MEDIA RELEASE

SONS OF GWALIA v MARGARETIC HIGH COURT DECISION

2 February 2007

The Australian Financial Markets Association (AFMA) believes there is a need for corporate law reform to address the fall-out from Wednesday’s High Court decision in Sons of Gwalia Ltd v Margaretic.

The High Court’s decision sets a disturbing precedent by altering the standing of shareholders and unsecured creditors in the event of a company failure, as it has been traditionally understood.

The commercial effect of the High Court’s decision is to increase risk for unsecured lenders who provide finance through loan facilities or by investing in bonds issued by companies. This will impact banks and other financial institutions operating in Australia, as well as investors in Australian corporate bonds. Investors in the US private placements market, which is a source of debt finance for Australian companies, have closely followed the Sons of Gwalia case, which provides a different outcome to the US law.

Banks and investors in the corporate bond market will take time to fully assess the effect of the High Court’s decision. The increased risk is likely to be reflected in the terms, availability and/or pricing of the relevant facilities. The indications are that this will have a greater adverse impact on borrowers who are smaller or have lower credit ratings.

Financiers and other businesses will also incur additional costs through more complex insolvency procedures; more uncertainty and delays in finalising outcomes, as shareholder claims are formed and tested.

Having regard to the relevant issues, AFMA believes it is in the public interest to maintain an efficient and competitive market by restoring a clear difference between shareholders and creditors. We will urge the Government to take the initiative in carefully reviewing the implications of the judgement and facilitating the necessary reform to strike the right balance between the rights of shareholders and ordinary creditors.

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