

# INSOLVENCY LAW JOURNAL

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## ARTICLES

### **Are Directors’ Going Concern Financial Statement Note Disclosures Informative? Evidence from Voluntary Administrations** – *James Routledge*

This article examines the directors’ disclosure of going concern uncertainty in the notes to company financial statements to determine if the disclosures are informative. Management of disclosure tone can enhance or reduce informativeness. Accordingly, the study examined the overall tone of disclosures and whether their tone was related to voluntary administration outcomes. The results showed that disclosure tone was predominantly negative, which does not suggest directors attempt to present an overly optimistic view of going concern uncertainty. Disclosure tone was similar across administration outcomes, indicating tone is not used to mitigate users’ perception of solvency problems and that directors tend not to use disclosures to signal positive going concern prospects. This arguably reflects a cautious approach to disclosure content. Analysis of first-time disclosures suggests that when a company does not have a history of going concern problems directors may attempt to opportunistically manipulate disclosures. The study highlights that there is room for improvement in the informativeness of director going concern disclosures, and suggestions are offered about how this might be achieved. .... 57

### **Smooth Sailing for Directors: Using the Safe Harbour to Restructure Insolvent Companies in Australia** – *Timothy Bost*

Companies may become financially distressed for many reasons, but once they have become so, a restructuring of the company’s obligations may be necessary to restore it to financial health. While insolvent companies were previously limited in the mechanisms under which they could undertake such a restructure, this changed in 2017 through the introduction of a carve out – a “safe harbour” – from the civil insolvent trading provision in the *Corporations Act 2001* (Cth). However, despite the focus of the safe harbour as being to facilitate informal restructures, directors are also potentially protected while developing schemes of arrangement – an arguably unintended consequence. By undertaking a thorough assessment of the safe harbour and a comparative analysis with related international restructuring mechanisms, this article measures the impact of the safe harbour on the Australian corporate restructuring regime and demonstrates how it will assist corporate restructuring going forward. .... 69

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