

# COMPANY AND SECURITIES LAW JOURNAL

Volume 31, Number 2

March 2013

EDITORIAL .....	73
-----------------	----

## ARTICLES

### **Directors' duties to creditors: *Walker v Wimborne* revisited** – *Rebecca Maslen-Stannage*

In the 30-plus years since Mason J's iconic judgment in *Walker v Wimborne* (1976) 137 CLR 1, his Honour's statement that directors of distressed companies must take into account the interests of creditors has been much analysed and interpreted. Recently this interpretation has taken an alarming turn towards a direct duty owed to individual creditors. To interpret the duty in that way would both depart from sound authority and cut across solvent reconstruction efforts which benefit companies and their stakeholders, including creditors. This issue is in particularly sharp focus since the recent arrival in Australia of "loan to own" investors who buy distressed debt and seek solvent reconstruction rather than insolvency processes. If the original manifestation of *Walker v Wimborne* – Mason J's simple statement – is applied, the right balance is struck between the interests of companies and their creditors. Furthermore, to avoid undermining appropriate solvent reconstruction efforts, insolvent trading laws should be reformed. ....

76

### **Crowd funding: Regulating the new phenomenon** – *Terence W Wong*

The rise of social media has driven rapid growth in a new phenomenon known as crowd funding. Crowd funding sources venture capital from the internet rather than from an established capital market or financier, and has in a sense become a new "capital market". It allows entrepreneurs to quickly, and at low cost, raise substantial amounts of capital from millions of internet users attracted to a great idea. This article suggests that crowd funding is incompatible with Australia's current laws, and that specific regulations for crowd funding should be introduced in Australia so that it does not become confused with other investment and fundraising methods. This must be done to protect and nurture the vast untapped potential of crowd funding, to compete with the global crowd funding market, and ultimately to encourage new products and services to be created in Australia. ....

89

## TAKEOVERS AND PUBLIC SECURITIES – *Simon McKeon* and *Jonathan Farrer*

### **The rise of contingent value rights in Australian M&A transactions** – *Alex Brown* and *Sarah Duerdoth* .....

111

## CURRENT DEVELOPMENTS – LEGAL AND ADMINISTRATIVE – *Herbert Smith Freehills*

### **The Co-operatives National Law: A new opportunity for co-operative social enterprise in Australia? Part II** – *Daniel Wiseman* .....

123

OVERSEAS NOTES: HONG KONG, SINGAPORE AND MALAYSIA – *Say Goo*

**Regulating insider dealing in Hong Kong: Challenges and the road ahead for enforcement and prosecution** – *Charles KN Lam and SH Goo* ..... 131