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ARTICLES

Improving Australia's Regulatory Framework for Systemic Financial Stability – *Steve Kourabas*

Regulatory theory since the global financial crisis (GFC) has emphasised the importance of systemic financial stability as a regulatory objective. This has taken the place of pre-GFC reliance on private markets as a primary mechanism to avoid systemic risk combined with a laissez faire approach to public oversight that focused primarily on ensuring the safety and soundness of a predefined number of financial institutions. Several jurisdictions, including the UK, have engaged in significant reform of their financial infrastructure to facilitate regulation in accordance with this change in regulatory theory, including through the creation of financial stability authorities. Importantly, these reforms have provided clarity in regulatory mandate and placed systemic financial stability at the centre of the regulatory framework. Australian policy-makers and regulators have been less open to engage in similar reforms, arguing that the existing framework is effective. This article argues that there are a number of areas where the Australian approach could be enhanced by regulation that has at its core the promotion of systemic financial stability. 183

When Is a Mortgage Broker the Lender's Agent? – *Oscar S Han*

A mortgage broker, being an intermediary between borrower and lender, is prima facie the agent of the borrower, not the lender. Nevertheless, the author suggests that, in particular circumstances, the broker may be the lender's "agent to know" in relation to the borrower's financial circumstances. That is, the broker's knowledge of the borrower's true financial circumstances may be imputed to the lender. Thus suppose, for instance, that the broker withholds its knowledge of a special disadvantage of the borrower from the lender. The borrower may be able to impugn its loan contract with the lender on the basis that the lender held knowledge, through the broker, of that special disadvantage. If the common law of agency is so applied, the lender will have a greater incentive to verify the information that the broker provides about the borrower's financial circumstances. 210

A Comparative Study of the Laws of Bond Trust in Common Law and Civil Law Countries – *Benjamin Liu*

This article discusses and compares the laws of bond trust in four common law jurisdictions – the UK, the US, Australia and New Zealand. It points out that, while there are certain differences between the English bond trust law and the US bond trust law, the two legal regimes share significant similarities. In particular, English and US bond trustees only have a limited duty to monitor the performance of the issuer. In contrast, both Australian and New Zealand laws require bond trustees to exercise reasonable diligence to ascertain whether any breach of the bond trust deed has occurred and whether the issuer's assets are sufficient to discharge its obligations under the bonds. This article also identifies a drafting error in s 283F(1) of the *Corporations Act* (Cth). 229

Social Impact Bonds in Australia – *Ian Ramsay and Corinne Tan*

Social impact bonds are a recent innovation but their number is increasing as investors, governments, those who provide social services that can be funded by the proceeds of these bonds and others focus on the advantages of this type of investment. This article defines social impact bonds, discusses some of their benefits and challenges, provides examples from Australia, the UK and the US, discusses the transaction structure for the bonds, and considers legal issues related to disclosure to potential investors. 248

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