

JOURNAL OF BANKING AND FINANCE LAW AND PRACTICE

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ARTICLES

Automatic crystallisation clauses: The way forward – *Nicola Yeomans*

Despite the prevalence of automatic crystallisation clauses in modern floating charges, their legal validity remains in question. Academics disagree on the nature of the pre-crystallisation interest and there are perceived inconsistencies in the judicial decisions. Automatic crystallisation can also give rise to significant practical complications in determining priority over charged property, particularly where crystallisation has gone unnoticed by the chargee and the chargor. The Australian Law Reform Commission has proposed amendments to the *Corporations Act 2001* (Cth) to respond to these difficulties. This article analyses the reform proposals in light of the legal and practical nature of automatic crystallisation and suggests alternative amendments better to balance the interests of the chargor, chargee and third parties. 5

Comfort letters – a fresh look? – *Lang Thai*

The topic of “comfort letters” is forever an ongoing debate in Australia. There are arguments for and against enforceability of comfort letters, yet little has been said about how the “law” can be reformed. In support of enforceability, this article provides a comparative perspective on the American and Australian models and suggests that certain principles from the former could be adopted in Australia to eliminate the inconsistency in the treatment of comfort letter cases. The article also analyses *Gate Gourmet* and *Lasalle Bank*, two recent cases from Australia and the United States, respectively. 15

The Enron effect: How the fall of Enron is changing the ISDA landscape in Australia – *Teresa Ientile, Mini Vandepol and George Harris*

The Enron collapse has proved a rich vein of litigation and new law for lawyers around the world. Australia is no exception. In the last two years, a series of decisions have been handed down flowing from the liquidation of Enron Australia Finance Pty Ltd which have thrown a spotlight on provisions of the International Swaps and Derivatives Association (ISDA) master agreement that had previously escaped intense scrutiny. The consequences of these decisions are still to be considered fully by the market and regulators and may lead many users of ISDA master agreements to rethink their documentation. 34

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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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