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1. RECENT CORPORATE LAW DEVELOPMENTS

(A) NEW WEBSITE ON ASIAN-PACIFIC CORPORATE LAW AND SECURITIES REGULATION RESOURCES

The Centre for Corporate Law and Securities Regulation has launched a new part of its website which deals with Asian-Pacific corporate law and securities regulation sites. Please go to "<http://cclsr.law.unimelb.edu.au>" and click on "What’s New".

(B) THE DEFINITION OF "ASSOCIATE" IN THE CORPORATIONS LAW

One of the most important definitions in the Corporations Law is that of "associate". The definition is important for those provisions of the Corporations Law that regulate takeovers, compulsory acquisitions and other transactions. As a result of the Corporate Law Economic Reform Program Act 1999 that commenced operation on 13 March 2000, there are now two definitions of associate in the Corporations Law. The two definitions are not entirely consistent and there has been uncertainty in the market place concerning their operation. Justice Austin of the New South Wales Supreme Court has provided his analysis of the definition of "associate". His paper is on the website of the Centre for Corporate Law and Securities Regulation. Please go to the corporate law Research Papers section of the website available at "<http://cclsr.law.unimelb.edu.au/research-papers>".

(C) ANOMALIES RESULTING FROM THE CORPORATE LAWECONOMIC REFORM PROGRAM ACT 1999

A number of anomalies have been introduced into the Corporations Law as a result of the Corporate Law Economic Reform Program Act 1999 that commenced operation on 13 March 2000. The Corporations Law Committee of the Law Council of Australia has prepared a list of these anomalies in order to assist practitioners. The objective is to add to the list of anomalies as more are identified. Please email any identified anomalies to "cclsr@law.unimelb.edu.au". To view the list of anomalies, please go to the Research Papers section of the Centre for Corporate Law website available at "<http://cclsr.law.unimelb.edu.au/research-papers>".

On 14 September 2000, ASIC released a policy proposal paper dealing with anomalies in the takeover provisions of the Corporations Law which have resulted from the CLERP Act. The policy proposals deal with issues that ASIC itself can resolve and ASIC is consulting with the Commonwealth Department of the Treasury about those anomalies that may require legislative amendment by Parliament. Major issues in the policy proposal paper include the definition of "associate" that applies to the takeover provisions and the test for compulsory acquisition of minority shares following a takeover bid. Copies of the policy proposal paper are available from the ASIC website at "<http://www.asic.gov.au>" or the ASIC Infoline on 1300 300 630.

2. RECENT ASIC DEVELOPMENTS

(A) ASIC POLICY AND THE FINANCIAL SERVICES REFORM BILL

On 27 September 2000 ASIC released interim documents showing how the Financial Services Reform Bill will affect existing ASIC policy. The matters covered in the documents include licensing financial service providers and financial product disclosure. The ASIC documents are available on its website at "<http://www.asic.gov.au>".

(B) ASIC INTERIM GUIDANCE ON MARKET STABILISATION

On 13 September 2000 ASIC outlined the circumstances in which it may grant no-action letters in relation to market stabilisation arrangements, and the conditions that ASIC will generally impose in those letters.

Where applications for no-action letters do not comply with the conditions, ASIC will consider them only in exceptional cases and only where applicants provide detailed arguments in support of departure from the standard conditions.

ASIC is in the process of developing a full policy on market stabilisation arrangements following a recent increase in the number of requests for no-action letters. The information release is intended to provide guidance to market participants until ASIC issues a policy statement on the issue. The release reflects ASIC's view on market stabilisation arrangements after consultation with stakeholders. That view is based on ASIC's experience and that of the market.

This guidance applies to both domestic-only floats on the Australian Stock Exchange (ASX) and to floats on ASX that form part of a wider international offering.

ASIC has previously granted no-action letters, in line with ASIC Policy Statement 108, to permit market stabilisation arrangements. While ASIC has, on previous occasions and in specific circumstances, allowed refreshing of the "green shoe" (see point 1 below), ASIC advised that in future it would be extremely reluctant to allow similar arrangements until the completion of the policy process.

Market stabilisation arrangements involve the following steps:

(1) The underwriter to an offer is provided with an option to buy additional shares from the issuer equivalent to no more than 15% of the total number of shares being made available under the offer. This option is also known as the "green shoe" option.

(2) Following the close of the offer, the underwriter can allocate more shares to investors than were made available under the original offer. The size of this short position is limited by the size of the option held by the underwriter.

(3) If during the first 30 days following the listing of the shares the market price falls below the final price as determined under the book build process (final price), the underwriter or the stabilisation broker acting for the underwriter may buy shares on market on the terms set out in the ASIC no action letter.

(4) If the underwriter does not buy a sufficient number of shares on market to cover its short position - this will be the case in the event of a price increase following listing - it may exercise the option to the extent necessary to do so.

ASIC’s APPROACH

(a) The law

The Corporations Law prohibits a person from engaging in misleading or deceptive conduct, false trading and market rigging, and insider trading. Because market stabilisation arrangements are designed to have price effects that might not otherwise occur, a question arises as to whether market stabilisation arrangements may involve a breach of any of those prohibitions.

In ASIC's view, an issuer, underwriter and/or stabilisation broker participating in market stabilisation arrangements will not breach the relevant provisions of the Corporations Law if all they do is conduct market stabilisation arrangements of the kind described in the release and they comply with the conditions set out in the release.

(b) Interim approach

ASIC may, by issuing no action letters, permit market stabilisation arrangements in limited circumstances and on defined conditions.

In ASIC's view, the combination of disclosure to ASX and to the market required by these conditions, combined with the existing systems and rules of ASX, should provide adequate and appropriate mechanisms to:

(i) minimise the risk of a false, misled or uninformed market developing in the relevant shares on ASX;

(ii) enable ASX to monitor trading in the relevant shares so as to identify at an early stage situations that may lead to a false, misled or uninformed market in the relevant shares on the ASX; and

(iii) allow ASX to take appropriate action in relation to such situations.

Market stabilisation arrangements are frequently designed to insulate the open market price of new listings for a period of up to 30 days. This is done in an effort to increase investor confidence in the market for the newly issued securities. That increased confidence is to the benefit of the market as a whole.

The need for market stabilisation most often arises as a result of perceived imperfections in the pricing and allocation of shares derived from the book build process. Allowing market stabilisation in defined circumstances brings the market practice relating to offerings of shares to be listed on ASX into line with the practice in various other jurisdictions including the United Kingdom and the United States.

The approach described in the relief only applies in the context of an initial public offering of shares. Market stabilisation is prohibited except for the purpose of retarding a decline in the market price of shares in this context. Although market stabilisation is regarded as acceptable market practice in the period immediately after an initial public offering where share price uncertainty and volatility are increased, it may be seen to be manipulative if the conditions set out in the release are not complied with.

ASIC Policy Statement 108 is available from the ASIC website at "<http://www.asic.gov.au>".

For further information contact:

Richard Cockburn
National Coordinator Mergers,
Acquisitions and Fundraising
ASIC
Tel: 0411 549 034

(C) ASIC RELEASES MUTUALITY POLICY

On 11 September 2000 ASIC released its final policy on mutuality in the financial sector.

ASIC Policy Statement 147 Mutuality – Financial Institutions (PS 147) outlines how ASIC will use its exemption powers when making decisions about credit unions, building societies and friendly societies that are transferring financial institutions (TFIs) under the new provisions added to the Corporations Law in 1999.

ASIC has the power to exempt TFIs from the special provisions of the Law that apply to them when they are, or may be, demutualising. PS 147 sets out how ASIC will decide whether a company has a mutual structure under those provisions.

PS 147 replaces ASIC Interim Policy Statement 147 issued in December 1999, which has been used to date by both ASIC and APRA to decide mutuality. PS 147 is available from the ASIC website at "<http://www.asic.gov.au>" or from the ASIC Infoline on 1300 300 630.

For further information contact:

Malcolm Rodgers
Director Regulatory Policy
ASIC
Tel: (02) 9911 2680

(D) ASIC RELEASES POLICY ON DIFFERENTIAL FEE ARRANGEMENTS

On 11 September 2000 ASIC released its policy on differential fee arrangements in managed investment schemes.

The Corporations Law requires that a responsible entity treat members of the same class equally. ASIC believes this prohibits a responsible entity charging members of the same class different fees based on the characteristics of the member, such as the amount to be invested in the scheme, or based on individual negotiations between the member and the responsible entity.

ASIC recognises, however, that differential fee arrangements may attract large investors to schemes. This can benefit all members through the cost savings delivered by more efficient scheme structures. ASIC has therefore given relief to allow a responsible entity to charge different fees to members of the same class in limited circumstances.

The relief allows a responsible entity to offer more transparent differential fee arrangements, such as those involving banding or tiering, to all members. The relief also allows the responsible entity to charge individually negotiated fees to sophisticated and professional members. ASIC strongly supports the full disclosure of fees and charges to investors. This relief is provided on the condition that the fee arrangements are adequately disclosed to all members of the scheme.

For further information contact:

Darren McShane
Director Managed Investments National Team
ASIC
Tel: (02) 9911 2181

(E) ASIC EXTENDS DEADLINE FOR TIME-SHARING SCHEMES

On 8 September 2000 ASIC announced that it had further extended, to 15 December 2000, the deadline for existing time-sharing schemes to register with ASIC or gain an exemption from registration under ASIC Summary Policy Statement 160 (SPS 160).

ASIC has previously given relief from the registration requirements under the Corporations Law for time-sharing schemes until 30 September 2000. ASIC has further extended that deadline to 15 December 2000 in recognition of practical difficulties currently being experienced by time-sharing schemes planning to register as a managed investment scheme or to obtain an exemption.

The practical difficulty for time-share operators arises as a result of certain time-sharing schemes presently being unable to finalise plans to obtain either registration or relief, which are dependent on how ASIC policy deals with membership of the Australian Timeshare and Holiday Ownership Council Ltd (ATHOC).

ASIC has received applications from ATHOC to be approved as an Industry Supervisory Body under SPS 160 and for its complaint handling system to be approved under ASIC Policy Statement 139 (PS 139). ASIC has decided not to approve these applications at this stage, but is considering varying its policy to allow members of ATHOC to be treated as if the approvals had been given on an interim basis. ASIC is awaiting further submissions from ATHOC before it decides whether to make such a variation to policy.

Extension of the deadline to 15 December 2000 will provide sufficient time for ATHOC to make submissions so that ASIC can announce a decision on its policy, and for operators of time-sharing schemes to finalise their applications in the light of that decision. ASIC does not envisage any further extensions.

SPS 160 and PS 139 are available from the ASIC website at "<http://www.asic.gov.au>".

For further information contact:

Darren McShane
Director
Managed Investments National Team
AISC
Tel: (02) 9911 2181

(F) ASIC FORESHADOWS FOCUS ON ACCOUNTING FOR LEASES

On 7 September 2000 ASIC highlighted its concerns with inappropriate accounting for complex lease arrangements. ASIC Chief Accountant Jan McCahey drew attention to the concerns at the 7 September meeting of the Urgent Issues Group.

ASIC is concerned that the accounting adopted by some companies for complex leasing arrangements may not reflect the substance of those arrangements.

Ms McCahey said that leases can only be accounted for as effectively transferring ownership of an asset if the lessor transfers substantially all of the risks and substantially all of the benefits of ownership of the asset to the lessee. If the deal effectively enables the party that has legal title to the asset to continue to enjoy the benefits of ownership of the asset, the asset cannot be treated as having been transferred to another party and no profit on "sale" can be recorded. "The overall substance of an arrangement should be considered in determining whether substantially all of the risks and benefits of ownership of assets have been transferred from one party to another," Ms McCahey said. "Separate agreements relating to particular assets must be considered together as the terms and conditions of one agreement may affect the substance of another agreement."

ASIC recommended that the Urgent Issues Group develop detailed guidance on certain aspects of the standards.

ASIC will focus on lease accounting in its surveillance of 30 June 2000 and 31 December 2000 financial reports, and will take enforcement action where appropriate against companies where the impact of incorrect accounting is material on the financial statements.

ASIC has already advised The Broken Hill Proprietary Company Limited (BHP) that it does not support the accounting treatment adopted by the company for the lease out and lease back of the rolling stock operated by the Mt Newman Joint Venture (MNJV). ASIC did not take enforcement action against BHP because the impact on BHP’s financial statements was not material within the meaning of accounting standards.

BHP announced in January 2000 that it would recognise a $31 million upfront profit in relation to the re-financing of rolling stock operated by the MNJV. BHP's directors maintain that the accounting treatment adopted by the company was appropriate.

However, having examined relevant documentation and discussed the matter with company management and advisers, ASIC’s view is that the arrangement is a financing arrangement in substance. The arrangement involved leasing the assets concerned to a finance partnership and leasing the same assets back from that partnership on virtually identical terms, except the lease back runs for a shorter period.

In ASIC’s view, the arrangement is a financing arrangement in substance and BHP retains substantially all of the risks and benefits of ownership of the assets. Hence, no sale should have been recorded.

Facts which ASIC considers particularly important are:

(1) MNJV can extend the lease back period to equal the term of the lease to the partnership and so can choose to retain all of the benefits of ownership; and

(2) MNJV remains responsible for the ongoing maintenance and operation of the rolling stock.

For further information contact:

Jan McCahey
Chief Accountant
ASIC
Tel: (03) 9280 3265

(G) AUSTRALIAN DERIVATIVES EXCHANGE CONSULTATION

On 7 September 2000 ASIC called for public comment on an application for Australian Derivatives Exchange Limited (ADX) to be approved by the Minister for Financial Services and Regulation as a futures exchange.

ASIC also called for public comment on an application for Options Clearing House Pty Ltd (OCH) to be approved by the Minister as a futures clearing house for the proposed futures exchange to be operated by ADX.

ASIC is seeking comment on the applications before making a recommendation to the Minister on the matters. ASIC will consider ADX and OCH’s draft business rules and applications in light of further comments received from the consultation process.

Before approving a futures exchange or clearing house, the Minister must be satisfied that the interests of the public will be served by the granting of approval. ASIC assesses whether an application meets the criteria laid down in sections 1126 and 1131 of the Corporations Law.

A summary of ADX and OCS's application is available from the ASIC website at "<http://www.asic.gov.au>".

ASIC will accept submissions up to the close of business on 13 October 2000.

Submissions should be marked to the attention of:

Tracey Lyons
Manager, Markets Regulation
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000

Submissions will also be accepted by email to tracey.lyons@asic.gov.au. All submissions will be treated as public and will be provided to ADX unless otherwise marked.

For further information contact:

Jennifer O'Donnell
Director, Regulation
ASIC
Tel: (02) 9911 2123

(H) HIGH TECH DISCLOSURE NOT WHAT IT SHOULD BE

On Monday 4 September 2000 it was announced that a joint study by ASIC and ASX had found that some listed technology companies may be ignoring the basics of good corporate disclosure or, worse, may not even be aware of them.

ASIC and ASX believe that with so many individual Australians now directly owning shares in companies listed on ASX, it is more important than ever that listed companies make timely disclosure of price sensitive information to all investors through the ASX.

During the study 20 Australian high technology companies were looked at. Half of the companies released additional information to ASX either after being advised ASIC staff intended to visit them or after the visit had taken place.

Three companies, Travelshop Ltd , ISIS Communications Ltd and Spike Networks Ltd released information only after negotiations with ASIC. If the disclosures had not been made voluntarily, ASIC would have taken civil action to seek to compel disclosure to the market.

ASIC is prepared to seek court orders where necessary to ensure trading of securities takes place in a fully informed market, but did not ultimately need to do so in these cases. ASIC has the power to take criminal action in cases of deliberate non-disclosure, but the standard of proof required is very high; ASIC did not contemplate criminal action in any of the cases.

ASIC understands that the Financial Services Reform Bill will empower it to seek civil penalties for various types of market misconduct. ASIC has suggested, and this study confirms, that breaches of the continuous disclosure rules should be among the types of misconduct which can be dealt with in that way.

ASIC was very concerned some directors did not realise they had to keep the market informed when the business did not go as well as they had forecast to the market. In some cases, actual revenue or profit was significantly less than that forecast in the company’s recently issued prospectus. In other cases, key business milestones forecast in the prospectus were not met. ASIC is also concerned that in some cases, directors were not even meeting regularly, and proper accounting records were not being kept. Some companies did not produce basic financial records such as monthly profit and loss and cash flow statements.

For further information contact:

Claire Grose
Director, National Markets Unit
ASIC
Tel: (02) 9911 2069

3. RECENT ASX DEVELOPMENTS

(A) ELECTRONIC SPONSORSHIP AGREEMENTS

ASX and ASTC have modified their policy to allow Participants to receive and store executed Sponsorship Agreements in electronic form. Explanatory Memorandum 1/00, issued 11 August 2000, provides guidance to CHESS Participants on the minimum requirements for an Electronic Sponsorship Agreement to satisfy the Rules.

The Explanatory Memorandum is based on principles of functional equivalence - so that paper Sponsorship Agreements and electronic Sponsorship Agreements are treated equally by the Rules, and technology neutrality - so that the Rules do not discriminate between different forms of technology. SCH has not specified one particular method of compliance, instead the Explanatory Memorandum states minimum requirements and sets out possible methods to meet the requirements. SCH acknowledges that Participants may use other methods to meet the requirements and that other technologies may be developed in the future.

Participants may create, distribute and execute Sponsorship Agreements electronically. For example, the terms and conditions may be presented on-line and the agreements may be executed electronically by methods that are appropriate in the circumstances to identify each applicant, indicate each applicant's approval and are reliable. Participants may also store the executed Sponsorship Agreement electronically.

The reform aims to facilitate electronic transactions between Participants and clients, offer greater flexibility and increase business efficiency.

Explanatory Memorandum 1/00 is available to the public on the ASX website under "What's New" at "http://asx.com.au".

4. RECENT CORPORATE LAW DECISIONS

(A) SUBSTANTIAL SHAREHOLDING NOTICE
(By Naomi Lenga, [Clayton Utz](http://www.claytonutz.com))

New Ashwick Pty Ltd and CP Ventures Ltd v Wesfarmers Ltd and Westralian Farmers Co-operative Ltd [2000] SASC 289, Supreme Court of South Australia, Wicks J, 25 August 2000

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/sa/2000/august/2000sasc289.html>"

or "[http://cclsr.law.unimelb.edu.au/judgments/](http://www.law.unimelb.edu.au/bulletins/archive/%3CFONT%20FACE%3D%22CG%20Times%22%3Ehttp%3A//cclsr.law.unimelb.edu.au/judgments/%3C/FONT%3E)".

(1) Facts

New Ashwick Pty Ltd ("New Ashwick") and CP Ventures Ltd ("CP") (shareholders in IAMA Ltd ("IAMA"), the aggregate holding representing a little over 19 per cent of the total shares on issue in IAMA) brought an action against Wesfarmers Ltd ("Wesfarmers") and Westralian Farmers Co-operative Ltd ("Westralian Farmers") seeking an order that the defendants comply with section 671B(4) of the Corporations Law. Section 671B requires information about substantial holdings to be given to the company and Australian Stock Exchange Limited in a prescribed form and accompanied by certain documents. New Ashwick and CP were seeking an order requiring the defendants to provide to IAMA and to Australian Stock Exchange Limited:

(a) copies of any documents setting out the terms of any relevant agreement or arrangement between the defendants and IAMA which contributed to Wesfarmers acquiring approximately 15 per cent of the issued share capital of IAMA; and

(b) a statement giving full and accurate details of any contract, scheme or arrangement that contributed to Wesfarmers acquiring approximately 15 per cent of the issued share capital of IAMA.

The issue for Wicks J was whether the defendants had failed to comply with section 671B(4) of the Corporations Law.

On 5 July 2000, the Managing Director of Wesfarmers, wrote to the Chairman of IAMA outlining a proposal that would ultimately result in a merger of Wesfarmers Dalgety Ltd ("WDL") and IAMA for consideration by the IAMA Board. The proposal was not put forward as a negotiating position but provided Wesfarmers conclusions based on information provided. He proposed an immediate placement to Wesfarmers of new IAMA shares comprising 15 per cent of IAMA's issued capital and the entering into of heads of agreement to exclusively pursue merger negotiations between IAMA and WDL for a period not exceeding 90 days. The proposal was expressed to be non-binding until the heads of agreement was entered into.

On or about 7 July 2000 IAMA and Wesfarmers entered into a heads of agreement. That document dealt generally with matters relating to the proposed merger.

On 11 July 2000, Westralian Farmers gave a Substantial Shareholder Notice ("the Notice") on its own behalf and on behalf of each of its subsidiaries, including Wesfarmers, pursuant to section 671B of the Corporations Law to IAMA and Australian Stock Exchange Limited. The Notice made it clear under the heading "relevant interest" that Wesfarmers was the registered holder of the shares and that Westralian Farmers was the "holding company of the company which was the registered holder". Attached to the Notice was a letter to IAMA confirming an agreement by Wesfarmers to subscribe for shares in IAMA for cash consideration.

(2) Plaintiffs’ arguments

The solicitors for the plaintiffs wrote to Wesfarmers and Westralian Farmers stating that the Notice lodged by Westralian Farmers did not comply with the requirements of section 671B. The Notice did not reflect the wider arrangements and understandings already concluded between Wesfarmers and IAMA and did not reflect the terms of the media release in which the Chairman of IAMA and the Managing Director of Wesfarmers stated jointly that Wesfarmers would become a "major shareholder" in IAMA pursuant to a proposed merger, should it be approved by IAMA shareholders. It was argued that the clear intention of section 671B(4) is to require disclosure of agreements or arrangements even if those agreements or arrangements are "in principle", conditional or indicative only.

(3) Discussion of the legislation

Wicks J noted that section 671B should be construed so that its primary purpose is to maintain an informed market in listed shares of Australian companies. Wicks J noted that the information to be given in the Notice in this case included details of the relevant interest of the defendants in voting shares in IAMA as well as details of any relevant agreement through which the defendants or either of them had a relevant interest in voting shares in IAMA. An agreement for the acquisition of shares, whether by way of placement or purchase will always be a "relevant" agreement in relation to those shares. All there needs to be is a reasonable nexus between the agreement and the relevant interest.

(4) Findings

Wicks J made the following findings:

(a) The letter dated 5 July 2000 was not a relevant agreement and therefore fell outside the scope of section 671B(4)(a). The letter made a proposal "or at best an offer and not more". The terms of the letter were never agreed to. Rather, it was merely designed to open negotiations between the parties.

(b) On its own, the document attached to the Notice was not an agreement. It was merely an offer in writing which could be accepted, rejected or ignored by IAMA. Although this document was described in the Notice as "Agreement to subscribe for shares", Wicks J noted that in his opinion, it was not an agreement to subscribe and therefore the evidence did not indicate how the subscription for shares took place.

(c) For the purposes of section 671B(3), the heads of agreement constituted a "relevant agreement" and both Wesfarmers and Westralian Farmers had relevant interests.

In the recitals, the heads of agreement spoke of the parties having agreed in principle that Wesfarmers would subscribe for shares and would investigate a possible merger of the businesses of IAMA and WDL. The recitals continued by stating that the heads of agreement set out the terms on which Wesfarmers would subscribe for the shares and on which the parties would investigate the possibility of a merger.

The heads of agreement was a fully enforceable subscription agreement under which Wesfarmers was obliged to pay the subscription monies and IAMA was obliged to issue a specified number of shares in its capital for an agreed price per share. Wicks J noted that if there were several agreements on foot in relation to the placement of shares to Wesfarmers, each could be regarded as contributing to the situation irrespective of the quality or degree of that contribution referred to in section 671B(4)(a) and hence all would need to be attached to the Notice.

In failing to attach a copy of the heads of agreement to the Notice, Westralian Farmers and Wesfarmers were each guilty of a contravention of section 671B.

(5) Remedy

Section 1325A of the Corporations Law provides that the Court may make any order or orders (including a remedial order) that it considers appropriate if a person contravenes a provision of Chapter 6C of the Corporations Law.

Wicks J noted that an appropriate order in this case would be one directing the defendants to comply with the requirements of Chapter 6C by giving to IAMA and Australian Stock Exchange Limited a Notice with the existing attachment and a copy of the heads of agreement within a limited period of time from the date of the making of the order.

(6) Whether the contravention should be excused

Section 1325D of the Corporations Law enables the Court to excuse a contravention of Chapter 6C. Wicks J decided not to excuse the contravention of section 671B on the part of the defendants in relation to the heads of agreement.

An order under section 1325A was made directing compliance with section 671B generally and also specifically in relation to the heads of agreement.

(B) NO DISCLOSURE DOCUMENT REQUIRED FOR SALE OF NEW SHARES UNDER SCHEME OF ARRANGEMENT
(By Naomi Lenga, [Clayton Utz](http://www.claytonutz.com))

Timor Sea Petroleum NL [2000] VSC 337, Supreme Court of Victoria, Warren J, 25 August 2000

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/vic/2000/august/2000vsc337.html>"

or "<http://cclsr.law.unimelb.edu.au/judgments/>".

(1) Facts

Timor Sea Petroleum NL ("Timor Sea") sought orders and directions pursuant to section 411 of the Corporations Law for the convening of a meeting of its members to consider and approve proposed schemes of arrangement.

Section 411 confers jurisdiction upon a court to order a meeting or meetings of the members of a Part 5.1 body where a "compromise or arrangement" has been proposed between the body and its members. Section 411(2)(b)(ii) provides that the court is to be satisfied that ASIC has had a reasonable opportunity to make submissions to the court in relation to the proposed arrangement and the draft explanatory statement.

There were two proposed schemes of arrangement:

(a) a proposed demerger to accommodate the acquisition of a company; and

(b) a trustee stock scheme involving the company issuing shares to a trustee to be held on trust for sale on the basis that the net proceeds of sale were paid to the company as subscription money for those shares. The object of the scheme was to create the capacity for capital to be raised for Timor Sea.

(2) Issue

The issue for the Court was to determine whether or not Timor Sea qualified for an exemption under section 708(17) of the Corporations Law. Section 708(17) provides that an offer of securities does not need disclosure to investors if it is made under a compromise or arrangement, approved at a meeting held as a result of a court order under section 411(1) or (1A).

(3) ASIC's objection

ASIC appeared before the Court to be heard with respect to the trustee stock scheme.

ASIC's concern was that as the shares were to be sold on market without a disclosure document, the scheme may contravene or circumvent section 707(3) of the Corporations Law.

Section 707(3) provides that an offer of a body's securities for sale within 12 months after their issue needs disclosure to investors if the body issued the securities without disclosure to investors and with the purpose of the person to whom they were issued being to sell or transfer them, or grant, issue or transfer interests in, or options or warrants over, them and such offer is not otherwise exempted.

Timor Sea argued that section 707(3) was inapplicable because the sale of shares was an integral part of the scheme and so was exempted from section 707(3) by section 708(17).

(4) Main grounds supporting ASIC's objection

(a) ASIC submitted that section 708(17) should be read narrowly on the basis that it is intended to exempt offers of shares under a compromise or arrangement where the offer of securities is made to the members who have a copy of an explanatory memorandum that provides disclosure in relation to the securities being offered.

(b) If section 708(17) applies, then the trustee stock scheme should not be approved because it undermines the purpose behind section 707(3) and is contrary to public policy.

(c) A problem would arise under section 707(3) if offers for sale by the trustee were dispensed by section 708(17) from compliance with section 707(3) when scheme shares were offered for sale within 12 months of issue by purchasers from the trustee.

(d) A narrow reading of section 708(17) promotes the purpose or object underlying the Law.

(5) Court’s findings

The Court gave the following responses to ASIC's grounds of objection:

(a) The proposed scheme was not a compromise but an arrangement. The exemption in section 708(17) applied to the trustee stock scheme and there was no need for disclosure to investors because the offer was under the arrangement which required the subscription moneys to be provided by the sale of shares. The sale of the share is an integral part of the arrangement for which approval is sought and is not something which is separate from the arrangement as might be the case in other types of schemes. Warren J considered the language of section 708(17) to be wide enough to exclude the application of section 707(3) with respect to an arrangement.

(b) No public policy consideration applies to negate the effect of a dispensation from section 707(3) expressly conferred under section 708(17). The relevant public policy is manifest in terms of section 708(17).

(c) Warren J held that no disclosure document is required for a re-sale of new shares to a third party under a scheme of arrangement (ie, section 707(3) does not apply). Rather, section 707(3) applies to certain offers for sale of securities where they are issued with the purpose of the issuing body or "the person to whom they were issued" selling or transferring those shares. The purpose of the issuing body is only concerned with sales or transfers by that person. Warren J noted that in her view, it would be anomalous if the first sale were to be dispensed from the requirements of section 707(3) by section 708 but a subsequent sale by a person who had no connection with the issuer were to be the basis for imputing a purpose to the issuer at the time of issue.

(d) It is a question in each individual scheme brought before a court for approval as to whether the exemption provided by section 708(17) applies to the particular facts. Here, Warren J chose not to give section 708(17) a narrow interpretation.

(6) Decision

Warren J found that Timor Sea qualified for an exemption under section 708(17) by virtue of the fact that the proposal before the Court was an arrangement under Part 5.1 of the Law that required approval under section 411(1). Warren J made the appropriate orders sought by the Timor Sea under section 411(1) for the convening of a meeting of shareholders to consider the schemes.

Ultimately, Australian Stock Exchange Limited required a prospectus to be issued due to the fact that the business of the Timor Sea, a listed company, would substantially change as a result of the schemes.

(C) UNFAIR PREFERENCES: WHEN IS A COMPANY A PARTY TO A TRANSACTION?
(By James Paterson, [Phillips Fox](http://www.phillipsfox.com.au))

Driver as Liquidator of Tilse Building Pty Ltd (in liquidation) v Commissioner of Taxation [2000] NSWCA 247, New South Wales Court of Appeal, Priestley JA, Meagher JA, Sheller JA, 31 August 2000

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/nsw/2000/august/2000nswca247.html>"

or "<http://cclsr.law.unimelb.edu.au/judgments/>".

Tilse Building Pty Ltd ("Company") engaged in the business of home building and construction and repair. By 1993 it was experiencing a downturn in work and consequently a cash flow shortage. As a result, it did not always lodge all tax returns by the due date.

In July 1994, as a result of its cashflow shortage and non-payment of tax liabilities, the Commissioner of Taxation (‘Commissioner’) served a creditor’s statutory demand on the Company. In April 1995, the appellant was appointed the Company’s voluntary administrator, and in May 1995 its liquidator. On the facts it was clear that the Company had been insolvent since at least 29 October 1994.

However, on some occasions (apparently because of incompetent financial advice) the Company had managed to overpay its tax liabilities. As a result, the Company lodged a request for an amended assessment in respect of its 1991 income tax return as its records had overstated the total income to be assessed. Thus it applied for a credit of $62,517.40 and as a result, under the authority of section 172 of the Income Tax Assessment Act 1936 (‘the Act’), the Commissioner then applied this money to the Company’s Prescribed Payments tax liability which was currently outstanding.

In February 1995 the Company lodged another request for an amended assessment, and again was successful in obtaining a Prescribed Payment tax credit of $21,908. This sum was then applied by the Commissioner to tax liabilities owed by the Company pursuant to section 221YHG(2) of the Act.

The appellant originally brought an action against the setting off of these figures, and another figure of $10,000, on the basis that the payments to the Commissioner were void because they were insolvent transactions within section 588FE of the Corporations Law. Accordingly the appellant requested repayment of these amounts.

At first instance, Windeyer J found that the $10,000 amount should be repaid to the appellant. However, the amount of $62,517.40 and $21,908 were not considered insolvent transactions by Windeyer J and thus, the appellant appealed that decision.

It was noted that in relation to both of the amounts in question, it was accepted that:

(a) the amended assessments raised credits in the Company’s favour;

(b) at the time each credit came into existence there was or were a debt or debts equal to, or in excess of, the credits to which the Company was entitled; and

(c) the Commissioner applied the credits so as to reduce or extinguish the debts.

The main question which remains was whether the reduction or extinguishment of the debts lead to an illicit preference.

In reviewing the transfer of the moneys, Meagher JA reviewed sections 588FE(2) and 588FA(1) of the Corporations Law. Section 588FE(2) states that a transaction is voidable if it is considered an ‘insolvent transaction’, while section 588FA(1)(a) states that a transaction is an unfair preference given by a company to a creditor of the company if, and only if, the company and the creditor are parties to the transaction.

His Honour determined that although the word ‘transaction’ must cover a vast field, for the purposes of both the definition and for the purposes of section 588FA(1)(a) it is necessary for a company to be party to the ‘transaction’. His Honour followed Emmet J’s decision in Commissioner of Taxation v Macquarie Health Corp (1999) 17 ACLC 171. In that matter when the Commissioner applied credits to the debts of a company, the company was held not to be a party to that transaction.

His Honour stated that a taxpayer who requested a re-assessment is not necessarily a ‘party’ to the Commissioner’s behaviour after the re-assessment is made. Meagher JA’s decision was agreed to by Priestley JA and Sheller JA. The appeal was dismissed with costs.

(D) RETROSPECTIVE APPROVAL OF AGREEMENT ENTERED INTO BY LIQUIDATOR TO RECOVER PREFERENCE PAYMENTS
(By Sean Tully, [Phillips Fox](http://www.phillipsfox.com.au))

Empire (Aust) Nominees Pty Ltd v Vince [2000] VSC 324, Supreme Court of Victoria, Warren J, 18 August 2000

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/vic/2000/august/2000vsc324.html>"

or "<http://cclsr.law.unimelb.edu.au/judgments/>".

On 3 March 1997 Empire (Aust) Nominees Pty Ltd ("Company") entered into two agreements with the Australian Tax Office (‘ATO’) to pay by instalments certain amounts in relation to outstanding tax liabilities of the Company. A third agreement was entered into between the Company and the ATO with respect to the payment of other outstanding taxes by instalments on 19 February 1998.

However, the Company was placed in administration on 15 May 1998 and then subsequently placed in liquidation on 12 June 1998.

The liquidator of the Company formed the belief that some or all of the payments made by the Company to the ATO may have been voidable under Division 2 of Part 5.7B of the Corporations Law (‘the Law’).

On 15 June 1999 the liquidator accepted an offer from the Insolvency Management Fund Pty Ltd (‘IMF’) to fund litigation to set aside all or part of the payments made by the Company to the ATO as constituting a preference. The agreement provided that if the liquidator received any moneys following the institution of proceedings (the ‘resolution sum’), IMF would receive, among other things, a portion of that sum and such portion was to be determined at varying amounts depending upon when the sum was received. The terms of the agreement contemplated that the resolution sum may not be obtained for up to more than 6 months after the letter of offer from IMF, that is, after 25 May 1999.

However, section 477(2B) of the Law provides that a liquidator is precluded from entering into an agreement if the term of the agreement ends or the obligations under the agreement may be discharged by performance more than 3 months after the agreement is entered into unless approval is given to the agreement by the court, the committee of inspection or by a resolution of the creditors. The liquidator did not obtain such approval before accepting the agreement on behalf of the Company.

On 14 May 2000 the liquidator issued proceedings against the ATO claiming that payments totalling $199,000 were made by the Company to the ATO and that such payments were voidable transactions pursuant to sections 588FE(2) and (3) of the Law. The proceedings were settled and orders were made by consent in the Supreme Court on 22 June 2000 that the ATO pay $70,000 to the liquidator pursuant to section 588FF of the Law.

The liquidator was advised after the settlement with the ATO that he should have obtained approval prior to entering into the agreement with IMF. The liquidator then made an application to the Supreme Court of Victoria for retrospective approval of the agreement with IMF pursuant to section 477(2B) of the Law.

In hearing the application, Warren J observed that:

(a) Templeman J held in Re Associated Travel, Leisure & Services Limited (1978) 1 WLR 547 that the Court has the power to give a retrospective sanction to action taken by a liquidator without the requisite approval where the action results in a benefit to the creditors;

(b) section 1322(4)(a) of the Law empowers the Court to make an order declaring that any act, matter or thing purporting to have been done under the Law or in relation to a corporation is not invalid by reason of any contravention of a provision of the Law; and

(c) section 1322(4)(d) of the Law empowers the Court to order an extension of the period for doing any act, matter or thing under the Law, including an order extending a period where the period concerned ended before the application for the order was made.

Warren J considered it appropriate that approval be given to the agreement between the liquidator and IMF, as:

(a) the creditors of the Company received a benefit if not a windfall in that as a result of the agreement entered into by the liquidator with IMF, $70,000 was recovered from the ATO that would otherwise not have been available; and

(b) the application would have been granted approval pursuant to section 477(2B) of the Law had it been made to the Court prior to the liquidator entering into the agreement with IMF.

Warren J therefore ordered that:

(a) pursuant to section 1322(4)(a) that the agreement effected between the liquidator and IMF on 15 June 1999 is not invalid;

(b) pursuant to section 1322(4)(d) the period for the making of an application under section 477(2B) of the Law for approval of the agreement is extended; and

(c) pursuant to section 477(2B) approval is granted to the liquidator to enter into the agreement.

(E) SELECTIVE REDUCTIONS OF CAPITAL AND COST ORDERS
(By Jonathan Tisher, [Phillips Fox](http://www.phillipsfox.com.au))

Winpar Holdings Limited v Goldfields Kalgoorlie Ltd [2000] NSWSC 855, New South Wales Supreme Court, Santow J, 17 August 2000

The full text of this judgment is available at:

"<http://cclsr.law.unimelb.edu.au/judgments/states/nsw/2000/august/2000nswsc855.html>"

or "<http://cclsr.law.unimelb.edu.au/judgments/>".

This judgment concerns the awarding of costs where none of the plaintiff’s objections to a selective reduction of capital eliminating a minority have succeeded. Santow J noted that there is no relevant reported decision in the changed legislative context for reductions of capital that has prevailed since the Company Law Review Act 1998*.*

His Honour noted that there are three potential ways to deal with costs:

(1) Costs should follow the event and be awarded to the defendant because the defendant successfully resisted the plaintiff’s challenge under section 1324(1) and (1B) of the Corporations Law ("the Law");

(2) Costs should be awarded to the unsuccessful plaintiff as objector, because this is how costs would have been awarded if the case had been a shareholder’s scheme of arrangement; or

(3) No cost order should be made.

Santow J concluded that costs should be awarded to the plaintiff as objector. The major reason for this was that if the selective reduction of capital had proceeded as a scheme of arrangement, the objections raised by the plaintiff would have satisfied the requirement for costs to be awarded where the objections were not frivolous or without substance. It would also be inconsistent if objectors were in a materially worse position because the proponent of a compulsory acquisition application chose to proceed by selective reduction of capital rather than by a conventional takeover or scheme of arrangement.

Santow J noted that the legislative change made by section 664F(4) of the Law, which was introduced under the Corporate Law Economic Reform Program Act 1999, weakened the defendant’s case in invoking the practice applicable to a compulsory acquisition following a conventional takeover under section 701 of the Law.

Section 664F(4) of the CL provides that:

"The 90% holder must bear the costs that a person incurs on legal proceedings in relation to the application unless the Court is satisfied that the person acted improperly, vexatiously or otherwise unreasonably. The 90% holder must bear their own costs."

It was noted that under section 701 there is a long history of cost orders against unsuccessful section 701 applicants as illustrated by the decision in Elkington v Shell (1999) 32 NSWLR 11. In this case, Sheller JA (with whom Meagher JA agreed) considered the decision of Hardie Boys J in Re Deans; Re Stevens Group Properties Ltd [1986] 2 NZLR 271. There, it was held that an objection by a dissenting shareholder had no real merit. With respect to costs, Hardie Boys J observed that the possibility of an objection is a distinct likelihood where the subject of a takeover bid is an old established company in which people have close personal interests. Accordingly, the offerer needs to have considered whether to allow parties to retain their shares or to seek to acquire them compulsorily. As the likely costs will have been taken into account when the exercise is started, they are considered part of the costs of the takeover. Hardie Boys J concluded that it would therefore be inappropriate to award costs in favour of the offerer and made no order as to costs. However, Sheller JA noted that this practice has not always been followed in Australia, and concluded that the appellant in that case, like any other unsuccessful appellant, should pay the costs of the successful respondent.

In summary, Santow J noted section 664F(4) was required to reverse that result in the case of compulsory acquisitions following conventional takeovers. His Honour then observed that in contrast, there is a history of cost orders being made in favour of objectors in relation to selective reductions of capital. This is illustrated by the decision of Hanson J in Quatro Limited v Argo Investments (1999) 32 ACSR 480, where it was held that objectors were able to act in a manner akin to being a party and participate in a forensic process on confirmation applications without, in many cases, being required to pay costs.

Santow J noted that the new regime applicable to selective reductions of capital has removed the requirement of court approval where there is no objector. However where an objector seeks to rely on section 1324 of the Law, the proponent of the selective reduction of capital has, as in a scheme of arrangement, the reverse onus of establishing its fairness in accordance with the criteria set out in section 256B and 256C of the Law.

His Honour concluded that similar cost outcomes could ordinarily be expected in relation to these three functionally equivalent modes of compulsorily acquiring a minority - a conventional takeover, a scheme of arrangement and a selective reduction of capital.

Santow J ordered that the costs of the plaintiff be paid by the defendant with other associated orders.

Santow J also noted that courts should not automatically make cost orders in favour of unsuccessful objectors. It is unlikely that a cost order will be made in favour of an unsuccessful objector where there has been illegitimate time wasting or their submissions are not reasonably plausible.

5. RECENT CORPORATE LAW JOURNAL ARTICLES

S Sievers, ‘Incorporation of Non-Profit Associations: The Way Ahead?’ (2000) 18 Company and Securities Law Journal 311

Although the activities of non-profit associations have an impact on most people in the community, except when something goes wrong, little attention is given to their structure or regulation. Australia has a national regulatory scheme for companies and it is clear that there is an increasing need for a similar uniform regulatory structure for non-profit associations. This article puts the case for the adoption of uniform State and Territory Associations Incorporation legislation along the lines of that recently agreed to for the regulation of co-operatives. The Associations Incorporation Acts are drafted specifically for non-profit organisations and would provide a simple and effective regulatory scheme that could replace the current fragmented structure under which non-profit associations may operate as companies limited by guarantee or as incorporated associations or remain unincorporated.

P Ali and T Russell, ‘Investor Remedies against Fiduciaries in Rising and Falling Markets’ (2000) 18 Company and Securities Law Journal 326

One of the main types of securities available to investors now are in managed funds or superannuation where a fund manager, trustee or custodian (or all three) stand between the investor and the market. Modern regulatory regimes have shaped how they are offered and administered, but much of the detail is still supplied by the common law of fiduciaries developed in the 19th century. When the fiduciary puts money into an investment which is not allowed under its duty to the investor, the law in Australia and the United Kingdom until very recently worked with principles which suited the older trust law’s emphasis on capital preservation at all costs. Now that fiduciaries are engaged to expose portfolios to levels of market risk chosen by the investor for gain, it is time to settle modern remedies to match. This article argues that the benchmark for compensating an investor should be the performance of the authorised alternatives, not the amount spent by the fiduciary on the unauthorised investment. This is the case in the United States.

M Gething and K Ould, ‘The Wesfi Takeovers Panel Application: Lessons for the Future’ (2000) 18 Company and Securities Law Journal 351

In this article the authors review the course of the hearing and decision in the Wesfi Takeovers Panel application last year. In particular they focus on the practices and procedures adopted by the Panel, and the litigation surrounding the application. The twin aims of the article are to review the Wesfi Application in the context of the operation of the Panel over its first 9 years, and to critique the post-Corporate Law Economic Reform Program Act Panel regime in the light of the Wesfi Application

Note, ‘Collateralised Debt Obligations, with an Overview of the Condor Securitisation Programme’ (2000) 18 Company and Securities Law Journal 371

Note, ‘The Corporations Law, Section 181: A Two-Edged Sword’ (2000) 18 Company and Securities Law Journal 377

Justice R French, ‘Federal Jurisdiction – An Insolvency Practitioner’s Guide to the Labyrinth’ (2000) 8 Insolvency Law Journal 128

Recent decisions of the High Court on questions of federal jurisdiction and cross-vesting require a revisiting by practitioners of principles governing the definition and exercise of federal jurisdiction. These are of particular importance in the areas of bankruptcy, insolvency and corporations law. This article considers the nature and origins of federal jurisdiction, the cross-vesting scheme and the impact of the recent High Court decision in Re Wakim. It looks to the constitutional setting of these doctrines and their interaction with bankruptcy and insolvency laws and corporations laws. The impact and effectiveness of interim and proposed legislative responses to Re Wakim are also considered.

J Farrar, ‘Corporate Group Insolvencies, Reform and the United States experience’ (2000) 8 Insolvency Law Journal 148

The recent waterfront dispute highlighted once again the problems arising out of group insolvencies and the matter has been considered by the Company and Securities Advisory Committee (CASAC). In the meantime, the Corporations Law Amendment (Employee Entitlements) Act 2000 has now been rushed through Parliament to penalise transactions deliberately entered into to defeat employee entitlements and to extend the concept of insolvent trading via the concept of uncommercial transaction. This article looks at United States bankruptcy laws and compares them with the CASAC proposals and the new Act. It argues that the United States laws provide a useful benchmark and consideration of the United States discussions of principle and policy will be helpful in Australia and New Zealand in this complex area.

M Ross, ‘Payments Made in the Ordinary Course of Business by an Insolvent Company’ (2000) 8 Insolvency Law Journal 157

Unlike Australia, a number of jurisdictions still apply the "ordinary course of business" rule in respect of payments made prior to liquidation. The rule is a valuable tool for those who support a rescue culture for failing companies since it enables creditors to retain payments made on due date when a debtor company is insolvent. Complaints centre on what is perceived to be the rule’s apparently uncertain application. However, case law does provide a precise interpretation of the phrase "payments made in the ordinary course of business", an interpretation which is capable of consistent application.

P Brazil and K Boreham, ‘The Liability of Company Officers for Corporate Breaches of the New Federal Environment Legislation’ (2000) Vol 19 No 2 Australian Mining and Petroleum Law Journal

K Lynch, ‘The Temptation to Intervene: Problems Created by Government Intervention in the Hong Kong Stock Market’ (1999) 29 Hong Kong Law Journal 123

C Forcese, ‘Deterring "Militarized Commerce": The Prospect of Corporate Liability for "Privatized" Human Rights Abuses’ (2000) 31 Ottawa Law Review 171

M Johnson, K Nelson and A Pritchard, ‘In Re Silicon Graphics Inc: Shareholder Wealth Effects Resulting from the Interpretation of the Private Securities Litigation Reform Act’s Pleading Standard’ (2000) Vol 73 No 4 Southern California Law Review

P Watts, ‘The Company’s Alter Ego – A Parvenu and Impostor in Private Law’ (2000) No 2 New Zealand Law Review

N Harvey and A Harle, ‘The European Union Takeover Directive – A Current Perspective’ (2000) Vol 11 No 7 International Company and Commercial Law Review

P Latimer, ‘False Trading and Market Rigging on the Stock Exchange’ (1999) 7 Asia Pacific Law Review 247

L Tan, ‘The Legal and Regulatory Framework of Securities Markets in the PRC’ (1999) 7 Asia Pacific Law Review 69

J Hill, ‘Visions and Re-visions of the Shareholder’ (2000) 43 American Journal of Comparative Law 39

M Dessent, ‘Weapons to Fight Insider Trading in the Twenty-First Century: A Call for the Repeal of Section 16(b) (2000) 33 Akron Law Review 481

The International Lawyer, Vol 33 No 4, 1999. Symposium on the Law-Based Nature of the New International Financial Infrastructure. Articles include:

- The New International Financial Architecture: Is There a Workable Solution?

- The Critical Importance of Controlling Corruption

- From Developing Countries to Emerging Markets: A Changing Role for Law in the Third World

- A ‘New International Financial Architecture?’ – Reflections on the Possible Law-Based Dimension

- The New Financial Architecture and Effective Corporate Governance

- Stock Markets and the Globalization of Retirement Savings

- Implications of Privatization of Government Pensions for Securities Regulators

- The Old Problems, the New Law, and the Developing Market

- A Preliminary Examination of the First Securities Law of the People’s Republic of China

M Wilkinson, ‘Hong Kong Corporations After the Hand Over: Matimak Revisited’ (1999) 29 Hong Kong Law Journal 345

C Booth, ‘When Government Intervenes: Winding Up Fraudulent Companies in Hong Kong’ (1999) 29 Hong Kong Law Journal 368

J Brock, ‘The Propriety of Profit-making: Fiduciary Duty and Unjust Enrichment (2000) Vol 58 No 2 University of Toronto Faculty of Law Review

M Maddern, ‘Choice of Entity and Securities Aspects of Independent Film Offerings by First-time Film Makers’ (1999) Vol 22 No 1 Hastings Communications and Entertainment Law Journal

G Backman, ‘The New Audit Committee Rules’ (2000) 28 Securities Regulation Law Journal 3

B Black, ‘Securities Regulation in the Electronic Age: Online Trading, Discount Broker’s Responsibilities and Old Wine in New Bottles’ (2000) 28 Securities Regulation Law Journal 15

M Steinberg and N Hansford, ‘The Plight of "Secondary Actors" Under Section 10(b): Distinguishing Primary from Secondary Liability’ (2000) 28 Securities Regulation Law Journal 36

M Berger, J Coffee and G Silk, ‘Institutional Investors as Lead Plaintiffs: Is There a New and Changing Landscape?’ (2000) 28 Securities Regulation Law Journal 127

Company Lawyer, Vol 21 No 7, July 2000. Articles include:

- Distance Marketing of Financial Services: The Approach Towards Harmonisation Emerges

- The Contracts (Rights of Third Parties) Act 1999

- Houses Built on Sand: The Case of the Debenture-Holder

- Registration of Charges: Wrong Company Number in Particulars Submitted to the Registrar

- Duggan v Stoneworth: The Compulsory Acquisition of Shares

- Turkey: Unlimited Companies in Turkish Company Law

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