
Index

Accountability

public companies, 143

Acquisitions

contingent value rights, 116-117, 118-119
Charter Hall REIT, 116-117
Wesfarmers/Coles, 118-119
creeping, 401

Administrative Appeals Tribunal

review of banning orders, 357-362

Annual general meetings

business of meeting, 171
chair, role of, 171-172
changing nature of, 169
company briefings, 180-187
continuous disclosure obligations, 182-183
disadvantages and potential problems, 181
efficiency argument, 181
fairness issues, 182
inside information and, 180-181
retail and institutional investors, issues involving, 184
company websites, 176, 178-179
continuous disclosure and, 174-175
frameworks, 187
private briefings, 182-183
corporate communication, and, 168-169
enhancing, 176-187
corporate disclosure, information requirements, 479-481
corporate governance policies and practices, 185
structures, 187-188
duration, 170-171
Engagement Report, 172-173
future directions, 172-175, 176
governance, rules of, 169-170
history, 167, 169-170
international, 179
member meetings, 179-180
periodic reporting, 176, 177
private companies, 188
proxies, 171
public company accountability, 187
purpose, 173, 176
regulation and practice, 170-172
legislative provisions, 170-171
resolutions, 172, 175
procedures relating to, 184
retail investor meetings, 179
technology, 175-176

value of, 167-168

proposals to enhance value, 175-176

virtual meetings, 186-187

voting, 171-172

Annual reports

benefits and feedback, 177

Arbitrage

contingent value rights and, 120-121

Australian Securities and Investments

Commission (ASIC)

banning orders, 219-224
continuing as director following, 223-224
compensation orders, 227
constructive trusts, 228-230
equitable test of causation, 227-228
reforms, suggested, 230
credit licences, 219-224
cancellation, 219-222
granting, 219-222
suspension, 219-222
financial advisers
fiduciary duties, 224-227
statutory duties, 224-227
financial services licences, 219-224
cancellation, 219-222
change in ownership or control, 222-223
granting, 219-222
suspension, 219-222
good fame or character test, 219-220
“involved in a contravention” definition, 221-222
limited resources, 278-279
private interests, 210-211
public interests, 210-211
regulatory objectives, 224-227
regulatory powers, 207, 208-210, 235-236, 341-342
development of, 209-210
inconsistencies, 208-209
reforms, 208, 210, 235-236
retirement savings, 230-231
auditors, role of, 233-234
inconsistent legislation, 231-232
misleading or deceptive conduct, 232
shadow banks, 232-233
statutory compensation fund, 234-235
voluntary informants, 233-234
search warrant powers, 216-218
settlements by, 332-335
court role in dealing with, 332-335

- Ingleby, 332
- superannuation fund management
 - auditors, role of, 233-234
 - inconsistent legislation, 231-232
 - misleading or deceptive conduct, 232
 - shadow banks, 232-233
 - statutory compensation fund, 234-235
 - voluntary informants, 233-234
- telecommunications interception warrants, 211-215
- Australian Securities Exchange (ASX)**
 - Corporate Governance Council, 49
- Banking**
 - “bank runs”, 239
 - contracts for difference, 256
 - covered bonds, 246
 - benefits and advantages, 248
 - responses to risk, 256-260
 - systemic risk and, 246-251
 - government insurance, 259-260
 - review of industry, 401-402
- Banning orders**
 - AAT review, 357-362
 - number of challenges, 358-359
 - outcome of challenges, 359, 360
 - ASIC regulatory powers, 219-222, 341-343
 - prior to amendments, 343-345
 - limitations on discretionary power, 345-349
 - continuing as director following, 223-224
 - Corporations Amendment (Future of Financial Advice) Act 2012 (Cth), 352
 - regime prior to, 343-352
 - s 920A, 353
 - deterrence, 346-347
 - duration prior to amendments, 349-352
 - factors in determining, 351
 - guiding principles, 350-351
 - financial services industry amendments, 342-343, 352-364
 - effectiveness, 362-363
 - new grounds for orders, 353-357
 - involvement in contraventions by other person, 356-357
 - person not adequately trained or competent, 355-356
 - person not of good fame or character, 353-355
 - regime prior to, 343-352
 - non-compliance with financial services law, 361-362
 - protection of public, 345-346
 - punishment, 347-348
- Barnes v Addy**
 - action, deployment of, 316
 - Bell litigation, 311-313
 - breach of fiduciary duty, 314-316
 - facts of case, 308-309
 - knowing assistance, 307, 309
 - dishonest and fraudulent design, 314
 - knowing receipt, 307, 309
 - test of knowledge, 313-314
 - liability under, 307
 - scope, 313-316
 - modern commercial cases, 309-310
 - Consul Development, 309
 - Farah Constructions, 309-310
- Beck v Weinstock**
 - background, 458-461
 - High Court decision, 464-465
 - implications, 465-467
 - preference shares, redeemable
 - nature of, 457
 - statutory framework for redemption, 462-464
- Bell Group**
 - bona fide rule, 424-426
 - directors’ duties and corporate governance, 270-271, 402, 472
 - fiduciary duty, 406-408
 - litigation, 402
- Bid rigging**, 320-321
- Billabong**
 - background, 532-533
 - recapitalisation proposals, 531-534
 - competing proposals, 533-534
 - overview, 531
- Board of directors**
 - board committees, 49-55
 - audit committee, 49
 - Australian Securities Exchange (ASX) Principles, 49
 - financial reporting integrity, 49
 - independence, 50
 - initial public offering (IPO) companies, 50-55
 - nomination committee, 49
 - remuneration committee, 49
 - executive remuneration, 148-149
 - board autonomy, 162-163
 - Hong Kong Corporate Governance Code, 63
 - composition of board, 64
 - investment corporation, 31-32
 - open-ended investment company (OEIC), 35-36

Bonds

- benefits and advantages, 248
- systemic risk and, 246-251
- responses to risk, 256-260

Breach of fiduciary duty

- accessorial liability and, 518-520
- assumption of responsibility test, 525-527
- knowing assistance, 527-530
- torts, 522-524
- banning orders, 219-224
- continuing as director following, 223-224
- compensation orders, 227
- constructive trusts, 228-230
- equitable test of causation, 227-228
- reforms, suggested, 230
- conflict of interest, 431-432
- exemptions, 412-421
- knowing assistance to breach of duty, 527-530

Cadbury Report

- corporate governance, 172

Centrebet/Sportingbet merger

- contingent value rights, 115-116

Chair

- role of, 171-172

Charter Hall REIT acquisition

- contingent value rights, 116-117

China

- Corporate Law, 383, 384
- fiduciary duties of directors, 383-387
- effectiveness of legislation, 385-386
- enforcement by courts, 387-395
- courts' attitudes toward shareholder protection, 392-395
- implementation of fiduciary duties, 390-392
- judges' decisions, lack of flexibility, 388-390
- pattern of cases, 387-388
- sources of data, 387, 396-398
- United States corporate law, 383-384

Communication

- annual general meetings – *see* **Annual general meetings**
- corporate disclosure – *see* **Corporate disclosure**
- private companies, 188
- public companies, 143
- benefits, 187-188

Companies

- crowd funding, 99-101
- disclosure requirements, 100
- types, 99-100

Compensation

- statutory fund, 234-235

Compensation orders

- constructive trusts, 228-230
- equitable test of causation, 227-228
- reforms, suggested, 230

Compliance

- corporate, 73-74

Conflicts of interest

- avoidance of, 283, 293
- breaches, 431-432
- consideration and investigation requirements, 432-433
- fiduciary duty and, 405-406
- financial advice, 263-264
- general law duties, 426-428
- overarching nature of rule, 430-431
- sphere of operation, 433
- statute and general law, distinguished, 403, 428
- third parties, conferral of benefits on, 433-435

Constructive trusts

- compensation orders, 228-230
- reforms, suggested, 230

Contingent value rights

- applications, further, 121-122
- disadvantages, 120-121
- financial performance-linked, 111, 113-114
- hybrid, 111-112
- limitations on use, 120-121
- nature and purpose, 111-112
- overview, 111
- price protection, 111, 117-119
- recent Australian transactions, 112-113
- specific event, 111, 114-116
- "tracker", 111

Continuous disclosure – *see also* Corporate disclosure

- AGM, and, 174-175
- ASIC infringement notice regime, 207
- regulatory requirements, 477-479

Contracts for difference

- leveraged loss, 252-253
- nature of, 252
- regulatory reform, 254
- systemic risk and, 251-256
- responses to risk, 256-260

Co-operatives

- access to capital, 48
- Australian
- current economic role, 124-125
- early history, 123-124
- future prospects, 130

- legal framework, 126-128
 - autonomy and independence, 44-45
 - characteristics, 42-43
 - concern for community, 45
 - co-operation among co-operatives, 45
 - Co-operatives (Adoption of National Law) Act 2012 (NSW), 40-41
 - definitions, 42-43
 - education, training and information, 45
 - finance, raising, 128
 - equity financing, 129
 - foreign, 128
 - future prospects, 130
 - international principles, 43-45
 - legal framework, 126-128
 - core principles, 126-127
 - shortcomings, 128
 - limitations in Australia, 40
 - member economic participation, 44, 126-127
 - National Law, 123, 128-129
 - origins, 41-42, 123-124
 - role
 - Australian economy, 124-125
 - international economy, 45-46
 - strengths and limitations, 46-48
 - structure, 40
 - third sector component, 46
 - types, 126
 - uniform Co-operatives National Law, 40, 43, 48
 - United Kingdom, 41
 - voluntary and open membership, 44
- Corporate disclosure**
 - civil penalties, 505-506
 - continuous – *see* **Continuous disclosure**
 - crowd funding, requirements
 - Australia, 93-103
 - Europe, 103
 - United States, 104
 - “end run” question, 502-505, 510
 - financial reporting, 476-477
 - James Hardie decision, 474-475
 - mandatory disclosure, 476-484
 - negligence, and, 497-498
 - members’ meetings, information requirements, 479-481
 - officers’ liability, 484, 509-510
 - accessorial criminal liability, 488-489, 511-530
 - civil penalty liability, 501-506
 - direct contraventions, 485-486
 - duty of care, 494-497, 498-500
 - forms of liability, 486-487
 - involvement, nature of, 488, 489, 492-494
 - “matters in controversy”, 490-492
 - Yorke v Lucas, application, 490
 - judicial bases, 484-485
 - knowledge, 500-501, 514-515, 527-530
 - negligence, 494-500
 - reasonable steps requirement, 497
 - reforms, 506-507
 - sanctions, imposition of, 507-509
 - status-based liability, 486
 - product disclosure statements, 481-482
 - securities issues, 481-482
 - statutory prohibitions on information failures, 483-484
 - takeovers regulation, 481-482
- Corporate governance**
 - annual general meetings, 185
 - Cadbury report, 172
 - case law, 143-144
 - Code, 173
 - contestability of management decisions, 293-294
 - directors’ duties and, 49-55, 270-271
 - executive remuneration, 145-155
 - failure, 153
 - framework, 154-155
 - Hong Kong, updated code, 62-70
 - international standards, 154
 - mechanisms, 147-151
 - failure, 153
 - models, 143
- Corporate social responsibility**
 - directors, duties of, 472
- Corporations**
 - closely-held, 279-280, 294
 - executives below board level – *see* **Officer**
 - investment corporations – *see* **Investment management markets**
 - officer, what constitutes – *see* **Officer**
- Corporations Act**
 - effectiveness of regulatory scheme, 365-377
 - financial services regulation, 207
 - information in the context of insider trading, 196-198, 202-203
- Corporations and Markets Advisory Committee (CAMAC)**
 - public company communications, 143
- Costs**
 - legal, interpretation, 447
 - restriction on indemnities, 446-447

Covered bonds

- benefits and advantages, 248
- systemic risk and, 246-251
- responses to risk, 256-260

Credit licences

- ASIC regulatory powers, 219-224
- cancellation, 219-222
- granting, 219-222
- suspension, 219-222
- good fame or character test, 219-220

Creditors

- bondholders, 79
- crowd funding, and, 101-102
- duties of directors, 76-88
 - Bell litigation, 311-316, 402, 406, 424-426, 472
- interests, consideration of, 80-81
- "loan to own" investors, 81
- nature of, 78-81
- trade creditors, 79

Cross-border cooperation

- Mutual Assistance and Business Regulation Act 1992, 73

Crowd funding

- adaptability, 106
- administration, effective, 106
- Australian law, accommodation within, 93-94, 102
- companies, 99-101
- data collection, 103
- disclosure requirements
 - Australia, 93-103
 - Europe, 103
 - United States, 104
- entrepreneurs, encouraging, 105-106
- Europe, regulation in, 103
- false and misleading representations, 101
- financial services, 98-99
- fundraising, 96-97
- image and reputation, 103
- insolvency rules, 101-102
- international competition, 102-103
- managed investment schemes, 94-96
- nature of, 89-90, 92
- regulation of, 92-93
 - Australia, 93-103, 106-107
 - Europe, 103
 - objectives, 105-106
 - United States, 104-105, 107-110
- transaction costs, minimising, 103
- types, 91
- United States, regulation in, 104-105
 - Securities Act 1933, exemptions, 107-110

Data collection

- crowd funding, regulation of, 103

Directors

- assumption of responsibility test, 525-527
- banning orders, 219-224
- continuing as director following, 223-224
- closely-held corporations, of, 279-280, 294
- concept, 280
- directors' fiduciary obligations, 283-286
- model for analysis, 280
- oppressive conduct, 286-292
- conflicts of interest, 403-404
 - avoidance of, 283, 293
 - fiduciary duty and, 405-406
 - general law duties, 426-428
 - statute and general law, distinguished, 403, 428
- corporate disclosure — *see* **Corporate disclosure**
- corporate governance duties, 270-271
- duty to creditors, 76-88
 - interests, consideration of, 80-81
 - "loan to own" investors, 81
- fiduciary conflicts, 403-404
- fiduciary duty, 278, 281-286, 402, 403, 471-472
 - Australian Securities and Investments Commission v Maxwell, 284-285
 - Australian Securities and Investments Commission v Warrenmang Ltd, 285-286
 - avoidance of conflict of interest, 283, 293
 - Barnes v Addy, 307-310, 316
 - Bell litigation, 311-316, 402, 406, 424-426, 472
 - breach, establishment of, 307-308, 474-475
 - case law, 408-409
 - China, 383-395
 - closely-held corporations, in, 283-286
 - equitable remedies for participation in breach, 307-316
 - exemption from breaches, 412-421
 - good faith and, 406, 423-436
 - history, 404-406
 - modern formulation, 281-282
 - nature of duty, 404-405
 - non-fiduciary duty, distinguished, 407-408, 421-422
 - oppression, interaction, 278, 289-292
 - case studies, 289-292
 - derivative action role, 292
 - origins, 281
 - profit principle, 409-412
 - prophylactic nature, 278, 281, 282-283
 - regulation of corporate wrongdoing, 292-293

- shareholder, company and directors relationship, 284-286
- shareholders, to, 286
- statute, interaction with, 409-421
- what is, 314-315
- innocent director dilemma, 444-445
- liability-sanction relationship, 365-366, 375-376
- Australian Securities and Investments Commission v Healey (No 2), 367-368, 372-375
- corporate regulatory environment, 366-367, 376-377
- deterrence, 368, 372
 - relevance, 368-371
 - usefulness, 372
- protection for, 401
- third party liability, 407
- torts, 522-524
- workplace health and safety legislation, and, 437-456
- wrongful conduct, addressing, 278-279
- Duty**
 - breach by officer, 6-7
 - directors – *see* **Directors**
 - statutory, 17-18
 - unit trusts, 28-30
- Energy industry**
 - contingent value rights and, 121
- Engagement**
 - public companies, 143
- Equitable test of causation**
 - compensation orders, 228-230
 - reforms, suggested, 230
- Evidence**
 - search warrants – *see* **Search warrants**
 - telecommunications interception *see* – **Telecommunications interception warrants**
- Executive remuneration**
 - board of directors, role, 148-149
 - autonomy, 162-163
 - capping, 155
 - incentive pay, 157
 - loss of talent, and, 157-159
 - market-friendly cap, 155-157
 - market summary, 160
 - corporate governance, 145-155
 - failure, 153
 - framework, 154-155
 - international standards, 154
 - mechanisms, 147-152
 - requirement for, 146
 - disclosure requirements, 149-151
 - Lake Wobegon effect, 149-151
 - mobility of executives, 158-159
 - loss of talent to international markets, 158-159
 - restrictions, international, 158-159
 - non-binding shareholder vote, 151-152
 - principal-agency framework, 147
 - Productivity Commission recommendations, 145, 160-163
 - conclusions, 163-165
 - reform, 160-163
 - board autonomy, 162-163
 - impact, 163
 - increased disclosure, 162
 - recommendations, 160-163
 - shareholder involvement, 160-161
 - remuneration committees, establishment, 149
 - rents, 148-149
 - review of, 143
 - talent
 - attracting, 150
 - elastic nature of supply, 159
 - market for, 146-147, 152
 - termination payments, 148
- False and misleading representations**
 - crowd funding, 101
- Federal election**
 - corporate law, impact on, 401
- Fiduciary duties**
 - avoidance of conflict of interest, 283, 293
 - breach, establishment of, 307-308
 - civil law countries versus common law countries, 378-379, 381-382, 395
 - directors, of – *see also* **Directors**
 - Chinese law, 383-387
 - effectiveness of legislation, 385-386
 - enforcement by courts, 387-395
 - exemption from breaches, 412-421
 - good faith and, 406, 423-436
 - history, 404-406
 - incomplete contract theory, 381
 - loyalty, 380
 - modern formulation, 281-282
 - nature of duty, 404-405
 - non-fiduciary duty, distinguished, 407-408, 421-422
 - oppression, interaction, 278, 289-292
 - case studies, 289-292
 - derivative action role, 292

- overview, 379-383
- regulation of corporate wrongdoing, 292-293
- shareholder, company and directors relationship, 284-286
- statute, interaction with, 409-421, 471-472
- Financial reporting**
 - corporate disclosure, 476-477
- Financial services**
 - ASIC regulatory powers – *see* **Australian Securities and Investments Commission (ASIC)**
 - Australia, 262
 - best interests and duties to clients, 266-269
 - competence, 264-266
 - conflicts of interest, 263-264
 - crowd funding, 98-99
 - licensing restrictions, 98
 - matching investors and products, 99
 - customer protection, 261
 - fiduciary duties, 224-227, 266-269
 - financial advisers
 - ASIC regulatory objectives, 224-227
 - Australia, reforms, 261-269
 - fiduciary duties, 224-227
 - statutory duties, 224-227
 - United States, reforms, 261-269
 - professionalism, 264-266
 - United States, 262
- Financial services licences**
 - ASIC regulatory powers, 219-224
 - cancellation, 219-222
 - granting, 219-222
 - suspension, 219-222
 - change in ownership or control, 222-223
 - good fame or character test, 219-220
 - licensing restrictions
 - crowd funding, 98
- Financial systems**
 - interconnectedness and systemic risk, 240-241
- Foreign ownership**
 - Australian companies, 401
- Fundraising**
 - crowd funding, 96-97
 - disclosure obligations and, 96-97
- Global financial crisis**
 - insolvent trading, 76
 - systemic risk – *see* **Systemic risk**
- Good faith**
 - Bell litigation, 311-316, 402, 406, 424-426, 472
 - bona fide rule, 424-426
 - conflicts and profits rules, 426-428
 - consideration and investigation requirements, 432-433
 - general law duties, 426-428
 - overarching nature of rule, 430-431
 - relationship to bona fide rule, 431-432
 - sphere of operation, 433
 - statutory duties, 428
 - third parties, conferral of benefits on, 433-435
 - Corporations Act 2001, under, 428-430
 - definition, 445-446
 - fiduciary duty, as, 406, 423
 - innocent director dilemma, 444-445
 - sphere of operation, 433
 - statutory duty, 426
 - conflicts and profits, 428
 - workplace health and safety, in relation to, 445-446
- Higgs Review**, 49
- Hong Kong**
 - Corporate Governance Code, 62-70
 - accountability and audit, 66-67
 - audit committee, 67
 - board composition, 64
 - chairman, 63-64
 - chief executive, 63-64
 - communication with shareholders, 68
 - company secretary, 68-69
 - consultation paper on amendment, 62
 - corporate governance report, 69-70
 - delegation by board, 68
 - directors, 63, 65
 - nomination committee, 64-65
 - remuneration and disclosure, 65-66
 - responsibilities of directors, 65
 - insider dealing, enforcement, 132-133
 - agency, by, 133-135
 - company, by, 135-137
 - court, by, 133-135
 - ethical education and training, 137
 - individual claimants, by, 137-138
 - prevention methods, 135
 - prosecution, 132-133
 - shareholders, by, 138-139
- Indemnities**
 - restrictions on, 443-447
 - common law, under, 451-454
 - exemptions, 452-453
 - legal costs, relating to, 446-447
 - tailoring, 454-455
- Information**
 - confidentiality, 198-199

- Corporations Act, under, 196-198, 202-203
- definition, 191
 - High Court determination, 193
 - ordinary meaning, 193-196
- false, 193, 194
- ownership, 198-199
- Information sharing**
 - Mutual Assistance and Business Regulation Act 1992, 73
- Initial public offering (IPO) companies**
 - ASX board committee requirements, 49-50, 52, 55
 - committee structure and survival status at three phases, 53-54
 - characteristics, 50-51
 - survival status 2008-2011, 52
 - board structure, 52
- Insider trading**
 - case law, 143
 - company briefings and, 180-181
 - elements of offence, 191
 - enforcement (Hong Kong), 132-133
 - agency, by, 133-135
 - company, by, 135-137
 - court, by, 133-135
 - individual claimants, by, 137-138
 - shareholders, by, 138-139
 - ethical education and training, 137
 - “generally available” definition, 191
 - Hong Kong, 131-139
 - “information” definition, 191
 - confidentiality, 198-199
 - Corporations Act, under, 196-198
 - false, 193, 194
 - High Court determination, 193
 - ordinary meaning, 193-196
 - ownership of information and, 198-199
 - “inside information” definition, 191
 - international regulation, 201-202
 - Mansfield’s case, 189, 202-203
 - background, 192-193
 - High Court determination, 193
 - nature of, 189, 190-192
 - prevention methods, 135
 - prohibition, 190-191
 - legislative purpose, 199-201
 - prosecution, 132-133, 189-190
 - telecommunications interception, 211
 - civil penalty proceedings, 213-214
 - criminal proceedings, 213-214
 - evidential material, access to, 212-213
 - investigation difficulties, 212
 - issue of warrant, 211-212
 - proving offences, 212
 - reforms, suggested, 214-215
- Insolvency**
 - crowd funding, 101-102
 - solvent reconstructions, 77
 - benefits, 78, 84-87
 - Centro example, 82-84
 - deed of company arrangement, contrasted, 82
 - duties of directors, and, 86
 - trade creditors and, 79-82
 - Walker v Wimborne doctrine, 76-77, 83-88
 - workouts, benefits of, 78
- Insolvent trading**
 - global financial crisis, and, 76
 - regulatory regime, 73, 76
- Insurance**
 - restrictions on, 443, 447-450
 - common law, under, 451-454
 - exemptions, 452-453
 - relationship between breach and company, 450
 - tailoring, 454-455
 - “wilful breach of duty”, 448-450
- International competition**
 - crowd funding, 102-103
 - insider trading, regulation of, 201-202
- International Co-operative Alliance (ICA), 42, 43**
- International Organization of Securities Commissions (IOSCO)**
 - appointment of new president, 73, 143
 - systemic risk and, 258-259
- International transactions**
 - financial performance-linked contingent value rights, 113-114
- Investment**
 - “loan to own” investors, 76-77, 84-85
 - nature of, 81-82
- Investment management markets**
 - Australia, in, 25
 - growth in sector, 25
 - potential reforms, 37-38
 - unit trust preference, 25
 - choice of fund type, 24
 - corporations
 - advantages of corporate model, 33-34
 - Australian regulatory scheme, 31
 - board of directors, 31-32
 - effectiveness, 32

ownership structures, 32-33
 protective features, 31-33
 voting rights, 32-33
 definition, 24
 duties and obligations to investors, 30
 global, 24-25
 statutory regulations, 30-31
 trust versus corporation as vehicle, 24, 31-35
 advantages of corporate model, 33-34
 choice between, 34-35
 unit trusts, 27-28
 common law, 28-30
 discretionary duties, 29-30
 duty of care, 29
 fiduciary duties 29
 prescriptive duties 29
 trust law, 34
 United Kingdom, 26
 open-ended investment company (OEIC), 35-37, 38-39
 board of directors, 35-36
 expenses and charges, restrictions, 37
 independent depositary, 36-37
 United States, 26-27

Liability

accessorial, 511
 assumption of responsibility test, 525-527
 breach of duty as alternative charge, 518-20
 direct statutory liability, and, 521-522
 “essential matters” what are, 515-518
 imposition, policies underlying, 511-512
 knowing assistance to breach of duty, 527-530
 knowledge, requirement, 514-515
 statutory provisions, 512-514
 torts, 522-524
 corporate disclosure, 484, 509-510
 accessorial criminal liability, 488-489
 direct contraventions, 485-486
 duty of care, 494-497, 498-500
 forms of liability, 486-487
 involvement, nature of, 488, 489, 492-494
 “matters in controversy”, 490-492
 Yorke v Lucas, application, 490
 judicial bases, 484-485
 negligence, 494-500
 reasonable steps requirement, 497
 reforms, 506-507
 sanctions, imposition of, 507-509
 status-based liability, 486
 exemption from breaches, 412-421
 authorisation clauses, 415, 419-421
 “improper” wording, 416-417
 limitation of nature of duties, 419

wording, 415
 indemnities, restrictions on, 443-447
 exemptions, 452-453
 tailoring, 454-455
 innocent director dilemma, 444-445
 insurance, restrictions on, 443, 447-450
 exemptions, 452-453
 tailoring, 454-455
 “owed to someone” interpretation, 444
 strict – *see* **Strict liability**

Managed investment schemes

compliance requirements, 95
 crowd funding, 94-96
 investor protection mechanisms and, 95-96
 definition, 94

Mansfield’s case

insider trading, 189, 202-203
 background, 192-193
 High Court determination, 193

Market manipulation

telecommunications interception, 211
 civil penalty proceedings, 213-214
 criminal proceedings, 213-214
 evidential material, access to, 212-213
 investigation difficulties, 212
 issue of warrant, 211-212
 proving offences, 212
 reforms, suggested, 214-215

Meetings

annual general – *see* **Annual general meetings**
 company briefings, 180-187
 continuous disclosure obligations, 182-183
 disadvantages and potential problems, 181
 efficiency argument, 181
 fairness issues, 182
 inside information and, 180-181
 retail and institutional investors, issues involving, 184
 company websites, 176, 178-179
 information, access to, 185-186
 member, 179-180
 corporate disclosure, information requirements, 479-481
 retail investor, 179
 virtual, 186-187

Mergers

bid rigging and misleading conduct, 320-324
 communications, 324
 consortiums, 324
 Dahl v Bain Capital Partners, LLC, 322-323
 Norcast v Bradken, 321-322
 cartel conduct, 320-321, 323

- contingent value rights, 115-116, 119
 - Centrebet/Sportingbet, 115-116
 - Gloucester Coal/Yancoal Australia, 119
 - transparency, 323-324
- Mining industry**
 - contingent value rights and, 121
- Misleading and deceptive conduct**
 - mergers and acquisitions, 320-324
- Mortgages**
 - systemic risk and, 239-240
- Mutual Assistance and Business Regulation Act 1992**
 - cross-border cooperation and information sharing, 73
- Negligence**
 - officers' liability, 494-500, 509-510
 - duty of care, 494-497, 498-500
 - knowledge, 500-501, 514-515
 - mandatory disclosure, 497-498
 - reasonable steps requirement, 497
- New Zealand**
 - Companies Office, 61
 - covered bonds, 246-251
 - exposure to systemic risk, 246-256
 - External Reporting Board (XRB), 61
 - financial market reform, 56
 - domestic regulation, 244-245
 - Financial Markets Authority, 56
 - consultation process, 59
 - funding increase, 58
 - levy, 58-59, 60-61
 - classes and estimated revenue, 60
 - foreign takeovers, restrictions on, 244
 - funding structure of regulators, 56-61
 - global financial crisis, impact, 242-246
 - property market boom, 243
 - public sector debt, 243-244
 - responses to potential risk, 256-260
 - Securities Commission
 - disestablishment, 56
 - insufficient funding, 56-57
- Officer**
 - classification as, implications, 17-20
 - corporate disclosure – *see* **Corporate disclosure**
 - definition
 - application of, 14-17
 - CAMAC recommendation, 21
 - CLERP amendments, 9-10
 - CLERP 9 amendments, 10-11
 - company secretary, 13-14
 - current definition, 11
 - current judicial consideration, 11-14
 - executives, 7-9, 14-17
 - first limb, 14-16
 - holding company directors, 17
 - management role, 16-17
 - participation in decision-making 14-16
 - pre-CLERP, 7
 - executive officer, 7-9, 15
 - prior to James Hardie case, 11-13
 - reform proposals, 21-22
 - role in corporation, 15
 - second limb, 16-17
 - senior manager, 10-11
 - shadow officer, 10
 - third parties, 17
 - duties, statutory, 12, 17-18
 - accessorial liability, 19-20, 511-530
 - content and operation of duty, 439-440
 - criminal sanctions, 19
 - disqualification orders, 18
 - duty of care, 439
 - enforcement, 440-441
 - indemnities and insurance, 20
 - pecuniary penalties and compensation orders, 18
 - practical implications, 20
 - pre-CLERP, 7
 - undertakings, 441-442
 - Shafron v ASIC 2012, 6-7, 13-14, 23
 - workplace health and safety, 439
 - content and operation of duty, 439-440
 - enforcement, 440-441
 - exemptions, 452-453
 - undertakings, 441-442
- Onus of proof**
 - legislative reform, 401
- Oppression**
 - case studies in, 289-292
 - Cassegrain v Gerard Cassegrain & Co Pty Ltd, 291-292
 - Cheal Industries Pty Ltd; Fitzpatrick v Cheal, 291
 - conduct of company's affairs, 328
 - effects, 293
 - interaction with directors' fiduciary duties, 278
 - minority shareholders, relief, 325
 - oppressive or unfair to member in any capacity, 329-330
 - statutory, 286-292, 325-326

- definition of oppressive conduct, 287
- derivative action, 292
- primary obligation, 286-288, 292
- secondary obligation, 288-289, 292
- trust remedies in proceedings, 330-331
 - arguments against, 327-330
 - arguments in favour, 326-327
 - orders “in relation to company”, 330
 - scope, 328-330
- Vadori v AAV Plumbing, 290
- Periodic reporting**
 - shareholder engagement and communication, 176, 177
- Personal Property Securities Register (PPSR)**
 - act of registration, 301-302
 - amendment demands, 302-305
 - administrative cost, 305
 - New Zealand, 305
 - practicalities, 305-306
 - process, 304
 - collateral descriptions, 301-302
 - financing statement, 301
 - insolvency practitioners, 306
 - migration of interests to, 300
 - notice-based, 301
 - perfection, 296-300
 - continuous, 299-300
 - pre-perfection, 298
 - priority, 298-299
 - purpose, 297
 - requirements, 297
 - temporary perfection, 297
 - timing, 298-299
 - Personal Property Securities Act 2009 (Cth), 295-296
 - objectives, 295-296
 - Practice Statements, 302-303
 - registration as perfection, 296
 - act of registration, 30-32
 - time of registration versus time of perfection, 298-299
 - seriously misleading defect, 301
 - transition period, 300-301
- Principles of the International Co-operative Alliance**, 41-42
- Private interests**
 - ASIC regulatory powers, 210-211
- Product disclosure statements**
 - corporate disclosure requirements, 481-482
- Proxies**
 - annual general meetings, 171
- Public interests**
 - ASIC regulatory powers, 210-211
- Public securities**
 - contingent value rights, 111-122
- Remuneration**
 - executive, 143, 145-166
- Retailisation**
 - systemic risk, 251-256
- Retirement savings**
 - ASIC regulatory powers, 230-231
 - auditors, role of, 233-234
 - inconsistent legislation, 231-232
 - misleading or deceptive conduct, 232
 - shadow banks, 232-233
 - statutory compensation fund, 234-235
 - voluntary informants, 233-234
- Risk**
 - systemic – *see* **Systemic risk**
- Risk management**
 - contingent value rights and, 121
 - corporate, 73-74
- Rochdale Equitable Pioneers Society**, 41, 43
- Search warrants**
 - ASIC, 216-218
 - evidential material, use of, 218
 - prior warning, requirement for, 216
 - reasonable assistance requirement, 216-217
 - reforms, suggested, 218
 - civil penalty proceedings, 218
 - computers, use of, 216-217
 - criminal proceedings, 218
 - electronic equipment, use of, 216-217
- Securities**
 - contingent value rights, 111-122
 - corporate disclosure requirements, 481-482
 - crowd funding – *see* **Crowd funding**
- Shafron v ASIC**
 - liability as officer, 6-7, 13-14
- Shareholders**
 - Australian Shareholders’ Association (ASA), 174
 - engagement and participation in AGM, 172-174
 - executive remuneration
 - non-binding votes, 151-152
 - shareholder involvement, 160-161
 - power to take private regulatory action, 278
 - protection from oppression, 286, 293-294
 - rights, 173

Shares

- partially protected, 118-119
- preference
 - Beck v Weinstock, 458-461
 - High Court decision, 464-465
 - implications, 465-466
- nature of, 457
- statutory framework for redemption, 462-464

Social media

- crowd funding – *see* **Crowd funding**

Sporting organisations

- compliance and risk management, 73-74

Strict liability

- legislative reform, 401

Subprime mortgages

- systemic risk and, 239-240

Superannuation fund management

- ASIC regulatory powers
- auditors, role of, 233-234
- inconsistent legislation, 231-232
- misleading or deceptive conduct, 232
- shadow banks, 232-233
- statutory compensation fund, 234-235
- voluntary informants, 233-234
- review of industry, 401-402

Systemic risk

- bailouts, 242
- “bank runs”, 239
- contracts for difference, 251-256
 - regulatory reform, 254
 - responses to risk, 256-260
- covered bonds, 246-251
- definition, 238
- economic stress or shock, 241
- global financial crisis, contribution to, 237-238
- interconnectedness of financial systems, 240-241
- leveraged loss, 252-253
- New Zealand
 - exposure to systemic risk, 246-256
 - global financial crisis, impact, 242-246
 - responses to potential risk, 256-260
- retailisation, 251-256
- subprime mortgages, 239-240

Takeovers

- contingent value rights, 111-122
- corporate disclosure requirements, 481-482
- “disposal” standstills, 317
- advantages, 319
- Archer Daniels and GrainCorp, 317-318

- disadvantages, 319-320
- disclosure, 320
- liquidity and competition issues, 319-320
- M2 Telecommunications Ltd’s acquisition of Dodo, 318-319
- stock overhang, 320
- recapitalisation proposals, 531-534
- Billabong case, 532-533
- competing proposals, 533-534
- overview, 531
- standstill agreements, 317
- protection offered by, 317

Telecommunications interception warrants

- civil penalty proceedings, 213-214
- criminal proceedings, 213-214
- evidential material, access to, 212-213
- insider trading, 211
- investigation difficulties, 212
- issue of warrant, 211-212
- market manipulation, 211
- proving offences, 212
- reforms, suggested, 214-215

Third parties

- conferral of benefits on, 433-435
- liability, 407

Torts

- accessorial liability, 522-524

Transaction costs

- crowd funding, regulation of, 103

United Kingdom

- co-operatives, 41-42
- investment management, 26
- open-ended investment company (OEIC), 35-37, 38-39
 - board of directors, 35-36
 - expenses and charges, restrictions, 37
 - independent depositary, 36-37

United States

- analysis of directors’ fiduciary obligations, 279
- business judgment rule, 379-380
- fiduciary duties, 379
- investment management, 26-27
- Jumpstart Our Business Startups Act 2012, 104

Voting

- annual general meetings, 171-172

Walker v Wimborne

- revisited, 76-88

Wallis Report

review of banking and superannuation, 401-402

Warrants

search powers, 216-218

telecommunications interception, 211-215

Websites

AGMs, and, 176, 178-179

Wesfarmers/Coles acquisition

contingent value rights, 118-119

Workplace health and safety

contraventions

offsetting risk, 442-443

directors, duties of, 437-438

content and operation, 439-340

enforcement, 440-441

undertakings, 441-442

indemnities, restrictions on, 443-447

common law, under, 451-454

exemptions, 452-453

tailoring, 454-455

insurance, restrictions on, 443, 447-450

common law, under, 451-454

exemptions, 452-453

tailoring, 454-455

legal costs, interpretation, 447

Model Law, 438

officers, duties of, 439

content and operation, 439-440

enforcement, 440-441

undertakings, 441-442, 454-455

relationship between breach and company, 450

undertakings, 441-442, 454-455

“wilful breach of duty”, 448-450