

# COMPANY AND SECURITIES LAW JOURNAL

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<b>Must the captain go down with the ship? The avenues available to directors to protect themselves from liability for insolvent trading – <i>Tristan Howes</i></b>	
In recent decades, a trend in Australian corporate law towards imposing personal liability on company directors has given rise to concerns that directors are “under siege” and overwhelmed by an increasing network of punitive risk. This article considers the defences available to directors for a breach of the insolvent trading prohibition in s 588G of the <i>Corporations Act 2001</i> (Cth), in light of the primary policy aims underlying the provision: the protection of creditors and the promotion of managerial diligence. Having considered statutory defences, discretionary relief and the company administration scheme, the article recommends that the government reconsider the adoption of a business judgment defence for insolvent trading to better promote these policy objectives. ....	7
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This article examines the role and utility of opinions rendered by independent financial advisers, who are required to be appointed in connection with takeovers of, and related party transactions entered into by, companies which are listed in Singapore. Three main problems are identified: (i) data from advisers’ opinions issued between 2008 and 2010 in connection with takeover offers of Singapore-listed companies show that there are a significant number of advisers who do not use the standard of “fair and reasonable” in assessing offers and instead use tests that are more equivocal, rendering the opinions less helpful; (ii) advisers remain subject to inherent bias and such bias is not easily detectable due to their wide discretion in choosing appropriate assumptions and methodologies; and (iii) there are a number of limitations faced by investors in bringing common law or statutory claims against advisers for failings in care and expertise, honesty or independence for the opinions they issue in takeover documentation. This article suggests solutions that improve the reliability and quality of these opinions, increase the incentives of advisers to produce meaningful and unbiased opinions, and at the same time, allow investors to have appropriate rights of recovery against them. ....	32
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