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EDITORIAL 141

ARTICLES

Section 420A in theory and practice: Clarifying guarantors' rights and other remedies for breach – *Tim Klineberg*

One of the few fetters on the broad power of sale of a receiver is s 420A of the *Corporations Act 2001* (Cth), which imposes a duty on the receiver to take reasonable care in exercising that power. In practice, the s 420A duty necessitates the receiver taking a number of identifiable, practical steps in the sale process which are not spelt out in s 420A itself. The consequences of a breach of s 420A include civil and criminal sanctions on the receiver which, in addition to the general law duties of receivers, are effective to regulate the conduct of receivers in exercising their power of sale. However, rights of action under s 420A are currently limited to the debtor corporation, which ignores other stakeholders who can be harmed by a failure of a receiver to take reasonable care in exercising their power of sale. Guarantors of the corporation's secured debt are the most obvious example. Recent case law illustrates that legislative reform is required to address the absence of guarantors' rights under s 420A. Reform is proposed which would establish that right under s 420A, whilst preserving the parties' freedom to agree otherwise. 142

Three years on and what have we learned so far? Voluntary administration in New Zealand – *Trish Keeper*

New Zealand adopted a voluntary administration regime in 2007 to encourage the rescue and rehabilitation of insolvent companies where appropriate. In 2002 when the decision was made to enact such a regime, it was also decided that it should be based on the successful Australasian voluntary administration regime. However, the new regime as enacted in 2006 contained a number of procedural and substantive differences to the voluntary administration provisions then operating in Australia. This article explains the reasons for these legislative differences and discusses their impact.The article also examines the 20 cases to date where a New Zealand court has been required to consider Pt 15A or any part thereof. In a number of cases, the courts have followed, often somewhat reluctantly, Australian precedents in interpreting and applying sections within Pt 15A. The location of the VA provisions within the *Companies Act 1993* (NZ) and the desire for consistent approaches within different parts of that Act are also a significant contextual influence in the interpretation of the voluntary administration regime in New Zealand. 154

The role and use of debt agreements in Australian personal insolvency law – *Ian Ramsay* and *Cameron Sim*

This article reports the results of an empirical study of the use of debt agreements in Australian personal insolvency law. Debt agreements were introduced into Australian personal insolvency law in 1996 as an alternative to bankruptcy. This alternative has become increasingly popular, and in 2010 debt agreements represented 23% of all new personal insolvencies. The article considers the role and use of debt agreements in Australian personal insolvency law. This includes examination of the various stages of the

debt agreement process and the key differences between the characteristics of debt agreement debtors and bankrupts. It also explores issues concerning the current regime, including the role of creditors and debt agreement administrators; the high termination and low completion rates of debt agreements; and whether debt agreements serve as a viable alternative to bankruptcy. 168

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