

# Restructuring – a key pillar of the global commitment to ‘build back better’

## Scott Atkins

Norton Rose Fulbright, Sydney  
scott.atkins@nortonrosefulbright.com

## Kai Luck

Norton Rose Fulbright, Sydney  
kai.luck@nortonrosefulbright.com

### Introduction

As Stanford economist and Nobel laureate Paul Romer said, ‘a crisis is a terrible thing to waste’.

The current pandemic has served as something of a circuit-breaker for governments, businesses and all of us as individuals. It has provided a reminder about the importance of living in a responsible and sustainable manner, compelling us to reflect on our own mortality and what it really means to live and function in a community tied together by a common humanity.

Led by a global narrative and policy framework advocated by the United Nations, the Organisation for Economic Cooperation and Development (OECD) and the World Bank, the focus of governments across the world is now on how to ‘build back better’ from Covid-19. There is an emphasis on sustainable development, net zero emissions and zero waste, and committed action on important social and governance objectives to advance human rights, equality and anti-corruption measures. Indeed, the recent G7 summit saw global leaders commit to a ‘green’ recovery with infrastructure tied to carbon neutrality and biodiversity goals, as well as better opportunities for global education, inclusion and social equality.

Businesses are increasingly focused on environmental, social and governance (ESG) outcomes. They are setting targets for emissions reductions and changing their operational structures to promote better governance, integrity, diversity, labour protection and anti-discrimination practices, as well as contributions to global, regional and community anti-poverty measures and other social justice goals.

This has been driven in large part by changing social attitudes, and the growing expectation from employees, customers and investors that the businesses they deal with must behave in a responsible and ethical manner. The ‘purpose’ of a company has now been reimagined and it transcends the traditional shareholder primacy model which prioritises the

maximisation of shareholder wealth irrespective of the social context in which a company operates.

In this environment, companies need to change the way they do business, not only to remain competitive and relevant and ensure continued capital and revenue flows – but also to ensure basic compliance with complex, shifting regulatory and policy settings.

This will inevitably require companies to overhaul their existing operations and restructure their affairs to ensure their footprint is greener, fairer and simply better. In doing so, there will be considerable opportunities for companies to access sustainability bonds and finance in global and domestic debt and equity markets. Green financing in particular is seen to be a pillar of corporate debt restructuring, both from public sources and private financiers, as central banks have indicated a willingness to increase lending authorities and relax liquidity restrictions to support climate change mitigation, resilience and other environmental goals.

Indeed, many financiers have established cooperative measures to work together to align their lending and investment portfolios with net-zero emissions. For example, the UN Net Zero Banking Alliance, established in April 2021, brings together 53 banks from 27 countries (representing almost a quarter of global banking assets in the order of US\$37tn), with a commitment to align lending and investment portfolios with the goal of net zero emissions by 2050. This follows the adoption of the Principles for Responsible Banking (the ‘Principles’) by (currently) 240 international bank signatories from 69 countries. The Principles set out broad commitments for signatories to:

- align their business strategies;
- reduce negative impacts;
- work with clients, customers and stakeholders; and
- improve internal governance, culture, transparency and accountability in pursuit of certain agreed ‘societal goals’, including the Paris Agreement.

Likewise, in the insurance sector, the UN Net Zero

Insurance Alliance was launched by eight global insurance and reinsurance entities in July 2021 at the G20 Climate Summit, with the aim of moving towards net zero underwriting portfolios by 2050. The membership of this Alliance is expected to significantly expand in coming months and years to include a broad range of global insurance, reinsurance and brokerage bodies. Further, the UN Principles for Sustainable Insurance provide a roadmap for insurers globally to incorporate climate risks in their business decisions and to also specifically work with customers and one another to ensure climate and other risks are effectively managed within a best practice risk management framework.

These developments will place considerable pressure on all businesses globally to transition towards net zero emissions, as well as to ensure their operations reflect other important ESG goals, if they wish to access indispensable sources of finance and insurance.

Given the existential nature of these transformed social and policy settings, many of the restructuring opportunities in coming years will need to be undertaken through a range of informal, hybrid and formal insolvency processes, such as schemes of arrangement, pre-pack administrations and restructuring plans. Further, with the pace of globalisation and the increased use of complicated corporate structures to conduct business on a regional and global basis, sustainability-linked corporate restructurings will often involve simultaneous cross-border processes in different jurisdictions.

These complex processes will require the support of a strong and experienced network of cross-border insolvency and restructuring professionals. After all, with every crisis comes an opportunity to learn, grow, change and make an enduring contribution to something stronger and better.

#### About the authors

**Scott Atkins** is the President of INSOL International and Australian Chair of Norton Rose Fulbright. He is also a Member of the International Insolvency Institute and a Fellow of the Australian Academy of Law. He is recognised as Australia's only Eminent Practitioner in restructuring and insolvency in the Chambers and Partners 2020 and 2021 Asia-Pacific regional legal rankings. He has industry-leading experience in cross-border insolvency and is recognised for his role in shaping law reform in Australia, Myanmar and other regions in the Asia-Pacific to support stronger rescue and restructuring frameworks and improved cross-border recognition and cooperation under the Model Law and other global and regional frameworks. Atkins also continues to drive INSOL International's work with its members and partner organisations across the world to advocate for insolvency and restructuring law reform, policy development and capacity building initiatives globally as key pillars of economic and financial stability, including through more efficient cross-border engagement and dispute resolution mechanisms such as mediation and arbitration.

**Kai Luck's** practice as Executive Counsel at Norton Rose Fulbright concentrates on cross-border insolvency and restructuring. He has worked as an insolvency specialist for over 12 years in several global law firms. Before this time, Luck obtained his doctorate in corporate insolvency law at The University of Queensland and has worked across academia, policy and practice.