

INSOLVENCY LAW JOURNAL

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ARTICLES

The regulation of Romalpa clauses: The limitations of equity – Daniel Solomons

The decision in *Aluminium Industrie Vaassen BV v Romalpa Aluminium Ltd* [1976] 2 All ER 552 is frequently cited as one of the great 20th century contributions to commercial law. This article reconsiders the commercial significance of the Romalpa decision by examining how it conflicts with commercial law objectives. It is argued that the judicial recognition and enforcement of Romalpa clauses reflects equity's failure to meet the legitimate needs of commercial markets, in particular, the need for commercial certainty and market transparency. The second part of this article critiques the way that the High Court of Australia has shielded Romalpa clauses from the public registration requirements in Ch 2K of the *Corporations Act 2001* (Cth). The Federal Government's current program of personal property securities reform provides a timely opportunity for this discussion. The proposed reforms – if implemented as planned – will remedy many of the problems resulting from equity's treatment of Romalpa clauses.

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Improving outcomes for creditors: Balancing efficiency with creditor protections – Jennifer Dickfos

The rationale for the latest changes in corporate insolvency laws was in part to improve outcomes for creditors by strengthening creditor protections and improving the efficiency of the insolvency process. To do so, four key areas were identified: enhancing employee entitlement protections; improving information to creditors; streamlining external administration by removing unnecessary procedural requirements; and introducing a statutory pooling process. It is contended, however, that the attainment of efficiency and strong creditor protections are divergent goals, made more so by the manner of regulating for such goals. The purpose of this article is to highlight, with examples from the latest changes in external administration laws, the divergent nature of both goals; show that the use of mandatory provisions, while achieving creditor protection, may be at the expense of procedural efficiency, depriving the external administrator of flexibility and that to maximise creditors' outcomes requires a continual balancing of the goals of creditor protection and efficiency.

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