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ARTICLES

Resolving the Tension between Common Law and Australian Accounting Standard Board Interpretations of Accounting Terms and Concepts – Part 2 – *Ganesh Sahathevan*

While the courts have been observed to be more willing to utilise financial statements and models as tools for legal analysis there will be instances where the courts will have to be relied on to address the conceptual gaps in the financial statements, models and accounting standards that may define them. These instances are quite likely to arise when the words of the financial statements contained in the notes to the financial statements may be interpreted in a manner that would not support the numbers. 151

Issues Arising from Taking Control of a Grantor's Circulating Assets at the Onset of the Grantor's Insolvency – *Noel McCoy*

This article considers issues associated with a secured party taking control of circulating assets of a grantor at the onset of the grantor's insolvency. Specifically, it argues that a secured party who wants to ensure that certain assets are non-circulating assets must make a registration on the Personal Property Securities Register disclosing control of those assets within 20 business days of the date of the security agreement (or else face a six-month "hardening period") and not upon a default or "review event" or otherwise at the onset of the grantor's insolvency. The article also briefly considers other risks to taking control of circulating assets in the onset of insolvency. Overall, financiers and finance lawyers should consider both drafting and practical measures to mitigate the risks identified. 167

The Implications of ESG for Financial Regulation – *Cheng-Yun Tsang*

ESG, as generally understood, stands for "Environmental, Social and Governance". These words and terminologies can be treated as goals for public and private entities to pursue, or values to be observed, in undertaking business activities and delivering public services. However, the current literature and discussion are not necessarily putting ESG at the centre of financial regulation and observing its implications and challenges. In other words, the overarching impacts of ESG on financial regulation remain unclear. This article aims to fill this gap. This article argues that at least four challenges must be addressed if we incorporate ESG into financial regulation. It then proposes strategies for financial regulators and relevant policymakers to respond to the four main challenges identified. First, ESG encompasses too many factors and metrics, and financial regulators need to prioritise their work to achieve these goals. The second strategy is utilising Supervisory Technology/Regulatory Technology solutions to gather structured and unstructured data from various sources. The third strategy is to create a mechanism that allows regulators to track financial institutions' performances and verify reported ESG outcomes to internal management of the firms and external supervisors. The last strategy is to increase efforts in regulatory collaboration, domestically and internationally, and across authorities in different sectors. 179

Unperfected PPSA Security Interests in Insolvency Part I: The Commercial Significance and Costs of the Vesting Provisions – Adam Waldman

This is the first of two articles which critically examine the “vesting provisions” in relation to the *Personal Property Securities Act 2009* (Cth) (PPSA). These are s 267 of the PPSA, which provides that a security interest “vests in the grantor” if it is unperfected at the time of one of several specified events indicating the grantor’s insolvency, and s 588FL of the *Corporations Act 2001* (Cth), which provides that a security interest “vests in the company” if it is perfected by registration and no other means, the grantor is a company, and the registration time is outside of one of several specified time periods. This article focuses on the commercial significance and costs of these provisions. Part II explores their operation. Part III explores their commercial significance by identifying when they lead to different outcomes than those which would have been generated anyway under other provisions of the PPSA. Part IV explores the costs of the provisions, including why they cannot be addressed through more discrete amendments to the PPSA. This raises the question of whether these provisions are necessary at all, which is explored in the second article.

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