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EDITORIAL 3

ARTICLES

Tenants' moratoria under the Corporations Act and relief against forfeiture – *Kate Galloway* and *Tim McGrath*

Appointment of an administrator over company assets under the *Corporations Act 2001* (Cth) is a means by which company property may be protected for the benefit of creditors and shareholders in the face of actual or anticipated insolvency. Creditors' and shareholders' interests in or claims upon company property are often in conflict with those of third parties – such as lessors of real property who might seek to forfeit the company's lease and regain possession of property. In these circumstances, the tenant company in administration may make a claim for relief against forfeiture or call upon the application of a s 444F moratorium. As two recent cases show, such a moratorium may be extended beyond the expiration or termination of a deed of company arrangement. This article examines the decisions in *Kelly and Morris v Hedz Pty Ltd (vol admin apptd) (rec and mngrs apptd)* (unreported, Sup Ct, Qld, Jones J, 30 July 2010) and *Strazdins v Birch Carroll & Coyle Ltd* (2009) 178 FCR 300 to determine the extent to which s 444F declarations can be considered to align with or augment equitable relief. In doing so it considers a 2011 Federal Court critique of s 444F protection, concluding that unless s 444F is reconsidered, relief against forfeiture may be a preferable remedy. 5

Trends in personal insolvency in Australia – an update – *David Morrison* and *Rachel Lee*

In Australia, personal bankruptcy is governed by the *Bankruptcy Act 1966* (Cth) and is regulated by the Insolvency Trustee Service Australia. Bankruptcy refers to three types being: bankruptcy, debt agreements, and personal insolvency agreements. This article is an update of the trends presented in the 2009 research paper by Ramsay and Sim (covering 1990-2008) by adding the data for the years ended 2009-2011 using both the regulator's site and the Australian Bureau of Statistics resources. The authors find a 4.06% decrease in personal insolvencies for the last three years and seek to draw inferences around reasons for these changes. 18

Duty for directors to avoid insolvent trading in Singapore: A proposition – *Fiona Kee* and *Angus Young*

Current statutory duties in Singapore are inadequate when it comes to managing corporate risk, in particular company directors' practice of avoiding insolvent trading. At present, directors are only obliged to cease incurring debts when they expect that the company will become insolvent as a result of the debt being incurred. Moreover, criminal conviction against directors trading whilst insolvent is a prerequisite for civil action by creditors to recover debt owing. This article proposes that by adapting Australia's statutory provisions in the Singapore setting will promote better risk management and enhance accountability, thereby creating a more sustainable entrepreneurialism in Singapore. According to media reports a new insolvency Bill is expected, therefore a shift in policy thinking should be considered. 55

RECENT DEVELOPMENTS – *Dr David Morrison*

Chasing the phoenix 65

REPORT FROM NEW ZEALAND – *Lynne Taylor*

Enforcement of directors' duties in New Zealand 71

BOOK REVIEW – *Dr David Morrison*
Empirical Methods in Law by Robert Lawless, Jennifer Robbennolt and Thomas Ulen 78