

# COMPANY AND SECURITIES LAW JOURNAL

Volume 33, Number 2

March 2015

EDITORIAL ..... 73

## ARTICLES

### **Balancing ethics and risk: Changes to ASX Corporate Governance Principles 3 and 7 – Josephine Coffey**

The Australian Securities Exchange (ASX) Corporate Governance Council released the final version of the Third Edition of the Corporate Governance Principles and Recommendations on 27 March 2014. This edition is the culmination of a consultation process that began in August 2013 and the Principles are effective for a listed entity's first full financial year from 1 July 2014. Although adoption of these Principles is not obligatory, the ASX Listing Rules (2014) require an entity to disclose the extent to which it has followed each Principle. This article gives particular attention to the altered role of the "stakeholder" in Principle 3 and in the subsequent revision of Recommendation 7.4. The author questions some of the limitations of the amendments while anticipating those modifications that may occur in future editions. .... 75

### **The value of board gender diversity vis-à-vis the role of the board in the modern company – Akshaya Kamalnath**

A number of countries have begun to adopt quotas for the appointment of women directors on company boards. Countries like the United States and Australia, have adopted the disclosure regime by requiring that public listed companies must disclose their diversity policies in their annual reports. This article argues that the board gender diversity debate must focus on the role of the board of directors in order to determine if board gender diversity can be valuable. Thus it analyses the role of the board in modern company law and then weighs the arguments being used in favour of corporate gender quotas against this in order to ascertain if these arguments hold water. .... 90

### **Costs in statutory derivative actions: The lingering ghost of Wallersteiner – Albert Monichino QC**

Part 2F.1A of the *Corporations Act 2001* (Cth) provides for a statutory derivative action in Australia. Section 242 provides for the court to make costs orders for derivative proceedings commenced with leave of the court under s 237. The manner in which courts deal with issues of costs impacts significantly upon the utility of the statutory derivative action. This article will consider the factors that inform the exercise of the court's discretion as to costs under s 242 at, first, the leave stage and, secondly, at the conclusion of derivative proceedings, drawing on case law in Australia, the United Kingdom, New Zealand and Canada. The English Court of Appeal decision in *Wallersteiner v Moir (No 2)* [1975] QB 373 is often cited for the proposition that a minority shareholder who brings a derivative action on behalf of the company has the right to be indemnified in respect of costs reasonably incurred, whether the derivative action succeeds or fails. This article will consider whether Wallersteiner reflects the law in Australia under the statutory derivative action provisions. .... 104

SHAREHOLDERS' REMEDIES – *Elizabeth Boros*

**Altering the division of power between the board and the general meeting** – *Elizabeth Boros* ..... 129

CORPORATE INSOLVENCY – *Helen Anderson*

**Profiling phoenix activity: A new taxonomy** – *Helen Anderson, Ann O'Connell, Ian Ramsay, Michelle Welsh and Hannah Withers* ..... 133