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The rescue and reorganisation of large corporate groups has become a significant challenge for national insolvency law systems that have largely been focused upon the rescue or restructuring of single companies. This has seen international efforts to rework established legal mechanisms to cope with problems created by corporate groups with a large number of subsidiary companies, especially in the context of cross-border insolvency. Innovation has been evident in regard to internationally active corporate groups after the failure of such group entities during the global financial crisis. Innovation has also occurred in regard to corporate groups whose subsidiaries are primarily located within one country. This article discusses one such rescue involving Arrium, a strategically important Australian steel company, with many Australian subsidiaries in its group and with stakeholders at the national, state and local government levels. The Arrium Group was placed into voluntary administration and eventually sold to the British company GFG Alliance. Using identical deeds of company arrangement for the 94 companies in the group, the Arrium administrators were able to hold parallel meetings of each company to approve the proposed DOCAs. Many companies in this group had provided cross guarantees and had shared directors. With the approval of creditors, the use of holding DOCAs (in the forms of transaction DOCAs and a distribution DOCA) avoided the need to seek court approval to amend the convening period under s 439A of the Corporations Act 2001 (Cth) and thereby gave the administrators more time to make the group more attractive for its eventual sale. The use of the holding DOCA mechanism provided many advantages that facilitated the eventual sale of this politically sensitive and strategically important corporate group. The Arrium voluntary administration offers some valuable lessons regarding the restructuring of large corporate groups with multiple subsidiaries.

Making corporate law great again: Deconstructing and identifying public interest in corporate theories and corporate entity theories  
— *Opemiposi Adegbulu*

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Public interest fosters debate in many disciplines, including corporate governance discourses about corporations at the point when what is optimal for society or the greatest good for society is considered. Nevertheless, public interest is rarely given a prominent role in corporate law; this has partly been because there is no definitive objective definition for the notion. Therefore there are contentions that public interest ought to be jettisoned or that it is not fit for purpose. This article examines if a definitive objective definition of the public interest is required in order for it to be fit for purpose, that is, to serve societal interests. Using a deconstruction approach, various theories on the public interest will be discussed as well as corporate theories to explore how they encapsulate various conceptions of the public interest. This article then argues that corporate theories incorporate tacitly or otherwise, the public interest, and that this is desirable because it could provide alternative ways of addressing corporate governance concerns. It is also added that an objective definition of the public interest is not imperative in order for the notion to be useful, rather a dynamic and flexible definition of the public interest enables corporations to be responsive and responsible for their societal impact, particularly in this era of rapid globalisation.

Sliding doors: Comparing backdoor listing and frontdoor listing for Australian start-ups  
— *Larelle (Ellie) Chapple, Victoria Clout, Alexandra Perry, and Thu Phuong Truong*

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With diminishing prices over this decade in the minerals sector, for example iron ore, many 'junior' listed minerals companies have become attractive 'hanging space' for entrepreneurs in a variety of other businesses, to achieve listing through a shell company. Colloquially known as backdoor listing, this practice has occurred in Australia for decades. Evidence shows that since 1994, backdoor listings account for around 10–15 per cent of new listed firms. Generally promoted as a legitimately viable alternative due to less regulation and disclosure compared to an initial public offering, this view has recently been revisited by the Australian Securities and Investments Commission and Australian Securities Exchange. Since December 2016, the Australian Securities Exchange has increased the requirements on the process for a backdoor listing. This article explores the regulatory reform around backdoor listing. The analysis provided herein aims to achieve a balance between facilitating access to the capital markets by start-ups and ensuring that adequate investor protections are in place. Despite decades of backdoor listings, why have the Australian Securities Exchange and Australian Securities and Investments Commission now turned their attention to this practice? This article reviews prior literature, regulator material, financial media and capital market data to identify the challenges Australian entrepreneurs face when choosing between initial public offering and backdoor listing. This is against a backdrop of changing market fortunes and a government commitment to a policy agenda promoting innovation in business. To conclude, a number of suggestions and recommendations are provided to address these challenges, based on the current debate and longitudinal data.

## Making the most of a lost opportunity: Do civil penalty proceedings for insider trading need to be reformed?

— *Juliette Overland*

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Insider trading is one of the most complex areas of corporate law, and insider trading laws appear to be among the most difficult to enforce. For this reason, civil penalty proceedings for insider trading were introduced in 2002 as part of the Financial Services Reform amendments to the Corporations Act 2001 (Cth). At that time, it was considered that the availability of civil penalty proceedings for insider trading would aid in remedying enforcement difficulties and provide the Australian Securities and Investments Commission with more effective, alternative means to pursue insider traders. However, since that time, only three sets of civil penalty proceedings for insider trading have been undertaken: *Australian Securities and Investments Commission v Petsas*; *Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd [No 4]*; and *Australian Securities and Investments Commission v Hochtief Aktiengesellschaft*. This article aims to identify why there have been so few civil penalty proceedings for insider trading and considers the impact of the fault element of insider trading, the comparatively low civil penalties, and the need for appropriate deterrence, as well as the relevance of the decision in *Australian Securities and Investments Commission v Whitebox Trading Pty Ltd* in relation to civil penalty proceedings, in order to determine whether reform is needed in this area.

## Making sense of contemporary capitalism using company law

— *Paddy Ireland*

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Standard company law treatises tend to depict company law as being about the legal aspects of forming and running a business and, therefore, as being about entrepreneurship and enterprise. This article suggests that this conceals as much as it reveals about company law and its significance in contemporary capitalism. Using as a starting point L C B Gower's assertion that company law is perhaps the branch of law 'least readily understood except in relation to its historical development', the article explores the historical emergence of company law to suggest that the erasure of history from most treatises tends to depoliticise company law by obscuring the struggles from which it emerged and the interests that were served by taking some particular legal paths rather than others. Far from flowing, as is often suggested, from the politically neutral provision of legal solutions to the functional problems thrown up by technological development and modern industry, company law can only be fully understood by viewing it through the prism of finance as well as the prism of production.

## Ethics and corporate whistleblowing rewards in Australia

— *Vivienne Brand*

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The once slow evolution of Australian corporate whistleblowing reform has accelerated remarkably in recent years, and reforming legislation is now before Federal Parliament in the form of the Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017 (Cth). One of the most

controversial aspects considered for inclusion in those reforms was the introduction of a whistleblowing rewards (or 'bounties') scheme. Although not part of the Bill, this significant potential reform is likely to remain under consideration, given its recommendation by the 2017 Parliamentary Joint Inquiry into whistleblowing. Key among the factors raised in opposition to the introduction of whistleblowing rewards in the Australian context appears to have been a range of ethical concerns with the intrinsic nature of such a scheme. This article reviews those concerns and offers some possible responses, as well as suggesting practical mechanisms with potential to assist in allowing for a well-designed rewards system that addresses ethical concerns. Ultimately the article concludes that the introduction of rewards for corporate whistleblowing in Australia should remain a reform focus.