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EDITORIAL 3

ARTICLES

Turning to Chapter 11 to foster corporate rescue in Australia – *Ahmed Terzic*

For more than two decades, Pt 5.3A of the *Corporations Act 2001* (Cth) has remained the predominant mechanism for corporate rescue in Australia. However, in recent years its enshrined voluntary administration procedure has drawn strong criticism in the face of legislative inaction. Such criticism has often been accompanied by claims that distressed corporations have found it increasingly difficult to reorganise their financial affairs, provoking voluntary administration's label as a lengthier route to liquidation. Over the years, Chapter 11 of the US *Bankruptcy Code* has frequently been brandished as an alternative approach to company reorganisation, only to be rebuffed for its perceived procedural difficulties and incompatibility with the creditor-oriented mindset that permeates Australia's insolvency regime. After delving into some of the reported drawbacks of voluntary administration, this article challenges the denunciation of Chapter 11 in Australia. It sheds light on the redeeming features of Chapter 11 that merit detailed consideration in Australia's present-day corporate landscape and parries the legion of criticism that has been directed at the procedure. It is asserted that turning to Chapter 11 as a model for reorganisation and value maximisation is warranted at a time when calls to foster a corporate rescue culture in Australia are abounding. 5

Corporate rescue in the United Kingdom: Past, present and future reforms – *Paul J Omar* and *Jennifer Gant*

In the United Kingdom, corporate rescue arrived in 1986 in the shape of two procedures introduced in the *Insolvency Act 1986*, inspired by comparisons with other jurisdictions where the concept of rescue had first been developed, but firmly anchored in models already known to English law, the latter also continuing to run alongside the procedural novelties. This dichotomy has shaped the development of rescue in the United Kingdom, particularly in the way it became affected by a form of competition between procedures, which led to rescue as a priority becoming downgraded. Reforms in 2002 were introduced to address this loss of priority, though the "brave new world" that resulted has come in turn to be affected by global changes in the conception of rescue and developments in practice. This article charts the evolution of rescue in the United Kingdom, anticipating what might be the shape of reforms that may come. 40

Does CIP remuneration provide value for money? – *Jennifer Dickfos*

Australian public's perception of Corporate Insolvency Practitioners (CIPs) continues to be assailed by criticism of CIP Remuneration. To determine if the Australian public and particularly creditors can be assured that CIP Remuneration is "value for money" this article considers two research questions: Who should assess if the CIP provides value for money and how to assess if the CIP provides value for money? Using a case study analysis, the article identifies the main criticisms of the current court review process of CIP remuneration. Central to such criticisms are the practical difficulties of judicial officers applying the principles of reasonableness and proportionality in reviewing CIP

remuneration claims. In answering the two research questions, CIP remuneration reforms outlined in the *Insolvency Law Reform Act 2016*, as well as alternative review measures, are considered. 62

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