

COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL 285

ARTICLES

Private equity and section 411 of the Corporations Act 2001 (Cth) – Justice Kevin E Lindgren

Schemes of arrangement under s 411 of the *Corporations Act 2001* (Cth) are sometimes used to effect takeovers, including takeovers by “private equity” entities and syndicates. There is no equivalent provision in the United States. This article makes the point that alleged breaches of fiduciary duty by the directors of takeover targets of the kind that have been litigated in the Delaware Court of Chancery, would not have come to light in applications for court approval of schemes of arrangement under the Australian s 411. Accordingly, the article is a reminder of the limited scope of protection for shareholders in a target company that court approval under s 411 is able to give. The article also outlines the historical background to s 411 and considers comparable provisions in United Kingdom, Canadian and New Zealand legislation. 287

Private equity bids: Managing conflicts of interest when public companies go private – Michael Hruby

The surge in global public-to-private leveraged buyout activity in recent years has sharpened the focus on the conflicts of interest faced by the boards and senior management of target companies. Despite the onset of a global credit crunch in late 2007, private equity firms are expected to be important long-term participants in the Australian takeover market. In contrast to the position in the United States and the United Kingdom, private equity bids are not specifically addressed by the current Australian regulatory framework. This article assesses the adequacy of the Australian framework, and argues that, despite the positive contribution made by Takeovers Panel Guidance Note 19, deficiencies persist. These shortcomings warrant consideration of legal reform measures to provide greater certainty and security to target shareholders, thereby reducing barriers to the successful execution of private equity transactions. 304

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Corrigendum

Please note that in the article by Marco Bini entitled “The Public Administration Act 2004 (Vic): A New Approach to the Liabilities and Duties of Directors on Government Boards and Authorities” (2008) 26(3) C&SLJ 172 at 179, under the heading “Part 5: How does it work?”, “1 July 2004” should read “1 July 2005”.

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