

# COMPANY AND SECURITIES LAW JOURNAL

Volume 35, Number 4

June 2017

EDITORIAL ..... 213

## ARTICLES

### **Litigation Funding and Liquidators – The New Zealand Court of Appeal Takes a Permissive Approach – Victoria Stace**

On three occasions in the last 10 years, the appellate courts in New Zealand have considered the legitimacy of litigation funding arrangements. The first involved a representative action. The second was a private commercial dispute. The third, heard in the Court of Appeal in June 2016, involved a liquidator that was funded by a third-party litigation funder to bring an action against the debtor company's auditors. The attitude of the New Zealand courts displayed in these cases is that litigation funding is not in and of itself objectionable. In relation to actions brought by liquidators, only if there is an "abuse of process" will the court intervene. One ground of "abuse of process" is where the arrangements involve the assignment of a bare cause of action in circumstances where that is not permitted. No abuse of process was found in the recent Court of Appeal decision, suggesting a high degree of judicial tolerance for liquidators' litigation funding arrangements. .... 217

### **Who Bears the Burden for Business Losses: To What Extent Are Liability Issues of Business Structures Taught in Australian Accounting Degrees? – Dale Boccabella and Dr Brett Freudenberg**

Running a business has its risks, especially as many fail in their early years of operation. The question as to which stakeholders associated with the business bear the loss is an important issue, which will largely depend on the business structure used. Accountants play a central role in the choice of business structure with their clients, with research demonstrating that liability issues are a central consideration. The Australian undergraduate accounting curriculum is heavily focused on sole proprietors, partnerships and companies, with scant coverage of trusts despite them being a popular business structure in Australia. This article goes back to first principles and examines whether there is justification for the differential coverage in the accounting curriculum on the liability issues concerning the various business structures. It will be argued that the liability issues with respect to trusts are just as important as that for the other popular business structure used to reduce liability exposure, being the company. .... 235

### **Whistleblowing Reforms: A Critical Analysis of the Current Law and the New "Bells and Whistles" Proposed – Jim Apollo Mathiopoulos, Katrina Hogan and Jean Jacques du Plessis**

The Turnbull Government has promised comprehensive whistleblower reforms. To generate meaningful community consultation as part of the law reform process, people must have a comprehensive understanding of the deficiencies in Australia's public and private sector

whistleblowing regime. The legislator's choice not to produce a consultation paper to accompany the current inquiry may limit the value of the submissions received, particularly as the terms of reference omit a number of important considerations that have been raised in earlier reviews, reports and papers. This article aims to fill this gap. This article also analyses the deficiencies in Australia's whistleblowing regimes and it compares areas where Australia falls behind global norms as accentuated by the G20 "Breaking the Silence" report. ....	261
CORPORATE INSOLVENCY – <i>Helen Anderson</i>	
<b>No "Silver Bullet": A Multifaceted Approach to Curbing Harmful Phoenix Activity – Jasper Hedges, Helen Anderson, Ian Ramsay and Michelle Welsh</b> .....	277