

**ELLA ALYDA VAN DER SCHANS**

**M:** +1 345 328 5007 **E:** ellyvanderschans@gmail.com  
**L:** www.linkedin.com/in/ella-van-der-schans-1204337a/

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**Personal statement**

I am an 8th-year PQE litigation lawyer with broad experience acting in complex disputes relating to funds, financial services, insolvency processes, trusts and fair value appraisal proceedings. In 2021, I relocated to the Cayman Islands to diversify and advance my professional and personal life. Prior to moving to the Cayman Islands, I lived in Melbourne, Australia where I was a Senior Associate at Herbert Smith Freehills specialising in class action litigation.

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**Education and qualifications**

October 2021      Admitted to practice in the Grand Court of the Cayman Islands  
April 2016        Admitted to practice in the Supreme Court of Victoria and the High Court of Australia

**The University of Melbourne**

2012 – 2014      Juris Doctor

- The Melbourne Law School Scholarship
- The Melbourne JD Harold Ford Scholarship
- Melbourne Global Mobility Scholarship
- Institutions in International Law, Geneva, Switzerland

2009 – 2011      Bachelor of Arts

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**Awards**

2019              Finalist for Dispute Resolution in the national Lawyers Weekly 30 Under 30 awards.

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**Professional work experience**

2021 – Present    **Mourant Ozannes (Mourant)** litigation Senior Associate at a leading offshore law firm

*"Fair value" appraisal proceedings*

- Acting for the largest group of dissenting shareholders in a fair value appraisal proceeding pursuant to section 238 of the Companies Act in relation to SINA Corporation (**SINA**). I am responsible for running this matter under the supervision of Simon Dickson. In addition to valuation issues, the proceeding involves a number of novel issues of law. First, there is a pending appeal in relation to the question of the correct valuation date for the respective experts to value the company. The dissenting shareholders' position that the valuation date should be the merger completion date, whereas SINA maintains that it should be the date of the EGM (as has been the case in previous section 238 proceedings - a view which was endorsed by the Grand Court at the directions hearing). Second, there are outstanding issues surrounding the effect of a new People's Republic of China (**PRC**) law relating to data security and cross-border data transfers. SINA says that the new law requires it to obtain regulatory approval from PRC authorities before it can disclose documents which are held in the PRC.

*Funds disputes*

- Acting for Saxena Holdings LLC (**Saxena**) and Tagusi Holdings LLC (**Tagusi**), limited partners of New Silk Route Advisors (**NSRA**), in relation to a winding-up petition in respect of NSRA brought by another limited partner, Gupta Associates LLC. The petition seeks a winding-up order on just and equitable grounds and the appointment of BDO as liquidators. On behalf of Saxena and Tagusi, we applied to strike-out or stay the petition, including on case management grounds, due to the existence of parallel proceedings in the United States (**US**). The Court granted a case management stay and held that determination of the US proceedings would significantly assist the Cayman Court in the fair, just and cost-effective determination of the issues in the petition. Although the arguments weren't ultimately ventilated at the hearing, our strike-out application also dealt with the question of

the correct jurisdictional basis for the court's power to wind-up an exempted limited partnership which has come into question since the Grand Court's decision *In The Matter of Padma Fund LP* and is still uncertain following the recent decision *In the Matter of Formation Group (Cayman) Fund I, LP*.

- Acting for Maria Lazareva in relation to an application by the Kuwait Ports Authority (the **KPA**) for the release of certain documents pursuant to the Confidential Information Disclosure Act (**CIDA**). The documents were initially disclosed to the KPA by The Port Fund LP (the **TPF**) in another proceeding. The State of Kuwait (**Kuwait**), which is the respondent to a foreign arbitration proceeding in which Ms Lazareva is the applicant, requested the documents from the KPA for use in the arbitration. The application was novel because the KPA was under no compulsion to release the documents or to give evidence in the arbitration. The Court took a broad approach to the interpretation of section 4 of the CIDA and allowed the KPA to release the documents to Kuwait. However, no orders have been made as the arbitration has come to an end and Ms Lazareva has been granted leave to make submissions regarding the effect of this development.

#### *Trusts disputes*

- Acting for the Trustee in relation to proceedings concerning the validity of a Cayman Islands' trust, the Stingray Trust. Related proceedings were also on foot in Switzerland and Milan. I have managed this matter in its later stages including in relation to its settlement and various applications to facilitate discontinuance of the proceedings in the Cayman Islands and overseas. An ongoing dispute with the trust's protector remains but is not subject to proceedings.

#### *Insolvency*

- Acted for Industrial Decisions Inc. in respect of a dispute regarding the issuance of shares in AEI and in relation to AEI's liquidation. This matter involved advising our client in relation to a petition which sought a winding-up order and the appointment of joint official liquidators to conduct an investigation into the shareholding dispute.
- Acting for the Chairman, founder and major shareholder of Fang Holdings Limited (**Fang Holdings**) – whose group has a dominant position in the online real estate market in the PRC. Although this matter has been relatively quiet since I adopted it, it involves defending a just and equitable winding-up petition and application to appoint provisional liquidators over Fang Holdings.

#### *General commercial and employment*

- Acting for Cable and Wireless (Cayman) Limited in relation to various contentious matters involving contractual and employment disputes.

2018 – 2021

**Herbert Smith Freehills (HSF)** litigation and dispute resolution Senior Associate at a global top-tier law firm

#### *Product liability*

- Acted for Toyota Motor Corporation Australia Limited (**TMCA**) in its defence of a product liability class action in relation to Takata airbags. This proceeding was the biggest class action in Australian history, was listed in the Supreme Court of New South Wales and was judicially managed in conjunction with the class actions against six other car manufacturers (co-defendants). I worked on all workstreams of the matter including interlocutory correspondence and hearings, liability and quantum evidence preparation, discovery and settlement. During the course the matter, I have worked across jurisdictions within Australia and overseas, including Japan and the United States of America (**US**). I also worked in conjunction with the solicitors acting for the co-defendants and the solicitors acting for a related entity in the US. I was responsible for supervising up to three junior solicitors and three graduate lawyers and coordinated a team of ten people across interstate and international offices in relation to the review and production of approximately 60,000 documents in various languages. I also worked closely with our counsel team, including two Senior Counsel and one Junior Counsel in relation to various contested issues and advisory work.

#### *Financial services*

- Acted for Australia and New Zealand Banking Group Limited (**ANZ**) in its defence of a class action in relation to consumer credit insurance policies. The group members allege that ANZ engaged in misleading or deceptive conduct or was unconscionable in respect of its sale and/or distribution of various insurance policies. As a Senior Associate on the matter, I was responsible for managing all

of the interlocutory workstreams including correspondence and hearings and general project management.

- Acted for a big-three credit ratings agency in defending a \$40 million claim in the Federal Court of Australia. The proceeding related to ratings assigned by the agency to certain synthetic collateralised debt obligations (**SCDOs**). It was alleged that our client engaged in the tort of deceit or misleading or deceptive conduct in contravention of sections 1041H or 1041E of the *Corporations Act 2001* (Cth) and section 12DA of the *Australian Securities and Investment Commission Act 2001* (Cth). I was responsible for reviewing and summarising the deal documents, considering issues regarding a potential conflict of interest for the solicitors acting for the applicant, overseas service of process and jurisdictional issues, identifying potential experts, briefing counsel and reviewing previous Australian and UK judgments in prior proceedings regarding the same or similar issues.
- Acted for ANZ in relation to a confidential ASIC investigation. I was responsible for reviewing documents identified by ANZ as being responsive to two ASIC notices and coding those documents for relevance, confidentiality and privilege for the purpose of meeting several production deadlines to ASIC. The review required consideration of third party privileges and documents subject to non-disclosure agreements.

#### *Secondment to Australia and New Zealand Banking Group Limited*

- Seconded to ANZ in the Commercial Legal Group within the Australian Legal Group and the Trade Legal Team within the Transactional Banking, Institutional Division. During the course of my secondment, I advised ANZ in relation to various matters, including its compliance and regulatory obligations, breach reporting to ASIC and remediation activities. I provided advice in relation to data and privacy issues arising in the course of new product and technology development and on promotional and marketing campaigns by reference to the prohibitions on misleading and deceptive conduct and unfair contract terms. I assisted with the review and roll out of ANZ's new Trade Terms and presented to the business in relation to the effect of the new terms. In addition, I was the primary solicitor responsible for advising ANZ regarding an ongoing project to simplify its loan offering following the Australian Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

#### *Scheme of Arrangement*

- Acted for the bidder in respect of the Australian court approval process for its acquisition of the shares in a target pursuant to a Scheme of Arrangement. I ran this matter under the supervision of a partner and senior associate. I was responsible for briefing and instructing Counsel for the two court hearings and working with HSF's corporate team to prepare affidavit material (which was sworn in Japan) regarding the steps that our client had taken to verify the information in the scheme booklet and the foreign jurisdiction advice regarding the enforceability of the deed poll. The Federal Court of Australia ultimately approved the scheme at the final hearing.

2015 - 2018

**HWL Ebsworth Lawyers (HWLE)** general commercial litigation and dispute resolution Solicitor at a national law firm

#### *General Commercial*

- Acted for seven directors of an international accounting firm and their related entities in a \$16 million action in the Supreme Court of Victoria for which we successfully prosecuted the plaintiffs' claims that the defendants had breached their fiduciary duties owed to the firm. I was the sole solicitor with the conduct of the matter working alongside the partner and Senior and Junior Counsel. Senior Counsel commented that my legal skills were first class and that my research uncovered important authorities that were influential in the Court's reasons in *Chickabo Pty Ltd v Zphere Pty Ltd [2019] VSC 73*.
- Acted for an international property group registered in the British Virgin Islands (**BVI**) in a share sale dispute regarding the sale of a company in circumstances where the purchaser lodged the share sale forms with ASIC before making the final payment of the \$8.3 million purchase price. After preparing for an injunction application, a lengthy negotiation resolved the dispute. As the sole solicitor working alongside the partner and Counsel, I drafted a complicated deed of settlement and release together with a guarantee and indemnity and a mortgage for security.
- Acted for a private lender in a proceeding in the Supreme Court of Victoria for the release of surplus funds in the amount of \$425,000. The funds were being held in court following a mortgagee sale of a property, where 16 other interested parties also had advanced funds for the purchase of the

property pursuant to loan agreements in a similar form of the loan agreement entered into by our client. I appeared on behalf of our client at the hearing of this matter where I was opposed to the 16 other interested parties, all of which were represented at the bar table.

- Acted for a significant development, construction and real estate group in a multi-million dollar proceeding in the Supreme Court of Victoria in respect of a tenant's purported entitlement to exercise an option to renew a commercial lease in circumstances where our client, the landlord, alleged that the option was not available because the tenant was in breach of material terms of the lease. This proceeding involved initiating an application for a separate question to be heard and determined by the Court prior to the trial of the proceeding. I was the sole solicitor with the conduct of this matter working alongside the partner and Senior and Junior Counsel.
- Acted for a leading international automotive supplier in defending a proceeding in the Supreme Court of Victoria involving a \$1.3 million claim by our client's former landlord that certain make good obligations were not met following the expiry of a lease that was varied and renewed numerous times over a 26 year period. As the sole solicitor working alongside two partners and Counsel, I worked to achieve a commercial resolution of this dispute at the mediation.
- Acted for a partnership in prosecuting a \$1.8 million claim against a statutory authority constituted under the *Seafood Safety Act 2003* (Vic) and the *Meat Industry Act 1993* (Vic) in the County Court of Victoria alleging breaches of the *Australian Consumer Law (ACL)* including misleading and deceptive conduct and unconscionable conduct.
- Advised the purchaser of a significant food, agricultural and environmental analytical testing business in respect of a potential claim for misleading and deceptive conduct due to a breach of the warranty contained in the sale agreement. This advice considered the validity of temporal and monetary limits in respect of claims brought under the ACL.
- Acted for a music and arts festival operator in a proceeding in the Supreme Court of Victoria where our client alleged defamation and breach of a share sale agreement and defending the counterclaim whereby the defendant alleged oppression and defamation. I subsequently acted for the same client in prosecuting a claim in the Supreme Court of Victoria in respect of a breach of the Deed of Settlement (**Deed**) that was executed in the first proceeding. In the second proceeding, our client sought specific performance of the Deed.

#### *Debt recovery and insolvency*

- Acted for various clients including the Australian Tax Office, The Bank of Queensland, ANZ, Australian Pharmaceutical Industries and pallet hire and pooling company Loscam Australia Pty Ltd in numerous debt recovery and insolvency proceedings. I was responsible for preparing letters of demand, drafting originating processes or statements of claim, defending contested claims, preparing applications for default judgment, enforcing judgment debts, preparing statutory demands, preparing winding up applications including nominating liquidators to be appointed by the court, appearing in winding up hearings, filing the relevant documents with ASIC and attending creditors' meetings. I have also advised a client in relation to an unfair preference claim and responded to the liquidators in relation to the same.

#### *Government*

- Acted for the Victorian Director of Housing and the Department of Health and Human Services (**DHHS**) in various matters including defending a discrimination law claim, prosecuting residential tenancy disputes in the Victorian Civil & Administrative Tribunal (**VCAT**) and providing advice and delivering presentations regarding DHHS communications to tenants and internal policies.

#### *Pro bono*

- Acted for numerous Western Community Legal Service (WestJustice) clients with migrant, asylum seeker and refugee backgrounds in relation to infringement matters. I have drafted multiple successful applications for revocation of infringements based on special circumstances. I have successfully appeared in the Magistrates' Court of Victoria on behalf of clients at contested hearings and an appeal of the Infringements Registrar's decision not to revoke an infringement.

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**Board positions and volunteering**

2022/3	<b>Mourant Global Chair of the Gender Network</b>
2021	<b>International Women's Insolvency &amp; Restructuring Confederation (IWIRC) Events Committee Member</b>
2019 – 2020	<b>Australian Women Lawyers</b> (peak representative body for women lawyers associations throughout Australia) <i>Board Member - Victorian Director</i>
2018 – 2019	<b>Victorian Women Lawyers</b> (peak representative body for women lawyers in Victoria) <i>President</i>
2018 – 2019	<b>Victorian Women Lawyers</b> <i>Vice-President</i>
2017 – 2018	<b>Victorian Women Lawyers</b> <i>General Executive Committee Member</i>
2016 – 2017	<b>Victorian Women Lawyers</b> <i>Networking Committee Co-chair</i>

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**Referees**

Available on request.

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