

# JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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## ARTICLES

### **Assignment, Security, and Securitisation** – *Alexander Swebeck*

Securitisations are premised on the ability to irrevocably assign assets from one entity to another. These assignments are typically performed in equity. Where the underlying assets are “accounts” under the *Personal Property Securities Act 2009* (Cth), as in the “Buy Now Pay Later” industry, the assignee’s ability to perfect legal title to the assets may be considered as “in substance” securing the assignor’s obligations. This has serious consequences for investors in a securitisation and undermines the economic motivations to securitise. If the assignor goes insolvent, the assets may re-vest in the assignor, which has further consequences for the valuation of the assets. .... 81

### **Reimaging Legal Tender and Banking Law for the Issuance and Usage of a Retail Central Bank Digital Currency in Australia** – *Nancy Michail*

As nations around the world consider the issue and use of a retail central bank digital currency (rCBDC), this article analyses its potential regulation within Australia. Specifically, the article examines whether rCBDCs constitute legal tender and explores the legal characterisation of rCBDCs, analysing whether they replicate cash or coins and whether they fall within the concept of either an account-based or token-based payment system. Beyond banking law, the article also considers the potential legal frameworks that could govern the usage of rCBDCs in Australia, highlighting areas of uncertainty. The findings underscore the potential benefits of rCBDCs in enhancing financial services and efficiency but emphasise the need for careful consideration of their legal status and the importance of integrating them into the current regulatory framework. .... 98

### **In Search of a Modern Corporate Rescue Regime in New Zealand: Cross-Jurisdictional Perspectives from Australia, the United Kingdom and the United States** – *Benjamin Liu*

Corporate rescue serves as a cornerstone of New Zealand’s economic stability, a role intensified by the recent financial turbulence brought on by the COVID-19 pandemic. This article critically examines New Zealand’s existing statutory restructuring frameworks, drawing comparisons with the legal landscapes of Australia, the United Kingdom and the United States. It contends that New Zealand’s insolvency law has been static for an extended period, resulting in a need for reform. This article advocates for the implementation of a debtor-in-possession rescue model specifically tailored for small businesses within New Zealand’s legal framework. .... 118

**Resolving the Tension between Common Law and Australian Accounting Standard Board Interpretations of Accounting Terms and Concepts – Part 1 – Ganesh Sahathevan**

Australian Accounting Standard Board (AASB) standards are legislative instruments that have the force of law pursuant to the provisions of the *Corporations Act 2001* (Cth) but these provisions apply only to those who are subject to the Act and do not replace common law conceptions of accounting information. Australian courts can choose to be guided by the standards but will define and assess accounting concepts guided by precedents in the common law which may or may not be in agreement with the standards. The courts on the one hand and the accounting profession and commerce on the other are likely to develop divergent conceptual frameworks for the analysis and preparation of financial statements. .... 133