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A NOTE FROM THE EDITOR 3

ARTICLES

The threshold requirements of the PPSA: Does s 12 require an interest in rem in order to create a security interest? – Cheyne James Clarke

This article examines the scope of the *Personal Property Securities Act 2009* (Cth) (PPSA). It begins by first applying principles of statutory construction to the words of the PPSA. Next is a detailed consideration of the decision of the Supreme Court of Canada in *Caisse Populaire Desjardins de l'Est de Drummond v Canada* (2009) 309 DLR (4th) 323. Finally, this article will analyse some of the arguments of academic commentators as to the scope of the PPSA. The primary focus of this article is whether or not the general law requirement of a right in rem, as opposed to a right in personam, is necessary to create an interest in personal property as required by s 12 of the PPSA. The secondary focus is on the differences between a flawed asset arrangement and a right to set-off which are then analysed. Finally, the practical implications of all of this for Australian banks is considered and some advice for how to manage the consequences of the outcomes discussed above is provided. 4

Bank levies in Australia: Lessons from Europe – Mary Dowell-Jones and Ross P Buckley

Australia introduced deposit insurance in 2008. It is currently funded on an ex post basis. Funds are not set aside to meet claims on the scheme; instead, the government will reimburse insured depositors should an Authorised Depository Institution fail, and will then recover the costs through liquidation. In April 2015, the government proposed moving to an ex ante funding model by introducing a levy of 0.05% on insured deposits to build a Financial Stability Fund to meet claims, but in its response in October to the Financial System Inquiry announced it would not proceed with the levy. Ex ante funding would bring Australia into line with international recommendations, and not doing so may embed moral hazard into the Australian banking system. This article analyses the levy as future governments may still choose to move to ex ante funding. Clarity is needed on key points, such as the size of the fund required and whether it would be used for bank resolution more generally. Careful design of the levy would be needed so as to not disproportionately disadvantage smaller banks which rely more on retail deposits for funding. This article considers the issue in light of international principles and emerging best practice. It considers how deposit insurance schemes in the United Kingdom, France and Germany are funded; and analyses the separate financial stability bank levies in these countries introduced to recoup some of the costs of public sector support during the crisis and to fund separate bank resolution regimes. 22

Enforcement of financial crime laws in Nigeria: The role of Economic and Financial Crime Commission – Uwem Emmanuel Udok

The Economic and Financial Crime Commission (EFCC) was established in 2003. The EFCC is the agency charged with the responsibility of investigation of financial crimes

and enforcement of financial crime laws. Over the years the EFCC has been involved in the fight against bank malpractices in the banking industry in Nigeria. Bank malpractices have constituted major threat to the stability of the banking industry in Nigeria resulting in the collapse of many of the banks operating in the country in the past years. Several cases of bank malpractices have been investigated and prosecuted by EFCC. However, it has often been confronted with certain challenges which have militated against the effective and efficient discharged of its statutory functions. In fact, the laws setting up the EFCC is inherent with certain inadequacies which have contributed to the ineffective discharged of its responsibilities. Furthermore, the EFCC is faced with certain constraints that have negatively affected the performance of its statutory responsibilities. This article therefore, assesses the role of the EFCC in curbing incidences of financial crimes especially bank malpractices in the banking industry in Nigeria and make appropriate suggestions for reforms. 31

Dynamics of firm-level financial inclusion: Empirical evidence from an emerging economy – *Sudipta Bose, Asit Bhattacharyya and Shajul Islam*

This article examines the financial inclusion disclosure practices of Bangladeshi banks from 2008 to 2013. The authors develop a financial inclusion index from the banking firm perspective to measure the level of financial inclusion disclosures in the annual reports and explore the potential determinants of such disclosures. The results demonstrate that the level of financial inclusion disclosures improved significantly after the central bank of Bangladesh released directive relating to financial inclusion. The results also indicate that the level of financial inclusion is positively influenced by banking firm size, growth opportunities, institutional investors, audit committee size and religion-based operations of the bank, whereas the percentage of female directors and firm age are negatively associated with the level of financial inclusion disclosures. The findings of this study should be of interest to managers, regulators and policy makers in countries that share similar financial systems. 45

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