

AUSTRALIAN BUSINESS LAW REVIEW

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EDITORIAL 313

ARTICLES

International commercial litigation: An Asian perspective – Hon JJ Spigelman AC

Legal disputes are an inevitable incident of international commerce. The delays, complexities and costs of resolving disputes with a cross border element constitute a barrier to enhancing mutually advantageous exchange through trade and investment. Reform requires multilateral and bilateral consideration of a range of issues including international commercial arbitration, civil procedure, venue disputation, the Hague Choice of Court Convention, cross-border insolvency, inter-jurisdictional judicial assistance, freezing and search orders, international service, collection of evidence and enforcement of judgments. 318

As easy as XYZ: Changing the world through corporate law and the external affairs power – Daniel Vujcich

There is a perception that the corporate quest for profit maximisation contributes to the “development of underdevelopment” at a global level. At present, there is little to prevent Australian companies from adding to that perception. This article proposes an amendment to the *Corporations Act 2001* (Cth) to effect positive change. The amendment takes the form of a replaceable rule that would require Australian corporations to observe certain domestic legislation in their overseas operations. In considering which Acts fall within the scope of the amendment, Parliament should work closely with industry representatives, relevant government departments and regulatory agencies to determine the feasibility of extending particular statutory obligations abroad. Using the *Equal Opportunity for Women in the Workplace Act 1999* (Cth) as a case study, this article seeks to demonstrate that the proposal to extend the operation of domestic laws will overcome many of the practical and regulatory difficulties associated with the two Corporate Code of Conduct Bills previously drafted by the Australian Democrats. The Commonwealth’s power to amend the law in this way would be supported by the external affairs power of the Constitution, a broad interpretation of which has recently been confirmed by the High Court in *XYZ v Commonwealth* (2006) 80 ALJR 1036. 338

Modernising Australian merger analysis – Rachel Trindade and Rhonda Smith

In this article we explore the use of Porter’s Five Forces model as a practical, dynamic and commercially grounded framework for use in Australian merger analysis under s 50 of the *Trade Practices Act 1974* (Cth). We explain how such a framework allows the analysis to take into account the structural elements of the traditional “structure-conduct-performance” model but does so in a non-linear fashion that captures the impact of strategic behaviour as well as addressing all the s 50(3) factors “on the one page”. While the emphasis of the article is on merger analysis, this alternative framework has a broader relevance to general competition analysis in a manner consistent with the Australian legislation and Australian case law. 358

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