

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **International standard-setting and the regulation of hedge funds: Part II – Rhys Bollen**

Financial services regulation is becoming increasingly globalised in response to the global nature of the industry. Firms, including hedge funds, are highly mobile. Each regulator must take into account global regulatory standards: if local regulation is below or above the international standard this can have a great impact on the local market, either pushing firms offshore or encouraging disreputable firms to operate here. Part I of the article, published in the August 2010 part of the Journal, explained why globalisation is a key issue for the regulation of hedge funds. It introduced the current literature on globalisation and regulatory theory. Part II builds on this, reviewing the current literature on standard-setting and international regulatory cooperation. This is applied to three case studies to demonstrate and validate. This Part then applies the theory in more detail to the regulation of hedge funds to show the rationale for international standards in this area and to give some insight into what standards are likely to develop, how and where. Major regulators should maintain their regulatory regimes at or close to the international standard. This Part reviews the emerging international standards. Astute regulators can be truly proactive and influence the emerging international standards. In the light of their other responsibilities and taxpayer-funded status, regulators should influence these standards in the most efficient and effective way. This requires thoughtful policy development and effective negotiation. .... 370

### **Insolvent trading defences after *Hall v Poolman* – Patrick J Lewis**

The decision in *Hall v Poolman* (2007) 215 FLR 243; 65 ACSR 123 examined liability for decisions made by experienced businesspeople years earlier in times of financial hardship. Palmer J exercised his discretion under s 1318 to relieve the director from liability for insolvent trading. However, he narrowed the review of “all the circumstances” to whether the action was commercially reasonable. Directors must be able to make decisions, which inevitably involve some degree of commercial risk, if the economy is to be advanced. The currently available defences to the duty to prevent insolvent trading in ss 588H and 1318 are both underutilised and rarely successful. A more general defence should be introduced to allow directors greater flexibility in attempting informal work-outs of distressed companies. .... 396

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