

COMPANY AND SECURITIES LAW JOURNAL

Volume 22, Number 4

June 2004

EDITORIAL	229
-----------------	-----

ARTICLES

Takeover financing arrangements: An issue of disclosure or market disturbance? – *David B Noakes*

Funding is a critical issue in the structuring and executing of takeovers, but never really makes it to the headlines unless the bid is contested and the adequacy of the financing arrangements is questioned. This article discusses whether the focus of bid finance regulation ought to be on issues of disclosure or market disturbance. This will include a brief review of the relevant case law and an in-depth examination of the decisions by the Australian Takeovers Panel on this topic, in particular the decisions in relation to the bid for Goodman Fielder Ltd. The article is presented in the light that the Panel has provided more direction by the release of a guidance note and the Panel (inevitably) will continue to refine the thinking on this topic through future decisions. However, the article seeks to provide an examination of the state of play today, together with some impressions of where the Panel may lead market practitioners in the future. 231

The history and development of the conflict and profit rules in corporate law – a review – *Johann Kirby*

The conflict and profit rules are key aspects of the fiduciary duties which directors owe to their company. They were first developed in equity and over time have been encompassed in legislation. It is argued that this co-existence in equity and legislation has led to the duties becoming, at times, inaccessible and ineffective, requiring further reform of the law.

An outline of the current status of the duties under the general law is provided to allow comparison with the position under the legislation. The history of the development of the Australian legislation is examined which demonstrates key aspects of the approach to corporate reform in Australia. Recent reform in the United Kingdom is examined in consideration of possible reform in Australia. 259

ACCOUNTING

The impact of the proposed CLERP 9 legislation on the auditing profession	280
--	------------

CORPORATE INSOLVENCY

Liquidator forced to hold s 508 members' meeting despite no prospect of return for members	284
---	------------

OVERSEAS NOTES – NEW ZEALAND

Developing corporate governance principles for New Zealand	286
---	------------

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Company and Securities Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to cslj@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 15,000 words for articles or 3,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- All material published in this journal is refereed. Every manuscript submitted to the journal is subject to review by at least one independent, expert referee.

Style

1. Levels of headings should be clearly indicated (no more than four levels).

2. Cases:

- Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
- Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
- “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
- Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
- For international cases best references only should be included.

3. Legislation should be cited as follows:

Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.

4. Books should be cited as follows:

Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:

4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).

5. Austin, n 4, p 56.

5. Journals should be cited as follows:

Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.

Wherever possible use official abbreviations not the full name for journal titles.

- In footnotes do not use *ibid* or *op cit*. The following style is preferred:

6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.

7. Sheehy et al, n 6 at 221.

6. Internet references should be cited as follows:

Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Company and Securities Law Journal* comprises eight parts a year.

Customer Service and sales inquiries:

Tel: 1800 650 522

Fax: 61 2 8587 7200

Web: www.lawbookco.com.au

Email: service@thomson.com.au

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0729-2775

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW