COMPANY AND SECURITIES LAW JOURNAL

Volume 35, Number 1

February 2017

EDITORIAL 3

ARTICLES

Reconsidering the Self-regulatory Approach to Corporate Social Responsibility – *Raisa Blanco*

Corporate social responsibility is a prominent factor in the evolution of corporate governance regimes internationally. In Australia, even with the introduction of the ASX Corporate Governance Principles and Recommendations and Listing Rules, the self-regulatory approach to corporate social responsibility has been encouraged and movement towards regulation has stalled. There is a danger of overreliance on the self-regulatory approach, specifically in relation to compliance and enforcement. Consideration of the effectivity of the self-regulatory approach, recent empirical research, and potential approaches to regulation indicates that the current corporate regulatory framework must be reformed in order to meet emerging demands and risks associated with corporate social responsibility. 7

Corporate Social Responsibility and "Contemporary Community Expectations" – *Jean Jacques du Plessis*

This article examines recent developments in company law surrounding corporate social responsibility (CSR). The focus is on the recognition of stakeholder interests and the role of contemporary community expectations in director decision making. The author provides judicial evidence regarding the recognition of the legitimate interests of shareholders and other stakeholders in company decision making, but acknowledges that the case law does not establish these interests as "rights". There is discussion of the role of a company as a "good corporate citizen" and contemporary community expectations concerning responsible corporate behaviour and sustainable growth that does not harm the environment or society. The author subsequently argues that contemporary community expectations form a policy basis for judges to interpret the law to reflect CSR. The unique legislative approaches to CSR adopted in the United Kingdom, Canada, India and the European Union are analysed, with consideration of the legislative elements that serve to promote CSR, and those that merely allow corporations to carry on with profit maximisation in a "business as usual" manner. The article concludes that CSR obligations should be reviewed in Australia, with a view to potential law reform in this area considering recent international developments. 30

Unreasonable Director-related Transactions: The Long Arm of the Liquidator? – *Adam Fovent*

Introduced in the wake of the One.Tel collapse, s 588FDA of the Corporations Act 2001 (Cth) was heralded as sending a strong message to the corporate world and as a valuable addition to the liquidator's arsenal. This article examines a number of important constructional choices in the emerging s 588FDA case law, and argues that the section was intended to command a breadth of operation which remains unrealised and underutilised.

The implications of these constructional choices will be demonstrated by reference to the applicability of s 588FDA to so-called "phoenix activity" and to failed private equity transactions, both of which raise the very concerns about errant directors and asset stripping to which s 588FDA was directed. This will provide an opportunity for comparative analysis, the courts of the United States having grappled for a number of years with the application of avoidance provisions to failed private equity transactions. 47

CORPORATE INSOLVENCY – *Helen Anderson*

Flipping out: Flip clauses are enforceable in the United States again! 65