

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

The statement of cash flow as a tool to determine solvency – Ganesh Sahathevan

This article will show that, in the courts' analysis of the facts to determine if directors had breached their duty to prevent insolvent trading as provided by s 588G of the Corporations Act 2001 (Cth), the courts have applied the cash flow test in such a manner that, while the information provided by the balance sheet is relied upon to deduce a corporation's solvency, the more readily available information contained in the statement of cash flows has been ignored. By so doing, a higher degree of uncertainty and inefficiency has been introduced into the analysis of whether or not s 588G has been breached. It is argued that, in its application, the focus of the cash flow test ought to be shifted from the balance sheet to the statement of cash flows. Consequently, it will be argued that liquidity ought to be used as the basis from which to determine solvency. ...93

The FSRA's derivative definition: Cleaning up the intraday contract problem – John Chellew

The Financial Services Reform Act 2001 (Cth) has introduced a new definition of "derivative" into the Corporations Act 2001 (Cth). This derivative definition has a carveout which states that contracts with a lifespan of less than one business day (intraday contracts) are not caught by the definition. Owing to this, many lawyers in the industry, and also the Federal Court currently believe that the derivative definition does not catch such intraday contracts. This is, in fact, not correct. After expressly removing intraday contracts, the definition, in a highly convoluted way, then declares intraday contracts back into the definition. The result has been significant misunderstanding within industry. It has also resulted in technical legal problems and is at odds with the Act's stated aim of "clear, concise and effective" communication. This article recommends a straight-forward amendment to the definition so that the definition clearly states, up-front, the real extent of the carveout.114

A review of the development and legal nature of payment facilities – Rhys Bollen

Money in its wider sense is closely associated with payment facilities. This article explains that these modern payment facilities almost always operate through the circulation of institutional liabilities, predominantly debt obligations. Due to their importance to the overall economy commentators and governments have taken a keen interest in the operation of payment facilities. The article examines the development, operation and legal nature of non-cash payment facilities, in the context of the basic payment infrastructure in Australia. The core of each payment facility, being the ledger or account kept relating to each payer and payee, is discussed in some detail. 130

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Customer Service and sales inquiries:

Tel: 1300 304 195

Fax: 1300 304 196

Web: www.lawbookco.com.au

Email: LRA.Service@thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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