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EDITORIAL 265

ARTICLES

Still a troublesome area: Legislative and common law restrictions on indemnity and insurance arrangements effected by companies on behalf of officers and employees – Perry Herzfeld

There are a number of areas of uncertainty regarding the restrictions on the ability of companies to indemnify and procure insurance for their officers and employees imposed by ss 199A and 199B of the *Corporations Act 2001* (Cth) and s 77A of the *Trade Practices Act 1974* (Cth), as well as the common law. This article considers a number of these uncertainties, including the meaning of “conduct in good faith”, “criminal proceedings” and “wilful breach of duty” in the legislative provisions; the effect of those provisions on the coverage of “innocent” directors; the application of legislative restrictions on indemnities to policies of insurance; and the common law’s attitude to indemnity and insurance against fines and penalties. It suggests a number of legislative reforms to address these uncertainties. 267

Replacement of the responsible entity of a managed investment scheme by members – Michael Legg

The global financial crisis and its impact on managed investment schemes has focused attention on a key aspect of Ch 5C of the *Corporations Act 2001* (Cth) – the replacement of a responsible entity by members. The *Corporations Act* requires that a company that is chosen to be a new responsible entity must consent to its appointment. This article explores two possible interpretations of the requirement for consent in relation to timing: at the meeting removing the incumbent responsible entity or within a reasonable time of that meeting. The interpretation of the consent requirement impacts on whether due diligence can be conducted by a potential replacement responsible entity and the risk that the scheme may be wound up. Due to the ambiguity that exists, the article then examines other avenues for facilitating member choice as to the responsible entity by allowing the necessary time for due diligence to occur, namely responsible entity duties, conditional consent, the use of a temporary responsible entity and ASIC relief. 299

The Australian insider trading regime: Workable or hopelessly complex? – Gill North

The efficacy of the Australian insider trading regime is the subject of ongoing debate. Uncertainties as to the nature, ambit and enforcement of the insider trading provisions abound, and while some parties suggest the regime is workable, others find it hopelessly complex and untenable. The article suggests that the effectiveness of the insider trading regime on a stand-alone basis is inherently limited. The regime needs to operate as one limb of a balanced and integrated corporate disclosure framework in order to achieve its policy goals of economic efficiency and market fairness. 310

CORPORATE FINANCE – *Paul U Ali*

Enforcement of security over special purpose vehicles: Part 1 – *Richard Hillman* 328

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