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EDITORIAL	465
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ARTICLES

New focus on insider governance? Independent directors, information requirements, and internal audit – *Wen-Yew Lee*

In the light of recent corporate failures in Australia and overseas, corporate governance has become a rather hot topic. Much literature and guidance has promoted the importance of independent directors, but an issue that has received less attention is how independent directors receive information. If independent directors are to monitor the performance of management, is there not some conflict arising from the fact that the information used in monitoring is sourced from management? This difficulty has been vividly illustrated in numerous case examples, including the recent HIH and One.Tel collapses. A potential solution is through use of the internal audit function as an independent information source for non-executive directors, assisting in the monitoring of management. However, internal audit as a governance mechanism has received little attention in Australia when compared to the United States and the United Kingdom. 467

Obligations of financial advisers in change-of-control transactions: Fiduciary and other questions – *Andrew Tuch*

Recent regulatory action by the Australian Securities and Investments Commission has focussed widespread attention on whether, in Australia, a financial adviser to a party in a change-of-control transaction (such as a takeover) is obliged to avoid being in positions of conflict with the interests of that party. Because financial advisers in these transactions are typically investment banks, the integrated structure of which may make conflicts of interest inevitable, such an obligation is likely to pose difficult challenges for the investment banking industry. The question is complicated by two apparently inconsistent standards being applied: the fiduciary obligation to avoid conflicts and the statutory obligation under the *Corporations Act 2001* (Cth) to manage conflicts. This article considers whether a financial adviser is, and should be, obliged to avoid conflicts in this context and, in doing so, attempts to reconcile the apparent inconsistency between these standards. 488

CORPORATE FINANCE – *Paul Ali*

SME loans securitisation by banks: Improving SME access to finance – <i>Lam See Wai</i>	522
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VOLUME 24 – 2006

Table of Authors	537
Table of Cases	539
Index	551

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Email: LRA.Service@thomson.com

Editorial inquiries:
Tel: (02) 8587 7000

HEAD OFFICE
100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



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