
Index

Accounts

- accounting standards, Centro case and knowledge of, 104-105
- legal framework and, 103-104
 - AASB 101 and 110, 103
 - Corporations Act, 103
- content of company
 - reliance on others in respect of, 92-97
 - statutory constructions and personal liability for, 89-92
- disputes, accounting, resolution at low cost by FRP, 519-520
- ASIC referrals to, 519-520

ACL/National Parts

- voluntary administration of, 172-173

Administration

- insolvent trading liability, company
 - administration as means of protection from, 21-25
 - creditor protection as focus of, 21
 - diligent management, and promotion of, 24
 - ipso facto clauses, and issue of, 23
 - rehabilitation clauses of companies after, 23
 - value-destroying nature of voluntary administration, 22-25

AFL Ltd – *see* Australian Football League Ltd (AFL Ltd)

Ansett

- voluntary administration of, 172-173

Anti-deprivation principle, 253-267

Auction

- takeovers
 - Revlon duty, 496-498
 - Revlon event, 498
 - target directors, duty to, 493-509

Audit committee

- uniform directors' duties and, 97-98

Auditors

- Centro case, and role of, 107

Australia

- board of directors, role in, 100-101
- fiduciary duties, statutory, in, 222-225
- financial advice regulation in, 227-228
- Storm Financial Ltd, collapse of, 110-111, 403
- superannuation in, 298
- unsolicited hostile bid, duty of board of directors in context of, 499-500

Australian Competition and Consumer Commission

- infringement notices, power to issue for breaches of consumer law, 3, 145-147

Australian Consumer Law

- misleading or deceptive conduct, regulation by s 18, 344
- contravention, award of compensation for, 348-350
- nature and scope of provision, 344-348

Australian Football League Ltd (AFL Ltd)

- AFL competition
 - current, and background to, 422-423
 - national era, 424
- ASIC, standing to bring civil penalties action against directors, 450
- community issues, interest in tackling, 420, 446, 451
- company, standing to allege breach of directors' duties, 446-447
- constituent documents, 435-436
- corporate governance
 - concept of, 441-442
 - directors' requirements, as expansion of, 441
 - policies, and AFL's use of, 442-443
- current AFL competition, and background to, 422-423
- directors, 436-437
 - contractors, requirement to have regard to interests of, 446
 - corporate social responsibility and, 444-446
 - creditors, requirement to have regard to interests of, 444
- duties
 - AFL Commission in context of, 435-441
 - common law principles, under, 424-426
 - equitable principles, under, 424-426
 - not-for-profit directors, 429-433

- shareholders' register, expansion beyond, 443-446
 - standing to allege breach, 446-450
 - statutory, 426-429
 - to whom owed, 437-438
 - what are, 424-435
- employees, requirement to have regard to interests of, 446
- trustees, directors as, 435
- guarantee, as company limited by, 421
- members, 436-437
 - directors' duties, standing to allege breach, 447
- non-profit sporting organisations, income tax exemptions for, 433-434
- objects of, 438
 - express, 438-440
 - failure to comply, issues with, 440-441
- stakeholders, 420
- statutory derivative action against AFL Commissioners, standing to bring, 447-450
- Australian Prudential Regulation Authority (APRA)**
 - crisis management powers, 403-404
 - Inquiry into the Collapse of Trio Capital, criticism by, 211
- Australian Securities and Investments Commission (ASIC)**
 - accounting disputes, ASIC referrals to FRP, 519-520
 - AFL Ltd, standing to bring civil penalties action against directors, 450
 - complexity of financial system, challenge of dealing with increasing, 81
 - criminal proceedings brought by
 - appropriate, when, 81-82
 - Kleenmaid directors, against, 81
 - enforcement priorities, 211
 - functions, 5
 - increasing powers vested in, 3
 - Information Sheet 151 issued by, 81
 - infringement notices, power to issue, 3, 145-147
 - Inquiry into the Collapse of Trio Capital, criticism by, 211
 - judicial power, exercise by, 3
 - leverage of scarce resources, challenge of dealing with, 81
 - Market Integrity Rules, power to issue infringement notices as to operation of, 3
 - regulatory parameters, challenge of dealing with widening, 81
 - settlement, agreed, by regulator and defendant, power of court to set aside, 339, 404
 - whistleblowers, call to come forward from, 82
 - winding up, consultation paper 180, and ASIC's power to wind up abandoned companies, 528-533
 - funding ASIC-initiated winding up, 532-533
 - when ASIC will wind up company, 529-530
- Australian Securities and Investments Commission v Citofresh International Ltd**
 - misleading or deceptive conduct, and provisions in respect of company disclosure, 357
- Australian Securities and Investments Commission v Fortescue Metals Group Ltd**
 - misleading or deceptive conduct, and provisions in respect of company disclosure, 359-560
- Australian Securities and Investments Commission v Healey – see Centro case**
- Australian Securities Exchange (ASX)**
 - ASX Rules 12.9-12.12, 55-60
 - trading policies
 - definition, 55
 - empirical study, 55-60
 - continuous disclosure, guidance note on, 475
 - independent directors, ASX Corporate Governance Principles, 315-318
 - listing rules, and proposal to give ASIC power to regulate, 3
- Barnes v Addy**, 538
- Basel Committee Report**, 293-295
 - Belmont Park Investments v BNY Corporate Trustee Services
 - Australia, in, 263-266
 - factual background, 258-259
 - procedural background, 259-260
 - Supreme Court, decision of, 260-262
 - ipso facto clauses, 257
 - anti-deprivation principle and, 257-258
 - pari passu rule, 256
 - anti-deprivation rules, distinction, 256
 - rule, 254-256
- BE Australia WD Pty Ltd v Sutton**, 188-189

- Bell Group case**, 340, 403
 corporate governance, director's duties and, 534-539
 Court of Appeal decision, 536-537
 factual background, 535
 Owen J, first instance decision of, 535-536
- Belmont Park Investments v BNY Corporate Trustee Services**
 Australia, in, 263-266
 factual background, 258-259
 procedural background, 259-260
 Supreme Court, decision of, 260-262
- Blackmail securities**, 154
- Board of directors**
 Australia, role in, 100-101
 functions, range of, 322
 United States, role in, 101-102
- Business judgment defence**
 auction, statutory rule and duty of target directors to, 502-503
 insolvent trading, for, 25-30
 creditor protection and, 26-28
 diligent management, and promotion of, 29-30
- Business trusts**
 Singapore, registration and regulation in, 397-400
 Business Trusts Act, provisions of, 398-399
- Canada**
 fiduciary duties, statutory, in, 222-225
 unsolicited hostile bid, duty of board of directors in context of, 501-502
- Centro case**, 102-107
 accounting standards
 knowledge of, 104-105
 legal framework and, 103-104
 AASB 101 and 110, 103
 Corporations Act, 103
 audit committee, uniform directors' duties and, 97-98
 auditors, and role of, 107
 content of company accounts
 reliance on others in respect of, 92-97
 statutory constructions and personal liability for, 89-92
 directors' duties in wake of, 83-99, 100-109
 performance of, limits of reliance and, 106-107
 facts, 86-89, 102-103
 Feltex decision, comparison, 107-108
 financial affairs of company, knowledge of, 104
 group of companies, scheme of arrangement to rescue, 5
 impacts of, 108-109
 liability judgment, 104-107
 concerns from, 83-84
 penalty judgment, 84-85
 responses to, 108-109
- China**
 independent directors under corporate governance regime, 455-458, 465-470
- Class actions**
 misleading or deceptive conduct, enforcement of company disclosure matters by, 360
- Conflicts of interest**
 managing, 228-231
 superannuation, for retail managed funds and related entities, 308-309
- Consumer credit**
 entry to market, restricting, 160
 licensing regime, 160
 loans, small and regulation of
 existing protections, 152
 Uniform Consumer Credit Code avoidance, 153
 participants in market, monitoring, 160
- Continuous disclosure** – *see* **Disclosure**
- Corporate governance**
 China, independent directors under corporate governance regime, 455-458, 465-470
 concept of, 441-442
 convergence and divergence, debate on, 453
 directors
 duties and, 534-539
 requirements, as expansion of, 441
 India, independent directors under corporate governance regime, 455-458, 465-470
 policies, and AFL's use of, 442-443

Corporations and Markets Advisory Committee (CAMAC)

Personal liability for Corporate Fraud, report on, 340

Council of Financial Regulators (CFR)

stock exchange listing rules, and proposal to give ASIC power to regulate, 3

Credit

securitisation, credit enhancement measures as component of, 291-293

Credit rating agencies

securitisation, and problems with, 289-290

Creditors

definition, 147

insolvent trading liability, protection of creditors as policy objective of duty, 9-10

business judgment defence and creditor protection, 26-28

voluntary administration, creditor protection as focus of, 21

protection, leximetric analysis of evolution of, 366-390

contract rights, creditor, 375-376

insolvency index, 376-377

debtor activities, restrictions on, 373-375

index, 388-90

shareholder protection, correlation with, 378-382

Damages

mortgage securities, for negligent valuation of, 476-492

alternative loan opportunities, and evidence of, 487

contingencies, assessing, 486-487

conventional approach, 491

high interest rates, 487-488

loss of opportunity, award of damages for, 484-485

measure of loss, 485-486

no transaction cases, 477-480

proof of loss, 485-486

Defences

business judgment defence, for insolvent trading, 25-30

creditor protection and, 26-28

diligent management, and promotion of, 29-30

insolvent trading liability, statutory defences, 11-17

threshold of, 17

Diligence

insolvent trading liability and promotion of managerial, 10-11

business judgment defence and, 29-30

voluntary administration and, 24

Directors

AFL Ltd, of not-for-profit company limited by guarantee, 436-437

contractors, requirement to have regard to interests of, 446

corporate social responsibility and, 444-446

creditors, requirement to have regard to interests of, 444

duties

AFL Commission in context of, 435-441

common law principles, under, 424-426

corporate governance and, 534-539

equitable principles, under, 424-426

not-for-profit directors, 429-433

shareholders' register, expansion beyond, 443-446

standing to allege breach, 446-450

statutory, 426-429

to whom owed, 437-438

what are, 424-435

employees, requirement to have regard to interests of, 446

trustees, directors as, 435

board – *see* **Board of directors**

compliance, as core duty of, 324-326

duties

AFL Commission in context of, 435-441

cases, major, dealing with, 147

Centro case, in wake of, 83-99, 100-109

performance of, limits of reliance and, 106-107

common law principles, under, 424-426

core duties, 322-328

equitable principles, under, 424-426

not-for-profit directors, 429-433

shareholders' register, expansion beyond, 443-446

standing to allege breach, 446-450

statutory, 426-429

- to whom owed, 437-438
- what are, 424-435
- independent, 315-320
 - ASX Corporate Governance Principles, 315-318
 - China, independent directors under corporate governance regime, 455-458, 465-470
 - choice of, 332-334
 - commitment balance, as core attribute, 464-462
 - company's environment and, 334-335
 - core attributes, 458-465
 - Corporations Act, 318-320
 - expertise, as core attribute, 462-463
 - financial value, 320
 - independence, as core attribute, 461-462
 - India, independent directors under corporate governance regime, 455-458, 465-470
 - motivation, as core attribute, 463-464
 - regulation, necessity for, 313-314
 - role and value, 312-336
 - utilisation, issues impacting on effective, 328-332
- insolvent trading liability, protection from – *see* **Insolvent trading liability**
- lapsed corporate opportunities, power to pursue, 4
- monitoring company performance, as core duty of, 326-327
- sleeping, liability for insolvent trading, 11-12
- strategy formulation, as core duty of, 327-326
- strict liability regimes, for failure to account for superannuation levies, 4
- Disclosure**
 - class actions, enforcement of company disclosure matters by, 360
 - continuous, 145, 473-474
 - ASX's guidance note on, 475
 - misleading or deceptive conduct provisions, relationship with, 342-343
 - misleading or deceptive conduct and company – *see* **Misleading or deceptive conduct**
- Dispute resolution schemes**
 - small loans, to provide consumer remedies, 160-162
- Due care and diligence**
 - misleading or deceptive conduct provisions, relationship with, 342-343
- Employee entitlements**
 - liquidation of companies for benefit of, 528-529
 - voluntary administration, and protection of, 147, 170-187
 - data, 180-182
- Enforcement**
 - misleading or deceptive conduct, of disclosure-related, 355-360
- England**
 - fiduciary duties, statutory, in, 222-225
 - unsolicited hostile bid, duty of board of directors in context of, 500-501
- Enhancements Bill**
 - introduction of, 149, 162-164
 - Parliamentary Reports of Inquiry into, 168
- Fairness**
 - lending, in, 5
- Feltex decision**
 - Centro case, comparison, 107-108
- Fiduciary duty**
 - Australia, statutory fiduciary duties in, 222-225
 - Canada, statutory fiduciary duties in, 222-225
 - England, statutory fiduciary duties in, 222-225
 - financial services licensees, Ripoll Committee recommendation for statutory duty, 216-239
 - ASIC submissions to Committee, 220-221, 238
 - government's response to Report, assessment of, 235-238
 - product issuers, role of adviser and salesperson, 225-227
 - Report of Committee, 221-222
 - response to Report, 231-235
 - Treasury submissions to Committee, 220-221, 238
 - United States, history of statutory fiduciary duties, 222-225
- Finance theory**
 - valuation, financial theory of
 - capital and income, separation of, 482-484
 - loss, definition in finance theory, 481-482
 - overview, 480-481

Financial advice

conflicted remuneration, ban on, 245-248
ongoing fee arrangements, 248
reforms, future of, 240-252
regulation, in Australia and United States, 227-228
"appropriate advice" rule, 242-244
disclosure obligations, 244
licensing, 242

Financial Reporting Panel, 510-527

accounting disputes, resolution at low cost by, 519-520
ASIC referrals to, 519-520
closure of, 522-525
commencement of operations, 516-519
establishment, 513-516
government discussion paper on future of, 522-525
independent review body, as, 510
regulatory framework, 510-513
retention, reasons for, 526-527

Financial services

misleading or deceptive conduct involving
provision of, 362

Fortescue Metals Group Ltd case

misleading or deceptive conduct, and provisions
in respect of company disclosure, 359-360,
473-474

Fraser v NRMA Holdings

misleading or deceptive conduct, and principles
in respect of company disclosure, 355

Future of Financial Advice

ASIC, and increasing powers vested in, 3
best interests obligations, 249-252
Bills 2011, 147, 240-252
commencement, 241
ongoing fee arrangements, 248
reforms, 240-252

**General Employee Entitlements and
Redundancy Scheme (GEERS)**, 528

voluntary administration
decline in popularity and, 175-177
options for reform and, 184

Gladstone Pacific 02

rights issues, 410-412, 416-419

Global Financial Crisis

instability, continuing, in wake of, 7

**GPG (Australia Trading) Pty Ltd v GIO
Australia Holdings Ltd**

misleading or deceptive conduct, and principles
in respect of company disclosure, 356

Hong Kong

independent directors under corporate governance
regime, 465-470
insider trading in, 6, 70-78
District Court decision in respect of, 6, 70-78
Securities and Futures Commission,
regulatory powers, 74-77

Illness

insolvent trading liability, as statutory defence,
14-15

Income tax

non-profit sporting organisations, income tax
exemptions for, 433-434

Independent financial advisers

common law, liability at, 43-45
related party transactions, opinions for, in
Singapore, 32-53
Securities and Futures Act, liability under, 45-47
shareholders actions against, where reliance on
misleading opinions, 52-53
principal-agent relationship and, 52
Securities and Futures Act, civil liability
regime under, 52-53
Singapore, opinions for public takeovers and
related party transactions in, 32-53
code of conduct, suggestion of reform by
introduction of, 49-51
conflicts of interest between adviser and
company, perceived, 33
reasonableness of assumptions, judicial review
of, 51-52
valuation methodologies, judicial review of,
51-52
takeovers, opinions for public, in Singapore, 32-53

-
- bias, inherent, effect, 32-53
 - discretion over choice methodologies, effect, 33, 40-41
 - enforcement measures for shareholders, lack of private, 43-47
 - equivocal independent adviser conclusions, 39-40
 - fair and reasonable test, opinions departing from, 33
 - independence, regulation of, 41-43
 - market practice, 35-36
 - objective standards, lack of, 39-40
 - problems with, 38-47
 - Takeover Code, effect of breach, 34-35
 - verification, lack of independent, 40
- India**
- independent directors under corporate governance regime, 455-458, 465-470
- Information**
- insolvent trading liability, reliance on information provided by others as statutory defence, 12-14
- Infringement notices**
- ASIC, power to issue, 3, 145-147, 473
 - Australian Competition and Consumer Commission, power to issue for breaches of consumer law, 3, 145-147
 - Leighton, issue against, 145, 473
 - regime, criticism of, 145
- Inquiry into the Collapse of Trio Capital**
- APRA, criticism by, 211
 - ASIC, criticism by, 211
- Insider trading**
- Hong Kong, in, 6, 70-78
 - District Court decision in respect of, 6, 70-78
 - Securities and Futures Commission, regulatory powers, 74-77
- Insolvency**
- corporate
 - claim, and circumstances giving rise to, 188-190
 - BE Australia WD Pty Ltd v Sutton, 188-189
 - Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd, 189-190
 - consultation paper 180, and ASIC's power to wind up abandoned companies, 528-533
- Insolvent trading liability**
- breach of duty, elements to establish, 7-8
 - business judgment defence, for insolvent trading, 25-30
 - creditor protection and, 26-28
 - diligent management, and promotion of, 29-30
 - company administration as means of protection from, 21-25
 - creditor protection as focus of, 21
 - diligent management, and promotion of, 24
 - ipso facto clauses, and issue of, 23
 - rehabilitation clauses of companies after, 23
 - value-destroying nature, of voluntary administration, 22-25
 - consequences, potential, of, 7-11
 - core components of, 7-11
 - creditors, protection of, as policy objective of duty, 9-10
 - defences, statutory, 11-17
 - threshold of, 17
 - directors, protection from, 7-31
 - discretionary relief from, 17-20
 - acting honestly, requirement for, 17-18
 - reasonability, and notions of, 19
 - unjust or oppressive relief from liability where, 18-19
 - illness, as statutory defence, 14-15
 - information provided by others, reliance on, as statutory defence, 12-14
 - Kleenmaid directors, criminal proceedings brought by ASIC against, 81
 - managerial diligence, promotion of, as policy objective of duty, 10-11
 - permanent non-participation in management, as statutory defence, 11-12
 - policy objectives, of duty to avoid insolvent trading, 7-11
 - sleeping directors, liability of, 11-12
 - solvency, reasonable grounds to expect, as statutory defence, 11-12
 - steps, reasonable, to prevent incurring debts, as statutory defence, 15-17
 - voluntary administration as means of protection from, 21-25
 - creditor protection as focus of, 21
 - diligent management, and promotion of, 24
 - ipso facto clauses, and issue of, 23

Index

- rehabilitation clauses of companies after, 23
- value-destroying nature of, 22-25
- workouts, contractual, and business judgment defence, 25-30
- creditor protection and, 26-28
- diligent management, and promotion of, 29-30
- Ipsso facto clauses**, 257
 - anti-deprivation principle and, 257-258
 - voluntary administration and, 23
- Islamic finance law**
 - Sukuk structures, 61-69
 - legal infrastructure of
 - Islamic law, 6
 - sukuk al-ijarah structure, 65-67
 - fixed income security, similarity to, 68
 - sukuk al-murabaha structure, 67-68
 - short-term note, as, 69
 - sukuk al-musharaka structure, 61-64
 - bankruptcy remoteness of special purpose vehicle (SPV), 61-62
 - shares, similarity to, 68
- James Hardie litigation**, 211-213
 - misleading or deceptive conduct, company disclosure and, 357-359
- Larkden Pty Ltd v Lloyd Energy Systems Pty Ltd**, 189-190
- Lending**
 - fairness in, 5
- Leverage**
 - securitisation, determining appropriate level of, 293
- Leximetric analysis**
 - creditor protection, of evolution of, 366-390
 - limitations of, 367-369
 - methodology of, 367-369
 - shareholder protection, of evolution of, 366-390
- Liquidation**
 - voluntary administration, position of employees and, 182-184
- Listing rules**
 - ASX Rules 12.9-12.12, 55-60
 - allowed trading window, empirical study of, 58
 - background to introduction of, 56-57
 - blackout periods, empirical study of, 59
 - specific trading policies, empirical study of, 60
 - trading policies
 - definition, 55
 - empirical study, 55-60
- Loans**
 - blackmail securities, 154
 - consumer credit, and regulation of
 - existing protections, 152
 - Uniform Consumer Credit Code avoidance, 153
 - responsible lending requirements, 154-156
 - small, regulating cost of, 147, 149-169
 - consumer needs, meeting, 166
 - dispute resolution schemes to provide consumer remedies, 160-162
 - Enhancements Bill
 - introduction of, 149, 162-164
 - Parliamentary Reports of Inquiry into, 168
 - new national proposals, background to, 150-152
 - small claims procedures to provide access to justice, 160-162
 - unconscionable conduct, prohibition in Australian Securities and Investments Commission Act, 158-159
 - unfair contract terms, prohibition in Australian Securities and Investments Commission Act, 159
 - unfair practices in respect of, 154
 - unjust transactions, 156-158
- Loss assessment**
 - models of, 488-490
 - elementary model of, 488-490
- Managed investment schemes**
 - amount invested in Australian, 391
 - cases concerning, 395-397
 - Managed Investments Bill 1997, 392-393
 - regulators and, 393-395
 - Singapore, registration and regulation of business trusts in, 397-400
 - Business Trusts Act, provisions of, 398-399

-
- unit trusts, distinction, 391
 - Misleading or deceptive conduct**
 - Australian Consumer Law, regulation by s 18, 344
 - contravention, award of compensation for, 348-350
 - nature and scope of provision, 344-348
 - Australian Securities and Investments Commission v Citrofresh International Ltd, 357
 - Australian Securities and Investments Commission v Fortescue Metals Group Ltd, 359-360
 - class actions, enforcement of company disclosure matters by, 360
 - company and securities legislation, provisions concerning, 342-365
 - continuous disclosure provisions, relationship with, 342-343
 - due care and diligence provisions, relationship with, 342-343
 - definition, 345-346
 - empirical research, on company disclosure, 350-353, 364
 - enforcement, disclosure-related, 355-360
 - financial services, involving provision of, 362
 - Fraser v NRMA Holdings and principles in respect of company disclosure, 355
 - GPG (Australia Trading) Pty Ltd v GIO Australia Holdings Ltd, 356
 - James Hardie Industries NV v Australian Securities and Investments Commission, 357-359
 - National Exchange Pty Ltd v Australian Securities and Investments Commission and principles in respect of company disclosure, 355-356
 - policy guidance, Australian, on company disclosure, 353-355
 - trade or commerce, application to conduct in, 347-348
 - Trade Practices Act 1974, regulation by s 52, 344
 - contravention, award of compensation for, 348-350
 - nature and scope of provision, 344-348
 - Multiplex Prime decisions**
 - rights issues, dilutive, 408-410, 416-419
 - National Exchange Pty Ltd v Australian Securities and Investments Commission**
 - misleading or deceptive conduct, and principles in respect of company disclosure, 355-356
 - Negligence**
 - mortgage securities, damages for negligent valuation of, 476-492
 - alternative loan opportunities, and evidence of, 487
 - contingencies, assessing, 486-487
 - conventional approach, 491
 - high interest rates, 487-488
 - loss of opportunity, award of damages for, 484-485
 - measure of loss, 485-486
 - no transaction cases, 477-480
 - proof of loss, 485-486
 - New Zealand**
 - finance company failures in, 110, 138
 - legislative response following, 124-125
 - related party transactions in, 82, 110-142
 - Storm Financial Ltd, collapse of, 110-111
 - Not-for-profit organisations**
 - AFL Ltd – *see* **Australian Football League Ltd (AFL Ltd)**
 - duties, of not-for-profit directors, 429-433
 - sporting organisations, income tax exemptions for, 433-434
 - Pari passu rule**, 256
 - anti-deprivation rules, distinction, 256
 - Phoenix companies**
 - ASIC, powers to attack, 3, 272
 - employee entitlements, Phoenixing Act and, 528
 - Public interest**
 - lending of money by companies, and, 5
 - Quorum**
 - lack of, application of s 392, Singapore Companies Act, 204-207
 - injustice, and substantial, 205-206
 - procedural irregularity, lack of quorum as, 206-207
-

Related party transactions

- conflict of interest theory about underlying nature of, 112-114
- corporate governance, and implications for, 114-116
- definition, 111-116
- disclosures, examples of, 139-140
- efficient transactions theory about underlying nature of, 112-114
- financial advisers' opinions for, in Singapore, 32-53
- law, and, 116-125
- New Zealand, in, 82, 110-142
 - Companies Act 1993, application of, 121-124
 - Corporations Act 2001, application of, 121-124
 - disclosure regime, 116-117
 - empirical study concerning, 125-136
 - law, and, 116-125
 - reporting requirements, 117-121

Reverse merger transactions

- advantages, 198-199
- Chinese
 - key issues in, 199-200
 - litigation, enforcement and, 200-202
- definition, 198

Rights issues

- control of company, and impact on, 405
- funding and takeover provisions in Corporations Act, conflict between operation of, 406
- Gladstone Pacific 02, 410-412, 416-419
- guidance note on, 412-416
- highly dilutive, 405-419
- Multiplex Prime decisions, 408-410, 416-419
- takeover prohibition, exceptions to, 406-407

Ripoll Committee

- financial services licensees, recommendation for statutory fiduciary duty, 216-239
 - ASIC submissions to Committee, 220-221, 238
 - government's response to Report, assessment of, 235-238
 - product issuers, role of adviser and salesperson, 225-227
 - Report of Committee, 221-222
 - response to Report, 231-235
 - Treasury submissions to Committee, 220-221, 238

Scheme of arrangement

- change of corporate control by, 195-197

Securities regulation

- economic theory underlying, 494-495
- takeover, role in, 495-496

Securitisation

- credit enhancement measures, as component of, 291-293
- credit rating agencies, and problems with, 289-290
- definition, 276-278
- leverage, determining appropriate level of, 293
- market, recent evolution of, 274-275
- risks, basic, 275-276
- whole-business
 - Australia, recent legislative developments, 281-282
 - Basel Committee Report, 293-195
 - contract, 290-191
 - current trends and, 295-196
 - evolution in structure, 290
 - firms suitable for, structural aspects of, 284-185
 - legislative provisions impacting, 280
 - liquidity issues, market scepticism and, 288
 - markets and, 283-184
 - ratings, interaction between, 287
 - structural aspects, 286
 - originators' credit risks, interaction between securitisation issues and, 285
 - post-financial crisis context, in, 274-296
 - risk retention requirements, 293-295
 - secured loan, distinction from true sale, 279-280
 - structure, 279
 - United Kingdom, recent legislative developments, 281-282

Settlement

- agreed, by ASIC and defendant, power of court to set aside, 339, 404

Shafron decision, 213-214

Shareholder protection

- creditor protection, correlation with, 378-382
- expropriation by boards of directors, against forms of, 369-371
- index, 383-387
- leximetric analysis of evolution of, 366-390

other shareholders, against, 371-372

Singapore

business trusts, registration and regulation in, 397-400
 Business Trusts Act, provisions of, 398-399
 financial advisers' opinions for public takeovers and related party transactions in, 32-53
 code of conduct, suggestion of reform by introduction of, 49-51
 conflicts of interest between adviser and company, perceived, 33
 reasonableness of assumptions, judicial review of, 51-52
 valuation methodologies, judicial review of, 51-52
 quorum, application of s 392, Singapore Companies Act to lack of, 204-207
 injustice, and substantial, 205-206
 procedural irregularity, lack of quorum as, 206-207

Solvency

reasonable grounds to expect, as statutory defence to insolvent trading liability, 11-12

Stock exchange

listing rules, and proposal to give ASIC power to regulate, 3

Sukuk structures, 61-69

legal infrastructure of
 Islamic law, 6
 sukuk al-ijarah structure, 65-67
 fixed income security, similarity to, 68
 sukuk al-murabaha structure, 67-68
 short-term note, as, 69
 sukuk al-musharaka structure, 61-64
 bankruptcy remoteness of special purpose vehicle (SPV), 61-62
 shares, similarity to, 68

Superannuation industry

Australia, superannuation in, 298
 beneficiaries
 best interests
 general duty to act in, 300-301
 statutory duty to act in, 301-303
 who are, 304
 increasing powers vested in ASIC, concerns about, 3

retail managed funds and related entities, conflicts of interest for, 308-309
 Stronger Super reforms, proposed, 297, 309-310
 trustee company directors, duties of, 307-308
 trustees, 297-311
 member choice, impact on duties, 305-306
 trusts
 traditional trusts, as, 298-300

Takeovers

auction
 Revlon duty, 496-498
 Revlon event, 498
 target directors, duty to, 493-509
 Chinese reverse, potential fraud in, 147
 creeping acquisitions rule, debate on need for review, 271
 financial advisers' opinions for public, in Singapore, 32-53
 bias, inherent, effect, 32-53
 discretion over choice methodologies, effect, 33, 40-41
 enforcement measures for shareholders, lack of private, 43-47
 equivocal independent adviser conclusions, 39-40
 fair and reasonable test, opinions departing from, 33
 independence, regulation of, 41-43
 market practice, 35-36
 objective standards, lack of, 39-40
 problems with, 38-47
 Takeover Code, effect of breach, 34-35
 schemes of arrangement, and duty to auction, 507-508
 securities regulation, role in, 495-496
 Takeover Code
 breach, effect of, 34-35
 review, debate on need for, 271
 target directors, duty to auction, 493-509
 unsolicited hostile bid, duty of board of directors in context of, 498-507
 Australian position, 499-500
 Canada, position in, 501-502
 England, position in, 500-501

Takeovers Panel, 191-192

auction, and duty to, 503-507
 policy issues, recent, 192-194

- procedural changes, recent, 194-195
- roadshow presentations by, 147, 191-195
- Trade Practices Act 1974**
 - misleading or deceptive conduct, regulation by s 52, 344
 - contravention, award of compensation for, 348-350
 - nature and scope of provision, 344-348
- Trading policies**
 - ASX Rules 12.9-12.12, 55-60
 - definition, 55
 - empirical study, 55-60
- Trustee company**
 - directors, duties of, 307-308
- Trusts**
 - Singapore, registration and regulation of business trusts in, 397-400
 - Business Trusts Act, provisions of, 398-399
 - trustees of superannuation trusts, 297-311
 - member choice, impact on duties, 305-306
 - traditional trusts, as, 298-300
 - unit trusts, distinction from managed, 391
- Unconscionable conduct**
 - Australian Securities and Investments Commission Act, prohibition in, 158-159
- Unfair contract terms**
 - Australian Securities and Investments Commission Act, prohibition in, 159
- Unfair preference**
 - cases, recent in respect of, 340
- Unit trusts**
 - managed investment schemes, distinction, 391
- United States**
 - board of directors, role in, 101-102
 - fiduciary duties, statutory, in, 222-225
 - financial advice regulation in, 227-228
- Valuation**
 - financial theory of
 - capital and income, separation of, 482-484
 - loss, definition in finance theory, 481-482
 - overview, 480-481
 - mortgage securities, damages for negligent valuation of, 476-492
 - no transaction cases, 477-480
- Voluntary administration**
 - ACL/National Parts, of, 172-173
 - Ansett, of, 172-173
 - cost of, 187
 - effectiveness, data on, 173-175
 - employee entitlements, and protection of, 147, 170-187
 - data, 180-182
 - General Employee Entitlements and Redundancy Scheme (GEERS)
 - decline in popularity of voluntary administration, and, 175-177
 - options for reform and, 184
 - insolvent trading liability, as means of protection from, 21-25
 - creditor protection as focus of, 21
 - diligent management, and promotion of, 24
 - ipso facto clauses, and issue of, 23
 - rehabilitation clauses of companies after, 23
 - value-destroying nature, of voluntary administration, 22-25
 - issues with, 177-179
 - large companies and groups, for, 185-186
 - liability, as haven against, 177
 - liquidation, position of employees and, 182-184
 - objectives of, 170-172
 - pooling in, availability of, 179-180
 - popularity, decline in, 175-180
 - safe havens, options for reform and, 184
 - scoundrels, as refuge for, 186
 - usage, data on, 173-175
- Winding up**
 - Consultation Paper 180, and ASIC's power to wind up abandoned companies, 528-533
 - funding ASIC-initiated winding up, 532-533
 - when ASIC will wind up company, 529-530
 - reinstatement, of deregistered companies, 530-532
- Workouts**
 - contractual, insolvent trading liability and business judgment defence, 25-30
 - creditor protection and, 26-28
 - diligent management, and promotion of, 29-30