

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

Unconscionable demands under letters of credit, performance bonds and bank guarantees – *Matthew Bisley and James Mok*

Letters of credit, performance bonds and bank guarantees are widely used in financing and other business transactions throughout the world. This is because of the certainty of payment that such instruments give to the beneficiary of the instrument (since there are very few exceptions to the issuer's obligations to make payment under the instrument). A new exception which has emerged in the last decade in Australia is unconscionable conduct under the *Trade Practices Act 1974* (Cth). This article examines how the unconscionable conduct exception has been applied by the courts in Australia in the context of demands under these instruments, and considers whether that exception will diminish the utility of these instruments. 197

Managed investment scheme interests – *Chris Furnell*

In this article the scope of the managed investment scheme concept is considered by analysing what constitutes a "scheme" and the limitations on the concept which flow from the three requirements expressly incorporated into its definition. That analysis is then followed by some brief comments on ASIC's views on the matter, as reflected in a number of policy statements by ASIC. 213

Conflict of laws issues in Australian financing transactions – *Oren Bigos*

Many financing transactions undertaken by Australian lawyers on a daily basis involve cross-border issues. A knowledge of the conflict of laws principles is essential for drafting agreements, giving advice and issuing legal opinions. This article aims to give lawyers a general understanding of the relevant legal issues, with some practical guidance. It is divided into sections dealing with jurisdiction (covering personal jurisdiction, jurisdiction clauses, insolvency jurisdiction and sovereign immunity), choice of law (focusing on principles relevant to financing agreements, security interests and corporate affairs) and the principles which apply to the recognition and enforcement of foreign judgments. 227

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