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EDITORIAL 133

ARTICLES

Do litigation funders add value to corporate governance in Australia? – *Shueh Hann Lim*

Although debates have centred on the legality of the class actions financed by litigation funders according to rules of civil procedure, there has been very little discussion of the impact of these class actions on corporate governance in Australia. By financing legitimate claims which otherwise would not have been brought before the courts, litigation funders are, in theory, enhancing the power of shareholders to enforce their rights under the *Corporations Act 2001* (Cth) and consequentially, encouraging greater compliance with the law. The aim of this article is to assess the foundations and credibility of this theory in practice. This article argues that litigation funders do add value to corporate governance in Australia. They can enliven an under-utilised and capital-starved class action regime as a private enforcement vehicle, act as a catalyst for institutional shareholder activism, compensate investors while deterring corporate misfeasance, and free up ASIC's resources so that ASIC can focus on utilising other enforcement mechanisms to achieve a superior outcome in corporate governance. However, government intervention is needed to ensure that litigation funders are not motivated by perverse incentives that will undermine corporate governance. 135

Private equity bidders: Barbarians or best friends? – *Larelle Chapple*, *Peter M Clarkson* and *Jesse J King*

The deal value of private equity merger and takeover activity has achieved unprecedented growth in the last couple of years, in Australia and globally. Private equity deals are not a new feature of the market; however, such deals have been subject to increased academic, professional and policy interest. This study examines the particular features of 15 major deals involving listed company "targets" and provides evidence – based on a comparison with a benchmark sample – to demonstrate the role that private equity plays in the market for corporate control. The objective of this study was to assess the friendliness of private equity bids. Based on the indicia compiled, lower bid premiums, the presence of break fees and the intention to retain senior management are compellingly different for private equity bids than for the comparative sample of bids. Using these several characteristics of "friendliness", the authors show that private equity deals are generally friendly in nature, consistent with industry rhetoric, but perhaps inconsistent with the popular belief that private equity bidders are the "barbarians at the gate". 159

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