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EDITORIAL 403

ARTICLES

Testing the limits of highly dilutive rights issues – Emma Armson

This article examines the takeover policy considerations arising where a rights issue involves a high ratio of shares being issued compared to the number of existing shares. Such highly dilutive rights issues exacerbate the usual effect on control because shareholders need to purchase a large number of shares relative to their current holding to maintain their proportionate interest, and any shortfall will lead to an increase in the relative voting power of those shareholders who exercise their rights. This raises a clear conflict between the policy underlying the takeover provisions and the ability to raise funds subject to the disclosure requirements in the *Corporations Act 2001* (Cth). These competing considerations are taken into account by the Takeovers Panel when deciding whether unacceptable circumstances exist in relation to the rights issue. The article analyses the recent Panel decisions relating to highly dilutive rights issues in *Re Multiplex Prime Property Fund 03* (2009) 76 ACSR 1 and *Gladstone Pacific Nickel Ltd 02* [2011] ATP 16, in the context of intervening changes to the Panel's *Guidance Note 17: Rights Issues* and earlier Panel decisions in relation to such issues. It concludes with observations concerning the elements that have been significant in determining the limits of what is acceptable. 405

Community interest and stakeholders aplenty, but to whom are the duties owed? Directors' duties in the not-for-profit arena of the Australian Football League Ltd – James Paterson

The Australian Football League Ltd consistently acknowledges that its key stakeholders are broader than just its member clubs, often making reference to groups such as supporters, club members, media and corporate partners, and various levels of government. Given the AFL Ltd's public recognition of those groups, this article considers the question: does a different legal duty apply to directors of not-for-profit organisations, such that the interests of persons other than shareholders must be considered? In reviewing the question, the article outlines the parties to whom the AFL Ltd's board of commissioners owe legal obligations under equitable, fiduciary and statutory directors' duties, and considers those duties in light of the AFL Ltd's objectives stated in its constituent documents. The article highlights additional legal duties imposed on directors of not-for-profit sporting organisations that seek concessional tax treatment, as well as reviewing the likely impact of the soon-to-be introduced national regulator, the Australian Charities and Not-for-profits Commission, on the obligations owed by directors of entities such as the AFL Ltd. 420

Independent directors in China and India: A comparative assessment – *Helen Wei Hu and On Kit Tam*

As the debate on convergence and divergence in corporate governance has received considerable research interest, this study aims to explore whether the recently developed independent director systems in China and India could be characterised as convergent or divergent. More importantly, do the independent directors in these two jurisdictions possess the core governance attributes regarded as essential for performing their governance roles effectively? Based on corporate governance guidelines and codes worldwide, four core attributes are identified as influencing the capacity of independent directors to successfully perform their role. A means test (t-test) is used to compare the attributes of independent directors in the largest Chinese and Indian companies. Additionally, these companies are benchmarked against the largest companies in Hong Kong, as they are perceived to have achieved better governance efficiency. Analyses show that while the regulatory development of corporate governance in China and India has been improved, there are still clear distinctions in the core attributes of Chinese and Indian independent directors.

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