

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

Carbon financing and the Australian emissions trading scheme: Less emissions, more opportunities? – Shol Blustein

The introduction by the Australian federal government of its Carbon Pollution Reduction Scheme was a decisive step in the transformation of Australia into a low carbon economy. Since the release of the Scheme, however, political discourse relating to environmental sustainability and climate change in Australia has focused primarily on political, scientific and economic issues. Insufficient attention has been paid to the financial opportunities which commoditisation of the carbon market may offer, and little emphasis has been placed on the legal implications for the creation of a “new” asset and market. This article seeks to shed some light on the discernable opportunities which the Scheme should provide to participants in the Australian and international debt markets. 191

Variation of charges under s 268(2) of the Corporations Act: Unwinding the Octaviar decision – James Douglas

The recent decision of *Re Octaviar Ltd; Re Octaviar Administration Pty Ltd* [2009] QSC 37 held that where a charge secures liabilities defined by reference to a set of “Transaction Documents”, then the subsequent designation of a further document as a “Transaction Document” will constitute a variation of charge for the purposes of s 268(2) of the *Corporations Act 2001* (Cth). This article provides a critique of the Octaviar decision. It is submitted that the interpretation of s 268(2) adopted in the case cannot be reconciled with the broader provisions of Ch 2K of the *Corporations Act*, the policy considerations underlying those provisions and certain relevant extrinsic materials. In addition, it is contended that the decision has numerous anomalous consequences, including in relation to “all moneys” charges and also in respect of disclosure requirements. Accordingly, it is concluded that an alternate interpretation of s 268(2) that ascribes the section a narrower operation is to be preferred. 200

Australian taxation implications of the ISDA 2002 Master Agreement – Chris Colley

This article examines the Australian tax implications of swap transactions governed by the ISDA 2002 Master Agreement and the interaction of those tax implications with the terms of the Master Agreement. 216

Protection guaranteed: A review of Australia’s approach to explicit deposit protection – Troy Williams

In order for a nation’s banking system to operate smoothly, or perhaps even at all, it is essential that people feel confident that their deposits are safe. As recent events have demonstrated, a determining feature of this confidence is the nature and extent of protection afforded to depositors by the nation’s regulatory regime. The purpose of this article is to examine the rationale behind deposit protection and subsequently examine the role that an explicit deposit protection scheme has in Australia. 233

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