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EDITORIAL	161
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ARTICLES

Decision-making in a voluntary administration – Colin Anderson

This article discusses the decision-making procedure of Pt 5.3A of the *Corporations Act 2001* (Cth). An initial review of the background to the provisions is undertaken which shows an emphasis on the creditors making a decision without any necessary review by the courts. This has placed considerable emphasis on the role of the administrator as a provider of information to the creditors to enable them to make a proper decision. The article then examines some aspects of the procedure by which this is carried into effect. Emphasis in the procedure is on making a decision quickly but despite this there is a lack of clarity in some areas and some improvement in the drafting may clarify what is required of administrators as well as facilitate the wishes of creditors.

The method of voting used in the procedure is examined and subsequently measured against an economic and law analysis of how voting should be conducted. This suggests that the current form of voting does raise several difficulties including placing the administrator in the potential position of deciding his or her own fate and hence compromising the administrator's independence. In addition it is not clear if the division of creditors into number and value is particularly helpful. There has not been consideration of these issues from a policy perspective except in the most rudimentary manner. As making the "right" decision is critical in this context it is suggested the current system needs to encompass a sound theoretical basis. It indicates further research could be undertaken to examine issues such as the role of the secured creditor in the voting mechanism and the extent of the dichotomy between number and value in meetings. 163

Directors' duties – ASIC v Rich – landmark or beacon? – John S Keeves

Is *ASIC v Rich* a landmark decision concerning the statutory duty of care and diligence under s 180 of the *Corporations Act* as it applies to company chairmen? This article reviews Justice Austin's decision and its possible implications, with particular attention to the term "responsibilities" when used in s 180, and the applicability of "usual practice" in formulating the duty or standard of care and diligence. The article then considers other recently published material concerning corporate governance and the role of the chairman of listed public companies, including the Report of the HIH Royal Commission, the *ASX Principles of Good Corporate Governance and Best Practice Recommendations*, the

revised *UK Combined Code on Corporate Governance* and Sir Adrian Cadbury's *Corporate Governance and Chairmanship – A Personal Perspective*. The article closes with some observations on the role of the chairman and related matters, and observations as to whether *ASIC v Rich* should be regarded as a landmark. 181

ACCOUNTING

CLERP (Audit Reform & Corporate Disclosure) Bill and financial reporting 205

COMPANY LAW

Comply or comply: The illusion of voluntary corporate governance in Australia
..... 208

OVERSEAS NOTES – HONG KONG, SINGAPORE AND MALAYSIA

When to sanction a scheme of arrangement? 218

BOOK REVIEW

***ASIC Corporate Investigations and Hearings* by Thomas Middleton** 223

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