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ARTICLES

Equity crowdfunding in Australia: a regulatory balancing act – *Tim Ancev*

This article explores the issues surrounding the regulation of equity crowdfunding in Australia and particularly the ways in which policymakers may seek to strike a balance between facilitating the growth of this new form of finance and ensuring adequate investor protections are in place. It is argued that, in the light of debate about the feasibility and desirability of equity crowdfunding, an “experimental” approach to regulating this phenomenon is justified in the early stages of its development. This approach would be the best way of achieving an appropriate balance between facilitation and investor protection, and would provide policymakers with an opportunity of ascertaining the true costs, benefits and ultimate potential of equity crowdfunding, in order to develop more appropriate regulation in the longer term. A number of reform proposals are ultimately considered and evaluated in the framework of an experimental approach to regulation. 352

Commercial litigation under the Personal Property Securities Act 2009 (Cth): Part I – *Matthew Broderick, Dr David Morrison and Emma Ramage*

Part I of this two-part series explores the impact of the Personal Property Securities Act 2009 (Cth) upon the rights of execution creditors to enforce judgments against personal property, the settlement of litigation involving security devices over personal property, and solicitors’ liens over the proceeds of litigation and documents. Part II will address the litigation rights of secured parties and stakeholders under the Act and specific provisions in the legislation that permit court applications. 372

Section 1322 as a response to the complexity of the Corporations Act 2001 (Cth) – *Hui Xian Chia and Ian Ramsay*

The Corporations Act 2001 (Cth) is growing in length and complexity. The authors explore the consequences of this increasing complexity including the costs created for those who are regulated by the Act and for the Australian Securities and Investments Commission (ASIC). In particular, the authors investigate whether s 1322 of the Act, which allows mistakes to be corrected, is in part a response to this complexity based on their analysis of the increasing number of s 1322 cases. They also consider how ASIC has responded to this complexity, noting that it has issued over 250 Regulatory Guides and, since 2004, has granted exemptions from having to comply with parts of the Act or modifications to the application of the Act, on more than 20,000 occasions. The authors’ research highlights the challenges and costs created by the increasing complexity of the Corporations Act 2001. 389

Aspects of the law relating to contested elections of directors – Rodd Levy

The use of corporate resources to respond to a proxy fight in Australia is said to be severely limited by the 1987 decision in *Advance Bank Australia Ltd v FAI Insurances Ltd* (1987) 9 NSWLR 464; 12 ACLR 118. Assertions have been made that directors of Australian companies must “stand neutral” in a contest against outsiders who seek to challenge board decisions or seek election to the board. With the advent of shareholder activism, this issue has become more important than it was previously. This article examines the scope of the rule, refutes the assertion that directors need to stand neutral and how boards may deal with this issue. It also examines the rules regarding the regulation (or lack of regulation) concerning misleading statements issued in proxy materials. 404

Is a charitable donation by an insolvent company an uncommercial transaction under s 588FB of the Corporations Act 2001 (Cth)? – Peter Sise

Is a charitable donation by an insolvent company an “uncommercial transaction” under s 588FB of the Corporations Act 2001 (Cth)? This may not be the sort of situation we commonly associate with “uncommercial transactions”. This article argues that it is likely to be an “uncommercial transaction”, but the outcome may depend on whether the donation is monetary or “in kind” and other circumstances surrounding the donation. 416

CORPORATE INSOLVENCY – Helen Anderson

The productivity commission, corporate insolvency and phoenix companies – Helen Anderson, Ann O’Connell, Ian Ramsay, Michelle Welsh and Hannah Withers 425