

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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## ARTICLES

### **Insolvencies, bailouts and resolutions: Dealing with banks when the music stops** – *Ayowande A McCunn*

The failure of a bank can have adverse consequences for the real economy in terms of credit rationing. This article analyses the effect of placing a bank into the standard insolvency process. It argues that bailouts are provided by governments because they are cheaper than credit rationing. It then explores alternative options for resolving banks without bailouts. ....

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### **Filling the capital gap: The financing case for crowdsourced equity funding in Australia** – *Jason Zein*

Australian entrepreneurs face great difficulty in attracting the necessary capital to turn their potentially valuable ideas and technologies into long term viable businesses. This article analyses the role that crowdsourced equity funding can play in assisting to finance innovation and entrepreneurship in the Australian economy. In particular, it focuses on the capital gap that arises in the development of a new venture, especially in its expansion stage, and considers the role that equity crowdfunding can play in addressing this capital gap. ....

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### **Marshalling, the Personal Property Securities Act 2009 and third party securities: Highbury and Szepietowski – New applications of enduring principles** – *Hon WMC Gummow AC and JGH Stumbles*

A junior secured creditor looks to marshalling when its secured rights are typically prejudiced or lost because of an accident of choice made by the senior creditor. The recent English decisions in *Highbury Pension Fund Management Co v Zirfin Investments Management Ltd* [2013] EWCA Civ 1283 and *National Crime Agency v Szepietowski* [2013] 3 WLR 1250, the principal focus of this article, are examples where the marshalling claims ultimately failed notwithstanding that they were successful in lower courts. In each case, the unavailability of marshalling is best explained by the terms of the arrangements between the parties. However, part of the reasoning in each of the cases purports to justify the respective outcomes on wider principles which are not necessarily consistent with marshalling's true equitable rationale. In this article, the authors analyse the court's reasoning in each case. In so doing, they explore the equity which is the mainspring of marshalling and canvass how marshalling remains potentially relevant for current security interests including third party securities and securities subject to the Personal Property Securities Act 2009 (Cth). ....

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