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## ARTICLES

### **Men over board: The burden of directors' duties in the wake of the Centro case** – Philip Crutchfield SC and Catherine Button

In *Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291 (*Centro*), the Federal Court found that the non-executive directors of the Centro group had breached their directors' duties in failing to identify errors in the classification of liabilities and the failure to disclose post-balance date guarantees in company accounts. The authors consider the implications of the *Centro* decision, and, in particular, the extent to which directors can now rely on others (principally management and external accountants). The authors suggest that, while the facts which gave rise to the findings of liability in *Centro* were unique, directors and those advising them ought still be cautious in relying on others to perform non-routine tasks. Such caution is warranted notwithstanding s 344 and other provisions which suggest that the role of directors is more concerned with ensuring that the proper company machinery and processes are in place than with performing specialised tasks personally. To that extent, the *Centro* case contributes to the evolution of the law of directors' duties towards a more managerial model. .... 83

### **Directors' duties, financial literacy and financial reporting after Centro** – Tim Leung and Jon Webster

In Australia the primary role of listed public company directors has long been one of oversight, guidance and monitoring, rather than operational management. However, the decision in *Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291 (*Centro*) raises important questions as to the precise nature and extent of this role, and the level of responsibility and accountability involved, particularly in respect of financial reporting. This article provides a brief overview of the nature of the role of the listed public company board in Australia and, by way of comparison, the United States, before proceeding with an analysis of the *Centro* decision itself. It concludes with a brief commentary on the practical implications of the *Centro* decision. .... 100

### **Related party transactions in New Zealand: An empirical study of a flawed system** – Duncan C Jessep, John H Farrar and Susan Watson

Between 2006 and 2010 approximately 32 finance companies went into receivership, liquidation or were bailed out by the government in New Zealand. The total combined outstanding debt from these failures exceeds NZ\$5.3 billion. Excessive, unregulated and, in some cases, undisclosed related party transactions have been cited by commentators as being a contributing reason for many of these failures. In light of these concerns, this article, using empirical analysis, questions whether the regulatory approach to related party transactions in New Zealand is adequate and, where applicable, suggests improvements to that framework, making comparisons with Australia. It concludes that

Australia has a more rigorous system but that related party transactions are inherently problematic under any circumstances. .... 110