

INSOLVENCY LAW JOURNAL

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EDITORIAL 193

The liability of members of creditor committees – the price for staying “close to the action”? – Lindsay Powers

Financial collapses can leave creditors – large and small – with no understanding of how, or if, they will ever see any return on what they are owed. It is natural that such creditors would want to stay “close to the action”. They often rush to join creditor committees, without really knowing what is involved. What are the risks of being on a committee in an insolvency administration? What are the responsibilities of a committee member? What is the potential for conflict with the creditor’s own self interests? This article examines the nature of creditor committees and their statutory and common law powers and responsibilities, and exposes a number of potential problems for creditors who want to join these committees. 195

Assessing solvency for financially distressed companies – Dr James Routledge and Dr Ray McNamara

This article reviews past and recent authorities that have addressed the definition and application of the solvency test in s 95A of the *Corporations Act 2001* (Cth). The discussion highlights that, when faced with financial distress, company directors need to carefully consider the solvency implications of their decisions. To generate cash to pay debts as they become due, directors may attempt to realise company assets, obtain additional secured or unsecured debt finance or reorganise the timing of payments with creditors. The discussion of relevant cases shows that the solvency implications associated with realisation of assets, use of assets as security and reorganisation of timing of debts due are relatively well settled. However, the situation with respect to the use of unsecured debt requires caution by company directors. 205

The power of the court to give directions to a liquidator – plagued by uncertainty?

– Richard Johnson

This article considers the parameters of the courts’ power to provide a liquidator with directions pursuant to ss 479(3) and 511 of the *Corporations Act 2001* (Cth). In particular, it endeavours to identify the circumstances in which a court would accede to a liquidator’s request for directions and those in which a court be unable, or perhaps unwilling, to do so. Although the wording of the provisions offers little guidance in this regard, this article asserts that legislative amendment is not required. The case law clearly articulates the parameters of the courts’ power and provides liquidators with an indication of whether directions will be forthcoming from the court in specific factual circumstances. It is evident from the case law that the circumstances in which a liquidator will be capable of procuring directions from the court are well established and defined, and that the circumstances in which a liquidator will be unable to avail of the provisions are equally well defined. ... 213

New Zealand's corporate insolvency preferential creditor regime: An analysis of recent changes to employee entitlements – Trish Keeper

This article examines recent changes to the rules governing employee preferential creditor entitlements following the failure of a corporate employer. It begins with an overview of the insolvency law objectives expressed by the New Zealand Law Commission and the Ministry of Economic Development and discusses whether the changes achieve these objectives. The author argues that the inclusion of redundancy payments within an employee's preferential entitlement does not satisfy the criteria for preferential status. The article also considers the impact of the inclusion of a definition of employee within the preferential creditor regime, which for the purposes of the regime excludes directors. 227

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CORRIGENDUM: The correct mode of citation for the previous part of this Journal is **13 InsolvLJ page** – this corrigendum applies to the contents pages and the Editorial.

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Customer Service and sales inquiries:

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Email: LRA.Service@thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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