

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **The future role of creditors' schemes of arrangement in Australia after the rise of voluntary administrations** – *Rebecca Langley*

Since the introduction and emergence of the voluntary administration procedure in Pt 5.3A of the *Corporations Act 2001* (Cth), creditors' schemes are used rarely to deal with the affairs of a company in financial difficulty or to effect compromises with creditors. However, creditors' schemes remain useful in particular circumstances largely due to the limitations of the voluntary administration regime, including the degree of financial difficulty in which a company must find itself before it can make use of the procedure and the unavailability of the provisions to foreign companies. This article explores the scope for the future use of creditors' schemes in Australia in the aftermath of the development of the voluntary administration procedure by exploring the recent schemes considered by the courts. The cross-border recognition of creditors' schemes is also contrasted to the cross-border recognition of the voluntary administration procedure and consideration is given as to whether the recent adoption of the United Nations Commission on International Trade Law's Model Law on Cross-Border Insolvency is likely to be of some assistance in overcoming the limitations of the voluntary administration regime. .... 70

### **Voluntary administration: Patterns of corporate decline** – *James Routledge and David Morrison*

Australian companies in financial distress prefer to select the option of voluntary administration (VA) offered by Pt 5.3A of the *Corporations Act 2001* (Cth). A board's choice to enter a company into a VA is premised upon the idea that it is preferable to take early action when the business is facing solvency difficulty. Such early action allows for the possibility of rescuing the business. This article examines whether directors cause businesses to trade in extenuating financial circumstances for too long a period before entering the company into a VA thereby shortening the chances of a successful business rescue. The empirical analysis presented suggests that timely entry into a VA is critical, and that the VA process is not being used in a timely manner. .... 95

### **Modified limited liability** – *Christian Witting*

This article is concerned with the circumstances in which personal injury claimants should be able to obtain redress from shareholders in the company that injures them. It outlines the problem of "judgment-proofing", including the deliberate structuring of relationships within a corporate group to ensure that group assets are protected from tort claims. The article surveys important proposals for reform of the limited liability rule. It concludes that a modified form of limited liability should be adopted in cases of personal injury. This is on the basis that shareholders perform an important function in the company structure, that outsiders have the right to identify shareholders with the company, and that, in a comparative contest over liability, shareholders' financial interests rank lower than the

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