

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

Volume 19, Number 1

April 2008

ARTICLES

The prudent eunuch: Superannuation trusteeship and member investment choice – *M Scott Donald*

The provision of investment choice to members of superannuation funds fundamentally challenges the role of the trustee as ultimate arbiter of what is in the best interests of members. This article suggests that current differences in opinion about the devolution of trustee responsibility in a member investment choice environment reflect differences with respect to a fundamental philosophical issue: who ought to make the judgment about which investment strategy is appropriate for the member? The article also proposes that, notwithstanding the extent of legislative and regulatory incursion into superannuation, trust law retains an important part to play in securing members' interests, especially with regard to determining the content of the investment choice "menu". The article also proposes a link between member investment choice and the provision of advice to members.

5

Secured financing in India: Key issues for foreign lenders – *Melissa Lim*

Foreign lending in India may be booming but foreign lenders need to be aware that the law is not clear cut and there are many issues to consider. This article analyses the key issues that foreign banks should be aware of when providing secured financing to borrowers in India. The article first sets out the background of financing in India. It then focuses on corporate issues specific to the Indian borrower company. The article summarises the approvals that may need to be obtained by such foreign banks and interaction with governmental authorities; focuses on taking security and enforcing security; and describes other miscellaneous key issues relevant to Indian financing of which foreign financiers should be aware.

20

Airlines and "queue-jumping" in insolvency – *Rhys Bollen*

The High Court has upheld the International Air Transport Association's claims about the effect of its clearing house system in relation to the insolvency of Ansett Australia. This article examines this significant decision in the field of payment systems, multilateral netting and set-off. The case departs from the previous leading case in the area (*British Eagle*) and clarifies some of the legal uncertainty that prompted the passing of special netting legislation in a number of countries.

35

A review of recent developments in European payment system regulation (including the new Payment Services Directive) – Rhys Bollen

The European Commission continues to pursue legislation and other measures to encourage a pan-European single payment area as part of the wider internal market project. This article examines some recent reviews of the existing legislation on payment services, takes a detailed look at industry's Single European Payment Area (SEPA) initiative and gives a detailed account of the new Payment Services Directive and its likely impact. 47

The co-winning article of the 2007 Research Prize of the Banking and Financial Services Law Association, by Jeremy Green, will be published in a forthcoming issue of the journal, pending updating for recent developments.

BANKING LAW AND BANKING PRACTICE – Alan L Tyree and John Sheahan SC

Mistake and qualified privilege 71

TAX AND STAMP DUTY – Andrew Sommer and Gary Best

“Land rich” duty: All or nothing 75

SECURITIES AND MORTGAGES – Craig Wappett and Angela Flannery

Lenders beware: Loan agreements and mortgages are not hand in hand 78

CAPITAL AND FOREIGN EXCHANGE MARKETS – David Clifford and George Harris

The NAFMII Agreement: A step forward for derivatives documentation in China 80

RECENT PUBLICATIONS 83

HONG KONG AND CHINA – Matthew Barnard

Syndicated loans in China 87

NEW ZEALAND – Dermot Ross, Ross Pennington, David Craig and Jason Boyes

Limited Partnerships Act 2008 (NZ) 88

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© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1034-3040

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW