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Articles

Business Ethics and The Law of Contract

Barbara Mescher

It is essential for business managers to be able to rely upon the performance of promises made in legally binding contracts. This article examines the role of business ethics in contract performance. It demonstrates that the law alone is not enough to ensure performance because the law is a narrower field than business ethics. Law has drawn upon the broader discipline, ethics, to form the foundation of the law. Ethics is about moral standards, and ethical philosophies explain moral standards. Business ethics has applied these philosophies to business. The law and business ethics are two different disciplines although they are at some points integrated and at others complementary. An appreciation of the relationship between applied ethics and the law is necessary to assist managers to appreciate that business ethics is as much part of business as is commercial law. This is particularly the case in the law of contract. This article encourages managers to embrace the principles of business ethics and engage in ethical decision-making as a necessary part of their business. Trust and honesty are ethical principles and they are basic elements of all business operations, especially entry into contracts. 8

IAS 39 and the Practice of Loan Loss Provisioning Throughout Australasia

Nigel Finch

This paper examines the response of a sample of Asian banks to the recognition of loan loss provisions before, during and after the Global Financial Crises. Drawing on empirical data from 2006 through 2009, this paper focuses on the level of loan loss provisioning undertaken by the banks, with a view to generating insights into the effectiveness of the approach to loan impairment and provisioning prescribed by IAS 39 – Financial Instruments: Measurement and Recognition. Given that the focus of impairment decision making under IAS 39 is historically oriented rather than future oriented, we argue this may result in the diminution in the decision usefulness of the content of bank financial statements in the face of imminent, though not yet manifested economic distress. Despite mounting evidence that substantial portions of the globe’s financial and economic fabric lay in a state of severe distress, our analysis of the financial disclosures of the sample of Asian banks shows a picture at odds with this larger reality. We argue that this response is shaped by the requirements of the newly introduced accounting standard and that a broadening of the legitimate sources of evidence upon which loan impairment recognition decisions may be based pursuant to IAS 39 should be a matter of priority. 13

Risk-Based Approaches to Combating Financial Crime

David Chaikin

The traditional method of combating financial crimes such as money laundering is the use of prescriptive legislation. A new idea is that risk concepts may be applied to understanding the phenomenon of money laundering and in devising strategies to minimise money laundering. In Australia, financial institutions have implemented a Risk-Based Approach to money laundering by devising Anti-Money Laundering/Counter-Terrorism Financing programs. Financial institutions are expected to identify the risks of money laundering arising from their customers, products/services, distribution/delivery systems and the countries/jurisdictions in which they operate or do business. They are also required to analyse the risks in relation to their specific circumstances and apply a risk management strategy to reduce those risks. The challenge is that Risk-Based Approaches can only minimise the potential risks of money laundering at best; they cannot provide any guarantee that money launderers will not use the product or services of a financial institution. The money laundering risk remains even in circumstances where a financial institution complies with the regulatory requirements and applies best practice in risk management. Nevertheless, the Risk-Based Approach offers financial institutions the most efficient method of setting priorities and allocating resources to combat money laundering..... 20

EDITORIAL

As 2009 draws to a close, we observe the dust settling over a business landscape startled by the impact of the global financial crisis. While commentators continue to reflect on and debate the causes and flow-on consequences from this unique confluence of events, many would agree that poor ethical behaviour, inadequate disclosure and an absence of appropriate risk measurement among banks were factors that contributed to the extreme erosion in value and unprecedented regulatory intervention.

In this issue, the *Journal of Law & Financial Management* provides a collection of timely articles examining business regulation issues in the wake of the global financial crises including ethics, banking disclosure and risk measurement among financial institutions.

Firstly, Barbara Mescher examines the role of ethics in contract performance and highlights critical issues associated with the application of ethical principles in business. Next, Nigel Finch examines the issues and trends in loan loss provisioning among Australasian banks. This study examines the practice of loan impairments and provisions over the period 2006 to 2009, a period designed to capture the impact of the global financial crises and interrogate the banks' response to this event. Finally, David Chaikin provides a commentary on the use and effectiveness of risk-based models in financial institutions. In response to many challenges such as money laundering and terrorism financing, financial institutions are expected to apply 'best practice' strategies designed to reduce the risk of being exposed to these financial crimes; however, as Chaikin illustrates, money laundering risks often remain even where financial institutions comply with regulatory requirements and best practices in risk management.

Tyrone M Carlin & Guy Ford

Sydney, December 2009.