts an investigation and examination plan and budget that also outlines the preliminary prospects of recovery.</li> <li>» The plan is agreed with the indemnifying creditor, including funding up to the 6th step detailed below.</li> </ul>	\$0 - \$20k	2 to 6 weeks
2nd	 Investigation and first meeting of creditors	<ul style="list-style-type: none"> <li>» Immediately following the appointment of the Trustee, the agreed investigation and examination plan is implemented.</li> <li>» The bankrupt, and possibly related parties, are interviewed by the Trustee.</li> <li>» Inquiries made by the Trustee of statutory registers, financiers, suppliers, other creditors and related parties.</li> <li>» The books and records of the bankrupt are recovered and reviewed by the Trustee.</li> <li>» The first (statutory) meeting of creditors is held by the Trustee.</li> </ul>	\$10k - \$30k	6 to 10 weeks
3rd	 Brief to lawyer	<ul style="list-style-type: none"> <li>» Trustee drafts a report summarising the outcomes of the initial investigations, outlining the best avenues of recovery, the need for further investigations and possible examinations, and includes revised prospects of recovery.</li> <li>» Brief to Trustee's lawyer drawing on the Trustee's report and seeking advice on potential recoveries and preparation for examinations of the bankrupt and related parties, to help gather 'missing' important information.</li> </ul>	\$10k - \$15k	1 to 2 weeks
4th	 Examinations	<ul style="list-style-type: none"> <li>» The examinations can either be private and administrative in nature (therefore relatively quick and at reasonable cost) or by public examination at Court (more expensive, but may result in better evidence of recoveries).</li> </ul>	\$10k - \$30k	1 to 5 days
5th	 Report on investigations and examinations	<ul style="list-style-type: none"> <li>» The Trustee updates the earlier investigation report to encompass the results of the examinations and further revise the prospects of recovery.</li> <li>» The Trustee also makes recommendations in the report on what further investigations and examinations are required and the funding needed to implement them.</li> </ul>	\$5k - \$10k	1 to 2 weeks
6th	 Meetings to agree next steps and future funding	<ul style="list-style-type: none"> <li>» The Trustee and the indemnifying creditors meet to consider the Trustee's updated report, to agree the next steps and the funding needed to progress to the next milestone.</li> </ul>	\$5k	1 day
<b>Total</b>			\$40k - \$110k	3 to 6 months



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### 5. What resources does a Bankruptcy Trustee require for large and complex bankruptcies?

In addition to adequate funding to conduct investigations and examinations, a Trustee requires ready access to the following resources:



**Experienced and sufficient staff –**

dVT Group has three Bankruptcy Trustees and five experienced staff dedicated to the firm’s bankruptcy practice.



**Experienced legal advisors –**

dVT Group has worked well with the majority of the leading bankruptcy lawyers.



**Search databases –**

dVT Group subscribes to all of the leading search databases.



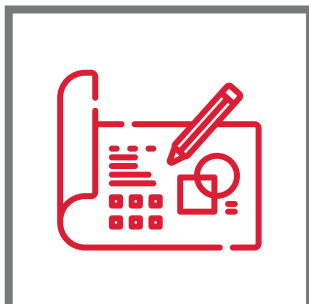
**Business Valuation expertise –**

dVT Group has this expertise in-house.



**National and international networks –**

dVT Group has an association with a national accounting firm, Walker Wayland, that has offices in each state of Australia. Mark is a Past President of INSOL International, the International Association of National Insolvency Associations.



**Forensic accounting expertise –**

dVT Group has this expertise in-house.

Mark welcomes the opportunity to discuss how he can help you and your clients maximise returns from large and complex bankrupt estates.

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