



Chapman Tripp Corporate Bulletin No. 19

(22 January 2014 – 26 March 2014)

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ARTICLES

AUSTRALIA

1.

Title:

Officers' liability for mandatory corporate disclosure : two paths, two destinations?

Author(s):

Bednall, T;
Hanrahan, P

Source:

(2013) 31 (November) Company & Securities Law Journal 474

Abstract:

Overview of sources of listed entities' mandatory disclosure obligations - Four ways in which officers may incur criminal, civil penalty or civil liability re the entity's disclosure failures - "Involvement" and "negligence" paths in liability.

2.

Title:

Directors' statutory and general law accessory liability for corporate wrongdoing

Author(s):

Black, A

Source:

(2013) 31 (November) Company & Securities Law Journal 511

Abstract:

This article considers several issues arising when a claim is made that directors or company officers are subject to statutory accessorial liability for corporate wrongs, including the content of the requirement for knowledge for the "essential facts" of a contravention.

3.

Title:

It tolls for thee : accessorial liability after Bell v Westpac

Author(s):

Bathurst, T;
Merope, S

Source:

(2013) 87 (December) Australian Law Journal 831

Abstract:

This article examines two issues central to the proceedings in Bell v Westpac. Whether directors' duties to act bona fide in the best interests of the company and for proper purposes



are fiduciary in nature; and the extent in which those duties will be breached in a near insolvency context. The extent to which Bell has altered conventional understandings of the “best interests” and “proper purposes” duties, and the implications of any such alteration for corporate rescue strategies, are explored.

4.

Title:

Improving the human face of project finance : the limited potential of limited recourse

Author(s):

Taylor, J;

Creed, N

Source:

(2013) 32 (December) Australian Resources & Energy Law Journal 225

Abstract:

Examines the capacity for special purpose project vehicles to deliver optimal environmental, social and cultural outcomes; and the sometimes counterintuitive effect of non-recourse lending and other project finance structures.

NEW ZEALAND

5.

Title:

Kaiwarua-Ealing Limited v Pullington Investments Pty Limited

Author(s):

Hamilton, L

Source:

[2014] (February) Company & Securities Law Bulletin 15

Abstract:

Unincorporated partnership - Winding up of partnership - Settlement for sale of land - Shareholders - Joint memorandum - Binding contract - Partnership Act 1908 - Dairy farm - Date of settlement - Future contract.

6.

Title:

BFSL 2007 Limited (in liquidation) v Steigrad

Author(s):

Bowman, E

Source:

[2014] (February) Company & Securities Law Bulletin 16

Abstract:

Statutory charge - Insurance - Indemnity - Breaches of directors' duties - Payment of defence costs.



7.

Title:

Financing transactions structured as sales of goods

Author(s):

Gedye, M

Source:

(2013) 25 (4) NZ Universities Law Review 1076

Abstract:

Examines the evolving practice of structuring what are arguably financing transactions as sales of goods and the courts' mixed response to that practice.

8.

Title:

"Directors' approval" clauses

Author(s):

Bell-Connell, J

Source:

[2014] NZLJ 5

Abstract:

For the first time in New Zealand, the issue of "subject to directors' approval" clauses has come before the courts. Assesses how courts interpret these clauses and provides specific examples.

9.

Title:

Audit quality

Author(s):

Botica-Redmayne, N

Source:

[2014] NZLJ 10

Abstract:

Audit quality is a concept discussed by many but understood by a few. Currently there is no unified definition of audit quality but there have, however, been attempts to define it. This article outlines characteristics of audit; frameworks of assessing audit quality; the audit process; audit regulators and standards; and the role of the legal system.

10.

Title:

Et in Arcadia, Ego

Author(s):

Watts, P

Source:

[2014] NZLJ 25

Abstract:

Discusses contracts "subject to directors' approval" and how courts have interpreted these.



Also considers whether the subjective nature common to directors' approval and shareholder's approval clauses is more significant than any point of difference between them. Discusses the residual problem of bad faith and what happens in instances where there is a sole director.

11.

Title:

Seeking accountability

Author(s):

Brown-Haysom, J

Source:

[2014] 143 (Jan/Feb) Safeguard 30

Abstract:

In the wake of Pike River, many are pressing for a law change to enable corporate decision makers to be held accountable. This article revisits legislative options for corporate manslaughter.

12.

Title:

Directors, call your brokers

Author(s):

Johnson, J

Source:

(2014) (February) MG Business 26

Abstract:

Nearly a year after the Court of Appeal, in *Steigrad v BFSL 2007 Ltd*, gave insured directors a Christmas present, the Supreme court has favoured liquidators and receivers of failed finance companies over directors by pursuing the directors of those companies for breaches of their directors' duties and also for breaches of the Securities Act 1978. On 23rd December 2013, the Supreme Court released its decision in *BFSL 2007 Ltd (in liquidation) v Steigrad* where, by a three-two majority, the court reversed the decision of the Court of Appeal. In doing this, the Supreme Court has effectively 'cut-across' the terms of a large number of directors' and officers' liability policies held by directors and prevented them from accessing costs to defend claims where the amount claimed exceeds to the policy limit. The article discusses what the case was about, what the court decided, the approach of the majority, the approach of the minority and what this means for directors.

13.

Title:

Usual suspects

Author(s):

Wilson, J

Source:

(2014) 543 (February) Consumer 12

Abstract:



Names big-name Corporates that feature in the Commerce Commission's list of companies it has taken repeated enforcement action against in the past three years. This article discusses the cause for complaints; the tricks; and the possibility for the Commission to have wider powers to issue infringement notices. Includes a summary of major companies that have been investigated in the last three years.

UNITED KINGDOM

14.

Title:

Company voluntary arrangements and adjudication

Source:

(2013) 31 (January) Building Law Monthly 7

Abstract:

In *Westshield Ltd v Whitehouse*, the judge considered the impact which a Company Voluntary Arrangement (CVA) may have on an otherwise enforceable decision of an adjudicator. It was held that, as a matter of jurisdiction, the existence of a CVA does not act as some sort of bar on adjudication which prevented a company from outsourcing adjudication in respect of a pre-CVA debt. But the existence of a CVA was a relevant matter to be considered when deciding whether or not summarily to enforce the decision of an adjudicator to grant a stay of execution.

UNITED STATES

15.

Title:

Is the client assets regime on the right track? Transatlantic perspectives on client assets post-Lehman

Author(s):

Reynolds, B

Source:

(2014) 29 (2) Journal of International Banking Law & Regulation 67

Abstract:

The determination of client property entitlements in the financial markets involves applying old fashioned rules dependent upon actions of the holder immediately prior to the insolvency, many of which often turn out not to have been executed properly or at all. The decisions in *Lehman* dealt with some of the prior legal uncertainties, but the basis of the relevant rules in the law of trusts continues to be questionable. This article discusses how shortcomings remain and some potential ways for achieving a fairer result by adopting a more 'outcomes-based' approach to vindicating client rights.

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