

the newlawyer

www.thenewlawyer.com.au

VISIT OUR SITE
>>
thenewlawyer.com.au
first with legal news

EDITOR: KATE.GIBBS@REEDBUSINESS.COM.AU | ADVERTISING: AMY.VIVIAN@REEDBUSINESS.COM.AU

20 JANUARY 2010

Gwalia's legalistic approach slammed

COMMENTATORS have taken the federal government's move to overturn the effect of the High Court's decision in *Sons of Gwalia v Margaretic* as a chance to slate the court's decision.

The federal government's move restores the traditional rights of creditors over shareholders in the winding up of a company, the independent body for government and risk management said. The move is "equitable" and "practical", it said.

The Corporation Act is to be amended to reverse the effect of the decision, which determined that in a corporate winding up, compensation claims by shareholders were not subordinated below the claims of other creditors.

Corporate Law Minister Chris Bowen made the decision as part of the government's reforms to insolvency laws aimed at providing better protection for directors involved in rescuing fallen companies.

Welcoming the move to reverse the effect of the decision in *Sons of Gwalia*, Chartered Secretaries Australia chief executive, Tim Sheehy, said: "The federal government is to be applauded for rejecting the High Court's legalistic approach in favour of what is clearly in the nation's best interests.

"Capital market investors can finally take comfort that the time-honoured and well-understood

distinction between the rights and risks of debt and equity investment will again prevail."

The CSA had long condemned the High Court decision, saying it flew in the face of the traditional principle that shareholders assume greater risk for the chance of greater reward, while creditors accept limited returns for lower risk.

CSA's view was that *Sons of Gwalia* distorted the capital markets by forcing creditors to compete with shareholders in a winding-up and effectively underwrite shareholders' speculative risks with no compensating benefits.

"The government has now delivered the right result by confirming that shareholders must continue to absorb the risk of insolvency as part of the broad range of risks they assume in acquiring shares and which properly include the risks of corporate fraud, misconduct and the non-disclosure of price-sensitive information," said Sheehy.

"The government's decision promotes regulatory certainty and greater equity – both of which are good for governance," he said.

In *Sons of Gwalia*, a shareholder alleged that he had been induced to buy shares in an ASX-listed company as a result of the company's misleading conduct.

>> READ MORE PAGE 2

>> local news

Firms hope for growth

LAW firms have their fingers crossed for a booming year in company floats and initial public offers to bolster their practices in 2010.

Freehills said this week that it hopes a resurgent stock market and some successful company floats towards the end of last year have set good conditions for growth in equity capital markets.

Corporate partner and co-head of the equity capital markets team, Philippa Stone said: "The successful public floats of retailers Myer and Kathmandu towards the end of 2009 were good signals for equity capital markets in 2010."

"Particularly in the first half of 2009 a lot of the activity was raising funds to sure up balance sheets.

"We would expect there will be more activity this year, particularly IPO activity from private equity investors seeking to realise their investments and existing listed companies seeking to raise funds to invest for future growth."

Middletons invests in writers

MIDDLETONS and the Sydney Writers' Festival (SWF) have announced Middletons as the official law firm of the annual literary festival held in Sydney.

The 2010 writers' festival will be held from 17 to 23 May featuring the best of both Australian and international writers.



the newlawyer

TO ADVERTISE
HERE CONTACT
AMY ON
02 9422 2970

the newlawyer

CONTENTS – CLICK BELOW

- 2 >> NEWS IN BRIEF
- 3 >> OUTSIDER'S VIEW

IF THIS IS NOT YOUR
COPY, SUBSCRIBE NOW
>> CLICK HERE

Introducing a new way
to find the right job candidates



RBI Vertical Jobs Network



JOBS.THENEWLAWYER.COM.AU
To find out more contact Hussein on 02 9422 2851

Appointments rife as firms prepare for bumper year

>> APPOINTMENTS

A new year begins and firms take it as a chance to show off their new partners and senior lawyers in a showcase of an optimism for the months ahead.

While last year saw salary freezes, holds on hiring, and in some cases mass redundancies within Australian law firms, 2010 kicked off with some senior hires in mid- and top-tier firms.

Following this week's news of hires at Minter Ellison, Clayton Utz and smaller Hall & Wilcox, among others, Corrs Chambers Westgarth has announced the promotion of a lawyer to the partnership in the firm's IP technology and competition group in Melbourne.

As well, the firm has recruited a senior overseas legal adviser in its intellectual property, technology and competition practice, also in Melbourne.

Daniel Plane, who takes that role, was recently the chair of the Asia IP practice of French firm Gide Loyrette Nouel in Hong Kong. And he previously managed the Asia-Pacific anti-counterfeiting

program of LVMH Fashion Group (which includes the Louis Vuitton brand) from Hong Kong and Nokia's Europe, Middle East and Africa Program from Helsinki.

In addition to handling intellectual property matters in Australia, Plane will also be advising Corrs' clients on Asia-Pacific IP Strategy, particularly focusing on IP protection and enforcement in the People's Republic of China, where he has extensive in-house and private practice experience.

Corrs has been upping its presence in China, in particular, in the past 10 years. The firm's managing partner John Denton told *The New Lawyer* last year that the firm is top tier in Beijing.

"We are no new coming. We are the long-term players in the market. We do it differently to our competitors. We don't set up marketing offices, we don't see it just as bricks and mortar. We see it about long, hard yards being built around developing relationships in the right places with the right people."

With deals like the \$285.6 million Baosteel Group investment in Aquila and clients like China

Iron and Steel Association, China Metallurgical Group Corporation and SinoSteel Mining under its wing, the appointment of someone like Plane appears to fit into the strategy.

Meanwhile, Mark McCowan, who moves into the firm's IP, technology and competition partnership, is a competition and trade practices law specialist.

He has particular expertise in merger clearance processes and complex regulatory investigations.

McCowan advises on competition and consumer protection law issues arising from mergers and acquisitions, joint ventures, distribution and supply arrangements, marketing activities, market regulation and industry codes of conduct.

He has worked in the Washington DC antitrust practice of a leading US law firm and has considerable experience acting on multi-jurisdictional transactions and investigations.

LEGAL NEWS OR VIEWS?

>> [CLICK HERE](#)

>> news in brief

AICD applauds insolvency reforms

THE Australian Institute of Company Directors has welcomed the package of insolvency law reforms announced by the Minister for Corporate Law, Chris Bowen, labelling the move "sensible and important".

The AICD said yesterday the High Court decision in *Sons of Gwalia* had adverse consequences, both for the cost and availability of credit to Australian business and for the cost and complexity of external insolvency administration.

"It created major practical problems for insolvency administrations, meant added delays and costs and reduced the pool of assets available to ordinary creditors," said John Colvin, chief executive officer of AICD.

"It also gave litigation funders added impetus to bring class actions against insolvent companies," he said.

"The modified Business Judgement Rule being proposed would help avoid that situation.

"However, the Government could go further in this area," Colvin said.

"AICD strongly believes there is a need more generally for a broad-based Business Judgement Rule defence, or safe harbour, for directors, consistent across Commonwealth, state and territory laws. The defence would be available when directors make commercial decisions in good faith, having informed themselves about the subject matter and having acted in the best interests of the company."

the newlawyer

TO ADVERTISE
HERE CONTACT
AMY ON
02 9422 2970

RBI Vertical Jobs Network

Time for a change

Find your new career opportunity

JOBS.THENEWLAWYER.COM.AU LEGAL

The problem of fee recovery



David Topp

>> SUPPLIERS

As a barrister, slow (or non-existent) payment of tax invoices is par for the course really. Avid readers of *The New Lawyer* would be aware that it is an issue which I have been quoted on in the past, and indeed is one I intend to return to in the future also.

An interesting kernel of information came to me during discussions with a fellow professional, though non barrister, sole trader when I lamented the Bar's perennial problem.

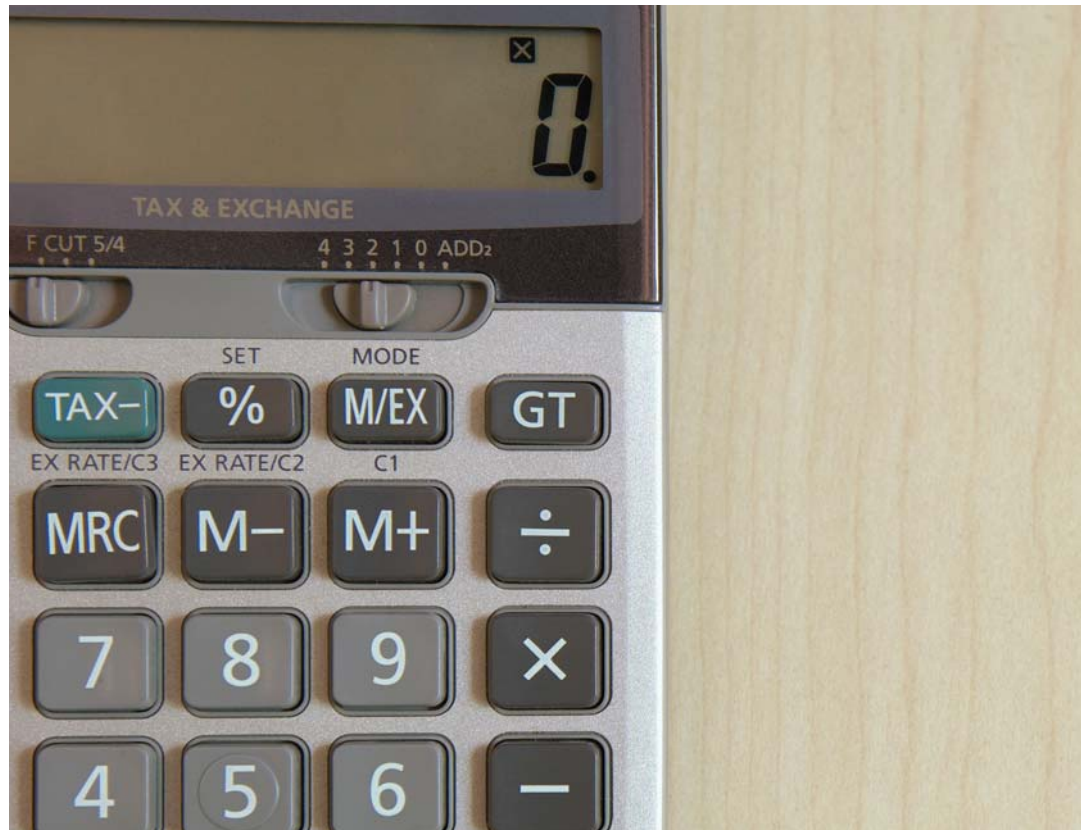
My sole trader contact found that investing in a credit card payment facility generated a measurable increase in fee recovery in his business and that this occurred notwithstanding his passing on of the credit card provider's surcharge.

Personally I could not care less if Donald Duck signed a cheque for one of my invoices so long as the cheque cleared.

Why is that? Could it be due to the fact that giving a credit card number is a simpler and quicker task for payers than the old fashioned write a cheque, attach to a covering letter, fold three ways, insert into an envelope and then find a post box somewhere method?

Perhaps. Though I always quote my BSB and account number details on my invoices, yet find that less than 5 per cent of payers actually use it.

Could it instead be the fact that many credit cards are linked to various frequent flyer and other



In the first of The New Lawyer's weekly 'Outsider's View' column, which looks at the legal profession from outside the large firm high rise, Queensland barrister David Topp vents his views on the problem of barristers' fees recovery.

rewards programs?

As someone who has in the past availed myself of frequent flyer points to enjoy a holiday or two, I do give the magnetic strips on my cards a fair work out.

Perhaps not to the same extent as Steve Waugh's iconic overwearing to threadbare status of his treasured baggy green cap, but nonetheless my cards do end up looking pretty second hand by the time that they arrive at their expiry date!

Based on my experiences, I would therefore venture that my sole trader contact's reported success is more a product of a motivation less morally upright than a desire by his clients to ensure that they do the right thing by their professional advisers.

But if it works, who cares?

Well the heads of various Bar Associations might. The Bar, along with the Solicitors branch of the profession, is proudly noble.

So much so that some barristers I have spoken to have gone so far as to be personally affronted if their solicitors post them a cheque drawn on the client's account in payment of fees.

Personally I could not care less if Donald Duck signed a cheque for one of my invoices so long as the cheque cleared. But if this is a concern for some Counsel, could it follow that the nobility of the Bar would be diluted further by the relative tackiness of 'Visa/Mastercard' images on barristers' fee notes?

Or alternatively is it not recognition of the fact that the Bar is, rightly or wrongly, a business and if barristers don't conform to and apply perfectly legal contemporary business practices, they will fail? No point having a noble profession if it is devoid of members in the first place.

There will undoubtedly be many views on this topic. The

beauty of *The New Lawyer* as an online legal publication is the ability for readers to promptly respond by adding comments of their own. I await your comments with interest.

David Topp is a Brisbane based commercial, debt recovery and insolvency barrister who often writes about/ comments upon contemporary cases and legal issues. David's shorter musings on law, and also Brisbane's coffee scene, can also be followed on his Facebook status updates.

>> [COMMENT HERE](#)

the newlawyer

WE WANT YOUR WORDS

>> [CLICK HERE](#)