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COMPARISON OF TRENDS IN NATIONAL LAW: THE PACIFIC RIM

*Ron W. Harmer**

INTRODUCTION

This paper is a contribution to that part of the Symposium which considers comparative trends in the national insolvency laws of various countries. In considering these trends, the question "Rescue or Liquidation?" is asked. This provides a very good place to begin because while there may be some relatively common agreement about what is meant by the label "liquidation," there may be some considerable difference of view, sometimes passionate, about what is meant by "rescue." So it may be best, at first, to attempt to give some meaning to them.

Then, having hopefully defined the scope, a review will be made of insolvency law trends in Australia, Japan, China, and Vietnam. That selection from the many countries which border the "Pacific Rim" will provide the opportunity to demonstrate some quite marked differences between them.

This paper does not attempt a detailed analysis of the issues concerning liquidation and rescue, nor of the laws of the respective countries that are reviewed and, so, much of what follows is necessarily impressionistic.

I. LIQUIDATION

The term or concept of "liquidation" (or "bankruptcy," as it is sometimes termed) may not require much in the way of definition for it is, or should be, relatively well understood. It has a long historical and well-documented meaning.¹ It may be most conveniently described as a conservative insolvency process which effects the immediate or prompt cessation of the business activities of an insolvent debtor; a sale of the assets, usually in piecemeal form, and, ultimately, the distribution of

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1. See generally 1 J.H. DALHUISEN, DALHUISEN ON INTERNATIONAL INSOLVENCY AND BANKRUPTCY § 1.02, at 1-4 to 1-12 (1986).

the proceeds to creditors. The debtor enterprise or corporation is usually extinguished during, or as a result of, the process.

Liquidation seems to have started life as a remedy for the merchant and trader class.² That is not surprising when it is remembered that the insolvency laws of most countries in their origin and subsequent development were made for, and heavily influenced by, the requirements of merchants and traders. Indeed, it was traders and merchants, through their guilds or associations, who were initially responsible for a large part of the application and administration of such laws. It should, therefore, not be considered remarkable that liquidation was considered the appropriate remedy to be applied to one of their number who became unable to meet his financial commitments. Those commitments would normally be due to fellow traders. So the remedy could hardly be other than one which would stop the trade of the merchant, dismember his assets, and effectively extinguish him from further trade and commerce.

Although there was little legal thought and certainly no economic theory then applied in justification of such a remedy, it was certainly pragmatic since, it may be argued, it was there to serve and protect the merchant class. It was used, quite legitimately, as a means of effecting a disqualification from, and maintaining appropriate standards within, the ranks of the merchants.

It was a considerable time before a justification based upon economic theory came to be applied to the process of liquidation. The underlying principle of this theory was that in a true market economy uncompetitive and inefficient traders would not survive. Those who failed the test of competition should be put out of business. This theory, based on the application of elementary and somewhat raw market "competition" principles, was probably grabbed rather than reasoned as it came to be applied in justification of a bankruptcy or liquidation law. Fortuitously, it must have suited the merchants because it roughly equated to their philosophy. But it seems to have cemented the idea that liquidation was the only remedy

2. See John C. McCoid II, *The Origins of Voluntary Bankruptcy*, 5 BANKR. DEV. J. 361, 361-62 (1987); DAVID G. EPSTEIN ET AL., BANKRUPTCY 1 (1993); Charles Jordan Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L.J. 325, 334-35 & n.59 (1991).

for traders who became insolvent. Reinforcement, if it was needed, came from the legal theory that liquidation provided the most orderly means of dealing with a bankrupt or insolvent estate.

Much later, other and more reasoned and plausible economic justifications for liquidation took hold. But by this time, liquidation was viewed more as both a legal and economic process than a "remedy." Bankruptcy or liquidation was justified by pointing to a collective economic benefit which came from the creation of a common pool of property in which all creditors might share.³ Additionally, it could be justified because of the economies produced by internalising the costs of the process.

It was this thinking that marked the beginning of the scholarly application of both legal and economic thought to insolvency law. But, and possibly more importantly, it undoubtedly opened up the prospect of examining and questioning the liquidation process from new perspectives. This led to the emergence of that which might be best described as "rescue" economics.

Before moving to that, there is one more observation that should be made about the word "liquidation." It is sometimes used, in a related context, in contrast to "bankruptcy." The principal source of this alternative use is found in countries which formerly conducted command economics and which are now engaged in a revolution of economic change or transition. Considerable upheaval has been caused in these countries because, to implement economic change, it became imperative to reorganise the state-run system of production. The reorganisation centered on the state-owned enterprise sector. This sector was, in general, littered with hopelessly debt-ridden enterprises, incapable of competing in anything approaching a market economy. A number of varying policies have been employed in attempting to either dismember the sector entirely or reorganise the individual enterprises to suit the different economic structures which have emerged among the various countries. Among the techniques employed in pursuit of that policy has been that of liquidation. In that context, however,

3. See THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* 10-19 (1986).

liquidation has come to mean a process of "asset divestment." A very good example can be found in the reunified Germany. In May 1990, specific purpose legislation (which created a powerful administrative body commonly known as the Treuhandanstalt)⁴ was enacted to effect economic policies to deal with the state enterprise sector of the former East Germany. Under that legislation, administrative processes were employed to restructure individual state enterprises to the point where they might be privatised. The measures were largely a success. But for state enterprises that could not be privatised, the legislation provided for a liquidation process which involved a gradual and orderly sale of their assets. Many of these enterprises had an excess of liabilities over assets which, under normal circumstances, would have required them to be liquidated under a bankruptcy process. To avoid this, a consultative bargaining process was employed with creditors of these state enterprises.⁵ The aim of this process was to reach agreement with the creditors on the reduction of their claims to a level equal to the proceeds of the liquidation, but not as low as that which might be occasioned by a formal bankruptcy process. This was largely achieved by endeavouring to keep the businesses of the enterprises "operational" and by selling them at going concern values.

The point of interest in all of this (which, hopefully, will have some relevance when we turn to consider what is meant by "rescue") is that the employment of this technique was considered to have an advantage over a liquidation in the strict insolvency law sense. This is true because, at least in some instances, the businesses of some enterprises were able to be continued and saved, thus enabling them to be sold on a going

4. See Vertrag zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik über die Herstellung der Einheit Deutschlands—Einigungsvertrag [Treaty Between the Federal Republic of Germany and the German Democratic Republic on Unification], art. 25(1), v. 31.8.1990, F.R.G.-G.D.R. (Bundesgesetzblatt [BGBl.] II S.889), translated in 30 I.L.M. 457, 481 (1991); Gesetz zur Privatisierung und Reorganisation des Volkseigenen Vermögen-Treuhandgesetz [Law Concerning the Privatisation and Reorganisation of the People's Property], v. 17.6.1990 (BGBl. I S.300); see also Ronald Winston Harmer, *Insolvency Laws and Reform in the People's Republic of China*, 64 FORDHAM L. REV. 2563, 2586-88 (1996) (discussing the Treuhandanstalt); Rainer Frank, *Privatization in Eastern Germany: A Comprehensive Study*, 27 VAND. J. TRANSNAT'L L. 809, 814 n.13, 819 n.45 (1994).

5. See Harmer, *supra* note 4, at 2587.

concern basis without dismemberment. Furthermore, employment was maintained and, in some cases, preserved. That, as will be soon observed, comes close to being a "rescue." So there may be some subtle legal and economic message here which suggests that notions of "liquidation" and "rescue" are more labels than anything else and that the end result depends more upon the practical nature of the process that is employed rather than on its form, style or title.

II. RESCUE

There seems to be some real difficulty in the meaning or definition of "rescue." In an insolvency law context, it is a word of much more recent origin. It has been increasingly used in many jurisdictions. But, one suspects, the word is used loosely and more as a generic description of a variety of differing processes which might effect different results. In some jurisdictions, the rescue process appears to be a near neighbour of the liquidation process; in other jurisdictions, those processes may be at serious odds with one another.

Two things seem to stand out in the confusion. First, most jurisdictions in which the word has come to be used have recently experienced a process of legislative reform and development in relation to their respective insolvency laws. It is not surprising that those developments have been largely centered upon corporations or enterprises of various juridical structures. These, of course, are the modern "merchants and traders" and the development of the law has been to encourage their survival, rather than summarily terminate them. This is what has introduced a corporate or enterprise "rescue" regime to many insolvency law systems.

Second, few of these countries actually describe their new statutory regimes under the formal heading or description of "rescue." Rather, a variety of terms are used, such as "reorganisation," "rehabilitation," "restructuring," "arrangement," "administration," "composition," "reconciliation," and, even, "merger" or "acquisition." Inquiry into what is signified by this variety suggests that they each delineate a formal statutory regime which in some important ways is different from that of liquidation. Moreover, when contrasted with liquidation, it is suggested that these regimes can possibly produce a better economic result in the administration of an insolvent

corporation or enterprise. To this list of rescue regimes should be added the informal "work out" device which has also been heralded, at least in some quarters, as a rescue method. But it is employed outside of, and sometimes due to the absence of, a formal statutory rescue regime. This becomes particularly relevant when considering trends in Japan.⁶

So, what is actually meant by "rescue" in the context of corporate or enterprise insolvency, and what is its nature? Those are difficult questions to answer, at least in terms that might be universally acceptable. "Rescue" is possibly best explained by reflecting further on the growing product of the fusion of contemporary legal and economic thought to insolvency law.

It may be submitted that the most widely accepted goal of an insolvency law system in contemporary times is to maximize the value of the assets of the debtor.⁷ That statement may appear trite and simplistic; however, in relation to corporate or enterprise insolvency, this goal has, increasingly and sensibly, focused on the income-producing business unit(s) of an enterprise. It rests on the view that the value or worth of an insolvent enterprise will normally be worth more if this business element can be preserved as an ongoing concern; so why terminate or extinguish it? Put slightly differently, if a form of bankruptcy or insolvency law regime can operate so as to preserve and possibly enhance the value of the business assets of an insolvent enterprise, then it would seem to fit the broad concept of "rescue."

Thus viewed, "rescue" does not mean that an insolvent enterprise is, literally, saved and fully restored, nor that the main participants in the insolvency (the creditors and owners of the enterprise) are eventually restored to their respective pre-insolvent positions; that may, on very rare occasions, be the result. But that which the various regimes and their differing descriptions all seek to signal is that through the application of whatever techniques or mechanisms (which involves certainly something other than the methodology of liquidation), more value than that which might be obtained from the standard liquidation style sale of the assets of the enterprise will

6. See *infra* Part IV.

7. See JACKSON, *supra* note 3, at 28.

be produced.

Care must be taken, however, because there can be some considerable confusion between different regimes. Trebilock and Katz, for example, in an article on corporate bankruptcy regimes in North America,⁸ describe a "reorganisation process" in those jurisdictions as one "under which . . . claims are traded for new claims and ownership interests in . . . [a] . . . going concern."⁹ They suggest that a reorganisation is characterised by a "sale" of the assets of an enterprise to the creditors. A sale of assets to third parties characterises a liquidation. This seems to emphasise, if not require, that a "reorganisation," at least in North America, necessarily results in creditors, or some one or more of them, becoming in some way (for example by debt/equity swap) "owners" of the enterprise.

A very recent example can be found in the Chapter 11 administration of the U.S. subsidiary of the failed Olympia & York Developments of Toronto. It is reported that the subsidiary, which is soon to emerge under the new name of World Financial Properties, has relinquished some of its assets, restructured US\$5 billion of debt, will have US\$3 billion of assets, and will be owned by a group of former creditors who have swapped debt for equity and invested additional loan funds. It is thus "rescued" because its constituent parts are kept together (in particular its core assets are not sold to third parties); its insolvent financial position is resolved; and the corporation continues.

While that may be a correct description of what in an ideal sense is signaled by the word reorganisation and, perhaps, the notion of rescue in North America, it may not necessarily correspond to actual practice in those jurisdictions. There have been, for example, a number of Chapter 11 liquidation reorganisations in which the business and other assets of a debtor corporation have been sold off to third parties as part of the plan approved under the Chapter 11 administration.¹⁰

8. Michael Trebilock & Jodi Katz, *The Law and Economics of Corporate Insolvency: A North American Perspective*, in *ESSAYS ON CORPORATE RESTRUCTURING AND INSOLVENCY* 1 (Charles Rickett ed., 1996).

9. *Id.*

10. See DAVID L. BUCHBINDER, *FUNDAMENTALS OF BANKRUPTCY: A LAWYER'S GUIDE* § 25.6, at 467 (1991); see also Bankruptcy Code, 11 U.S.C. § 1123(b)(4) (1994).

Moreover, full satisfaction of the debts of creditors is rarely achieved under Chapter 11 style administrations.¹¹

Nor would the description correspond to the notion of rescue in many other jurisdictions. In France, for example, the title of its insolvency law rescue regime is "rehabilitation,"¹² which is certainly rescue evocative. But rehabilitation in France, on most occasions, is achieved by transferring or selling off the business of an insolvent enterprise as a going concern, with or without its debt. In Australia, as will be seen,¹³ and in England, the position is similar.

However, what the different cultures seem to have in common is that a formal process is established which is capable of providing the opportunity for rationalising the business and financial affairs of an enterprise. This would suggest that rescue is principally concerned with:

- the preservation of the income-producing business of the enterprise; and
- the reduction, rescheduling, or extinguishment of debt (for example, by write-off or by conversion of debt into equity) according to the realistic capacity of the enterprise to bear it.

It does not necessarily follow that the enterprise itself must be preserved and left intact. The overall aim is to provide an environment that can best achieve the type of goal that the application of contemporary legal and economic thought appear to agree upon. That might also include, as a by-product, some protection for wider interests, such as employees, markets for suppliers, and the like.

Viewed in that way, a rescue can still produce one, more, or all of the following seemingly negative results:

- a liquidation or sale of some or all of the assets of the enterprise to third parties, including income-producing business (remembering, however, that the environment of the rescue regime itself creates a more appropriate marketplace in which to obtain the best value

11. See BUCHBINDER, *supra* note 10, § 25.7, at 470.

12. Loi relative au redressement et à la liquidation judiciaires des entreprises [Law Relating to Judicial Rehabilitation and Judicial Liquidation], Law No. 85-98 of Jan. 25, 1985, Journal Officiel de la République Française [J.O.], Jan. 26, 1985; CODE DE COMMERCE [C. COM.] app. at 1001 (91st ed. Dalloz 1995-1996) (Fr.).

13. See *infra* Part III.

for such assets);

- the ultimate extinguishment of the legal entity or juridical form of the enterprise itself (because to seek the preservation of the legal entity is, at best, a subsidiary or incidental prospect or possibility only), which may come about by a later formal liquidation or bankruptcy of the enterprise;
- the total extinguishment of owner "equity" (because that "interest" must, of necessity, be secondary to the interests of creditors unless, of course, the owners are prepared to support the preservation of their interests in the enterprise by obtaining the injection of further capital or debt funding);
- the removal of power from, and the possible replacement or dismissal of, some or all of management (particularly because in many jurisdictions their business ability will, at the very least, be suspect);
- the ultimate retrieval, followed by the exercise, of rights of various classes of creditors (particularly creditors who hold security over assets of the enterprise), which may have been suspended or curtailed as a result of the effect of the employment of the formal "rescue" process; and
- a compromise or composition of debt owed to creditors (for it is rare that even a "rescue" that is highly regarded as "successful" will result in actual payment of debt in full).

Thus, rescue is not necessarily about preservation or rehabilitation of the corporate entity or other juridical form through which the enterprise functions. And while it may be important to endeavour to avoid some of the above effects, that should not be regarded as primary goals of the procedure.

Another approach toward finding not so much a meaning for rescue but a legislative approach which actively encourages a rescue, might be to examine whether the insolvency law regime is debtor or creditor friendly. If, as in the United States, the regime is largely debtor-driven then, one might conclude, the prospect and opportunity for the rescue of the debtor corporation itself is greater, since to a large degree the debtor is presented with a potentially powerful position from which to negotiate. But if, as for example in Australia, it is more creditor-driven, then there is less prospect of a corporate rescue. In

this aspect, it is relevant to note the presence, as in the United States for example, of correlative legislative provisions that are principally geared toward facilitating and not hampering deals to be structured to enable the debtor to survive. Thus, the U.S. Bankruptcy Code contains provisions which curtail the operation of state laws which might otherwise interfere with a rescue plan, and other provisions which modify or substantially reduce the impact of other federal laws dealing with securities control and taxation.¹⁴ All of this is focused on the prospect of preserving the debtor corporation.

One is forced to suspect that the use of the word "rescue" is apt to conjure up more in the mind of the beholder than is actually represented. Rescue may not be the most appropriate generic description of the variety of insolvency regimes which have emerged. Still, it has become a somewhat universal term and we may as well continue with it.

Finally, the relative speed and enthusiasm by which the rescue culture has come to exist and spread is somewhat remarkable. The revision and development of insolvency laws is normally paralytically slow; but that has not been the case in relation to the rescue regimes. It is also clear that the rescue culture has been developed for the benefit of those engaged in trade and commerce, i.e., for the modern merchants and traders, as mentioned before. This is in unfortunate contrast with the lack of development of enlightened approaches to the equally alive and contemporary problem of consumer bankruptcy. Indeed, attention to this considerable area, which has been spread by the growth of the credit economy, is almost absent. Might the reason for this be (and might one thus conclude almost with the same line which opened this part of the paper) that the development of insolvency laws is dictated and heavily influenced solely by reference to the needs of merchants and traders?

III. AUSTRALIA

Until relatively recently, Australian approaches to insolvency law took their character and form from English insolvency law models. For a long time, the standard bankruptcy process was used to deal with insolvent individuals, but liquida-

14. 11 U.S.C. §§ 1145-1146 (1994).

tion was used for insolvent companies. There was very little else available. A "private" administration of an insolvent company could be imposed by a secured creditor through the appointment of a receiver, which might sometimes result in something approaching a rescue, but, otherwise, these forms of administration rarely benefited anyone other than the secured creditor. There was also available an elaborate labour and cost intensive "scheme of arrangement" process which, at least on paper, offered a prospect of corporate rescue. But it was an inefficient and expensive process that was seldom employed.

Then, in the 1960s, two developments occurred. One was the introduction of a process which offered insolvent individuals engaged in small business an alternative to bankruptcy. Under a formal but commercially efficient statutory process it was possible for a debtor to agree to an arrangement with the creditors. This offered the prospect of preserving the business of the debtor. The other development involved the importation of the South African device of "judicial management" into Australian corporate insolvency law.¹⁵ In Australia, it was termed "Official Management" and was fashioned as a relatively informal process in an attempt to improve on the more formal scheme of arrangement process.¹⁶ It offered the prospect of saving the company and its business operations.¹⁷

Of these two innovations, the former was extremely successful, the latter a remarkable failure. Official management failed because it required that the debts of the debtor corporation be paid in full.¹⁸ By comparison, the arrangements process for individual debtors was successful because it enabled the debtor and the creditors to shape whatever form of arrangement might be mutually agreed.¹⁹ The success of this approach and the failure of the official management process

15. See Ron Harmer, *An Overview of Recent Developments and Future Prospects in Australia (With Some Reference to New Zealand and Asia)*, in CURRENT DEVELOPMENTS IN INTERNATIONAL AND COMPARATIVE CORPORATE INSOLVENCY LAW 39, 40 (Jacob S. Ziegel & Susan I. Cantile eds., 1994).

16. See *id.* at 40-41.

17. See *id.* at 41.

18. See *id.* at 41; see also 1 AUSTRALIAN LAW REFORM COMMISSION, REPORT NO. 45, GENERAL INSOLVENCY INQUIRY 26 (1988) [hereinafter ALRC REPORT].

19. See Bankruptcy Act, 1966, pt. X, para. 962 (Austl.), reprinted in C. DARVALL & N.T.F. FERNON, AUSTRALIAN BANKRUPTCY LAW AND PRACTICE 7021-22 (5th ed. 1977); Harmer, *supra* note 15, at 41; ALRC REPORT, *supra* note 18, at 25.

led to proposals that something like the arrangements process should become part of the corporate insolvency law.²⁰ It would need to be less ambitious than official management and more efficient and practical than that available under the schemes of arrangement procedure. Importantly, however, the proposals for a new and more efficient regime were largely based on economic arguments concerned with the goal of maximising the value of the business of the corporation and the wider social and related aims of preserving employment and markets.²¹ If the corporation might be "saved" in the process, then so much the better, but it was not a goal in itself. Drawing on the benefit of the earlier insolvency rescue regime developments in the United States and in England, a new form of corporate insolvency procedure termed "Voluntary Administration" became available in Australia in 1993.²²

As to its appropriate place in the liquidation/rescue categorisation, it might be best described as highly purposeful toward saving business and maximising returns to creditors, but also providing the opportunity in an appropriate case for the restructure and reorganisation of the debtor company itself.²³ Thus, it would qualify, at least in terms of the descriptions mentioned earlier in this paper, as a rescue regime. This particular regime has now been active for some three years. It is therefore appropriate to focus on its performance to date.

Judged solely by bare statistics, it seems to have enjoyed considerable, if not remarkable, success. The statistics show²⁴ that the number of liquidations has dropped remarkably; the level of receiverships is relatively static; and the bulk of financially distressed companies has been dealt with under the administration regime.

Some compelling numbers may be extracted from the official figures. One year prior to the introduction of voluntary administration, Australian corporate insolvency was clearly in the warp of the "liquidation" process. For example, in May

20. See Harmer, *supra* note 15, at 41.

21. See ALRC REPORT, *supra* note 18, at 28.

22. See Corporate Law Reform Act, 1992, pt. 5.3A (Austl.); see also Harmer, *supra* note 15, at 40, 42.

23. See Harmer, *supra* note 15, at 43.

24. The official figures concerning the level of corporate insolvency in Australia as released by the Australian Securities Commission are attached as an Appendix at pp. 164-65.

1992 there were 400 cases of insolvent liquidations and just two cases of schemes of arrangement. In May 1993 (immediately prior to the introduction of voluntary administration) the numbers were 380 cases of insolvent liquidation and not one case of a scheme of arrangement. But by May 1994, voluntary administration was having some considerable effect. The number of insolvent liquidation cases had fallen to 194; there were no schemes of arrangement; and the cases of voluntary administration numbered 134. In May 1995, the figures were 222 liquidations and 239 voluntary administrations. By May 1996, the number of liquidation cases had fallen to ninety-seven and the number of voluntary administrations was constant at 240. Of course, some allowance has to be made for a number of influencing factors, including changing economic conditions over that period of four years. Even so, the fact is that voluntary administrations now account for about sixty-five percent of cases of corporate insolvency. And, importantly, the statistics suggest that about one half of that number results in a permanent non-liquidation form of arrangement for the company.

The actual commercial results of successful administrations are not as apparent. There is some fair evidence to show that the businesses of many companies have been preserved and saved (more often by sale to a third party as a going concern, but sometimes preserved for the benefit of the insolvent company as a result of capital injections from existing and newly introduced equity holders). It also seems that successful administrations have produced a greater return to creditors (estimated to be, on average, three to four times better) than if the company had been liquidated. That indicia itself suggests that flow on effects, such as preservation of markets and a saving in unemployment, have probably also been achieved. And so far, there is no evidence of any "repeat" business from companies that have undergone the voluntary administration process.

The probable reasons for this success are varied. The first involves certain aspects of the procedure. These may be summarised as follows:

- *The Comparative Ease of Initiation.* The procedure may be invoked by the directors of a company that is

insolvent or which is likely to become so.²⁵ The directors appoint an administrator by signing a simple form; there is no court "filing."²⁶ Rather, the document of appointment is lodged with the corporate regulatory authority (the Australian Securities Commission) and publicised as required in the relevant regulations.²⁷ It thus offers a convenient and straightforward method of initiation.

- *The Absence of Involvement of the Courts.* The courts are not involved in the initiation nor the ongoing processing of the procedure, but they may exercise, if required, both a facilitating and supervisory jurisdiction.²⁸ This, in itself, reduces the formality of the procedure and saves time and expenses. The decision making is left largely to the principal participants—the company and its creditors.
- *The Intervention of a Qualified Licensed Administrator.* This functionary (considered to be important in the Australian environment) is appointed by the directors to take control of the company and its property.²⁹ The administrator becomes the pivotal force of the procedure. The administrator is required to carry out an investigation into the financial position and affairs of the company and, ultimately, to make a recommendation about the future of the company.³⁰ This would normally involve a recommendation that either the company be liquidated or that terms of an arrangement between the company and its creditors be considered and possibly adopted by the creditors.³¹ The "management" of the company is suspended from ultimate control of the affairs of the company, though it may remain in office and continue to operate the business of the company under the control of the administrator.³² Both management and equity holders

25. See Corporate Law Reform Act, 1992, pt. 5.3A, § 436A (Austl.).

26. See Harmer, *supra* note 15, at 43.

27. See *id.*

28. See *id.* at 46.

29. See Corporate Law Reform Act, 1992, pt. 5.3A, §§ 473A-473B (Austl.).

30. See Harmer, *supra* note 15, at 44.

31. See *id.*

32. See Corporate Law Reform Act, 1992, pt. 5.3A, § 437C (Austl.).

may seek to influence the terms of a possible arrangement for the company, but they do not control the forum for that purpose.

- *The Moratorium, Prohibiting Action Against the Company and Its Property.* With one notable exception,³³ the appointment of the administrator effects a stay of action and proceedings against the company and its property.³⁴ The moratorium extends to lessors of property used or occupied by the company,³⁵ as well as secured creditors and suppliers of goods who have dealt with the company on a retention of title basis.³⁶ This is designed to preserve the business and assets of the company as the procedure unfolds through its successive stages.³⁷
- *The Limited Time Frame Which Controls All Aspects of the Procedure.* The procedure is governed by tight time limits. The moratorium, for example, operates only up to the time within which a meeting of creditors is convened and held for the purpose of determining the fate of the company.³⁸ This would normally be no longer than thirty-five days from the date of the appointment of the administrator.³⁹ It may be extended by the courts for appropriate cause.⁴⁰ This creates a "ticking clock" for both the creditors and the debtor and is designed to encourage a speedy and early determination of the future of the company.
- *The Decision-Making Power of the Creditors in General Meetings.* The creditors (in all their number and variety) have the power to commit the company to a liquidation (that regime is automatically substituted if the creditors so resolve) or to negotiate, with the assistance of the administrator, for terms of an arrange-

33. See Corporate Law Reform Act, 1992, pt. 5.3A, § 440D(1) (Austl.); see also *infra* notes 44-45.

34. See Corporate Law Reform Act, 1992, pt. 5.3A, § 440D(1) (Austl.).

35. See *id.* § 440C.

36. See Harmer, *supra* note 15, at 44.

37. See *id.* at 43.

38. See *id.* at 45.

39. See *id.*

40. See Corporate Law Reform Act, 1992, pt. 5.3A, § 439A(6) (Austl.).

ment.⁴¹ The form of an arrangement is not prescribed and may take any form, provided that its terms of it do not offend cardinal legalities.

- *The "Guardian" Provisions in the Legislation.* The guardian provisions permit the court to terminate an arrangement which will not be performed or an arrangement that has been effected through improper methods (such as a violation of the procedure, the "stacking" of votes of persons connected with the company and so forth). The court also has power to vary the terms of an arrangement by consensus.⁴²

The procedure is thus designed to be, and appears to be, generally regarded as commercially efficient and expedient.

Another reason for the statistical success of the regime has been the apparent willingness of the courts to give as much practical effect to the legislation as possible in cases of doubt or contention. The reported cases (there have been a number)⁴³ frequently contain judicial statements referring to the commercial purposes and intent of the legislation. They reflect the endeavour of the courts to give the legislation sensible and practical application.

The new regime has also been helped by the attitude of secured financiers (mainly the banks). To accommodate the realities of commercial financial life in Australia, the legislation governing voluntary administration provides for an exception to the effect of the general moratorium.⁴⁴ This exception favours a creditor who holds security over all the property of a company (the holder of a "floating" charge over the property of a company). That class of creditor must be given immediate notice of the appointment of an administrator and that creditor may then elect (within a period of ten days) whether to enforce the security (by, for example, appointing a receiver to the se-

41. See *id.* § 439C.

42. See *id.* § 440A(2).

43. See, e.g., *Deputy Comm'r of Taxation of Austl. v. Comcorp Austl. Pty. Ltd.* (1996) 14 Austl. Co. L. Cas. 1616 (LEXIS, Aust Library, Ausmax File); *Foxcroft v. Ink Group Pty. Ltd.* (1994) 12 Austl. Co. L. Cas. 1063 (LEXIS, Aust Library, Ausmax File); *J & B Records Ltd. v. Brashs Pty. Ltd.* (1994) 13 Austl. Corp. & Sec. L.R. (CCH) 680 (LEXIS, Aust Library, Ausmax File); *Cawthorn v. Kiera Constrs. Pty. Ltd.* (1994) 33 N.S.W.L.R. 607; *Mann v. Abruzzi Sports Club Ltd.* (1994) 12 Austl. Corp. & Sec. L.R. (CCH) 611 (LEXIS, Aust Library, Ausmax File).

44. See Harmer, *supra* note 15, at 44.

cured property). If the security is enforced within that prescribed time, the secured creditor is able to deal with all the property of the company covered by the security to the exclusion of the administrator. But the administrator remains in office, although the prospect of being able to reach an arrangement between the company and its creditors will then be slight. If the secured creditor does not elect to enforce the security, the creditor is bound by the moratorium.⁴⁵ Initially, it was feared that the banks would take unlimited advantage of this exception to the moratorium and undermine the operation of the new regime; in practice, however, this does not seem to have been the event. There have been many instances where banks have not enforced their security rights and some instances, even, when banks have actively encouraged the company to appoint an administrator.

Another factor that may be attributed with some indirect connection to the apparent success of the new regime concerns a change in the attitude of directors of near-insolvent companies. Part of the legislative reform package imposed more effective personal liability on directors for trade and revenue debts of the company brought about by insolvent trading.⁴⁶ The effect of this, coupled with the ease of initiation of the new procedure, has encouraged directors to take a more responsible attitude toward the financial problems of a company and to act more promptly.

None of this should be taken to suggest that there are no criticisms to be made of, nor concerns about, the new regime. The comparative informality of the procedure is open to abuse, and it has been abused, but the incident rate seems reasonably low at this stage. The legislation has had teething problems and some amendment and modification is necessary. Doubts have been raised about the apparent statistical success of the procedure because of the number of administrations that become liquidations (around fifty percent) and the lack of quality measurement of the so-called successes. But the evidence overall seems to indicate that the commercial community views this formal "rescue" procedure favourably.

45. *See id.* at 44.

46. *See* CHRISTOPHER BEVAN, *INSOLVENT TRADING* 137 (1994).

IV. JAPAN

The most striking trend in Japan has been the absence of use of formal rescue (and, for that matter, liquidation) processes and the use of informal "rescue" processes.⁴⁷ There has not been a significant change to Japanese formal insolvency procedures since the Corporate Reorganisation Act of 1952.⁴⁸ This legislation was, in effect, modelled on the pre-1978 Chapter X procedure of the U.S. Bankruptcy Act.⁴⁹ In its form and object, it may be regarded as a "rescue" regime, particularly for large companies. Yet, the statistical evidence of its actual employment suggests that it is rarely used and that, instead, more informal rescue processes are applied. There seems to be a number of reasons for this.

The first reason has to do with Japanese society and culture. The values of that society generally lead to constructive, informal discussion and negotiation of commercial and other issues through which solutions may be found and a settlement reached.⁵⁰ This acts as a disincentive to use legal proceedings to determine issues. That, coupled with a fairly high degree of protective intervention at both the government and financial industry levels (the latter involves the Japanese financing banks which, invariably, will have a stockholder stake in their customer enterprises), will often protect enterprises from a formal insolvency administration, even though they may be insolvent, and, indeed, may preclude the concerted initiation of

47. See Tasuku Matsuo & Richard Vliet, *Creditor's Rights Under Japanese Law*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN AND EAST ASIA 202, 208 (John Owen Haley ed., 1978).

48. Kaisha Kōseihō [Corporate Reorganisation Act], Law No. 172 of 1952 (Japan); see Theodore Eisenberg & Shoichi Tagashira, *Should We Abolish Chapter 11? The Evidence From Japan*, in CURRENT DEVELOPMENTS IN INTERNATIONAL AND COMPARATIVE CORPORATE INSOLVENCY LAW, *supra* note 15, at 215, 219.

49. See Eisenberg & Tagashira, *supra* note 48, at 219-20; Yukiko Hasebe, *The Position of Creditors in the Distribution of Insolvent Estates: Consensual Secured Creditors in Japan*, in CURRENT DEVELOPMENTS IN INTERNATIONAL AND COMPARATIVE CORPORATE INSOLVENCY LAW, *supra* note 15, at 403, 404 n.8; Tasuko Matsuo, *The Commercial Laws of Japan*, in DIGEST OF COMMERCIAL LAWS OF THE WORLD 1, 79 (Lester Nelson ed., 1992).

50. See Yasuharu Nagashima & Aki Saito, *Commercial Dispute Resolution*, in THE LAW OF COMMERCE IN JAPAN 97, 98 (Haig Oghigian ed., 1993); Lynn Berat, *The Role of Conciliation in the Japanese Legal System*, in COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN 487, 487-88 (Kenneth L. Port ed., 1996); Akira Ueno, *Social, Economic and Political Trends in Japan*, in CURRENT LEGAL ASPECTS OF DOING BUSINESS IN JAPAN AND EAST ASIA, *supra* note 47, at 24, 27.

a formal insolvency legal process. This somewhat institutionalised, "informal" process possibly explains the comparatively low statistical rate of enterprise "formal" insolvency for such a large commercial market economy.

A second factor may be evident from the extent of the involvement of courts and judges to guide and assist in mediation and compromise and, in many instances, to control effective reorganisation.⁵¹ This is particularly noticeable in actual practice of the Corporate Reorganisation Law.⁵² Like the Australian administration regime, it is primarily a voluntary procedure initiated by the company itself (it may also be invoked, though this is rare, by shareholders or creditors who have a minimum percentage of share holding or debt).⁵³ Unlike the Australian procedure, it is initiated by a formal court filing.⁵⁴ However, the usual practice in Japan is that informal, confidential discussions are conducted with the court before any filing is made and the court will sometimes make informal contact with major creditors.⁵⁵ This seems designed to test the strength of support for a possible reorganisation and even to determine whether there are other informal avenues available for the company; of course, if this happens, the application is withdrawn. If, however, the application is filed, the court will conduct interviews with the chief executives and employees of the company and secured and other creditors. A judge will usually also visit the main business operations of the company. The process is slow especially when it is considered that the court, in undertaking these tasks, is determining whether or not to accept or dismiss the application for reorganisation; the actual proposal and plan for reorganisation will only come later. It is reported that the average time for this interim decision is up to six months.⁵⁶

51. See John O. Haley, *Dispute Resolution in Japan: Lessons in Autonomy*, in *COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN*, *supra* note 49, at 483, 485.

52. See Matsuo, *supra* note 49, at 80.

53. See Corporate Reorganisation Act, Law No. 172 of 1952, art. 30(1)-(2) (Japan); Matsuo, *supra* note 48, at 80.

54. See Matsuo, *supra* note 49, at 80; see also Matsuo & Vliet, *supra* note 47, at 210.

55. See Matsuo, *supra* note 49, at 80.

56. See Koji Takeuchi, *Japanese Insolvency Law*, in *MULTINATIONAL COMMERCIAL INSOLVENCY M-1, M-4* (1993).

It may be for this reason that the reorganisation procedure in Japan is sometimes seen, particularly by financiers, as the system of "last resort." Most reorganisations appear to be fashioned through informal processes, influenced, if not led, by a leading financier or "main" bank. It is here that the real shape of insolvency trends in Japan may be best identified. The trend is clearly toward rescue, but not through a formal legal process and certainly not through the application of an insolvency law. Of course, it may be that the informal rescue device is encouraged by the knowledge that there does exist, if all else fails, a statutory formal insolvency process.

There is some evidence of emerging resistance to this informal technique. The nature of corporate governance with its heavy domination and dependence on share holding financiers in Japan seems to be changing. There are signs of rising resentment to this, not only by chief executives, but also by creditor classes. Furthermore, there are some suggestions that the culture of "employment for life" in Japanese enterprises is weakening and employees are less dependent on the survival of enterprises. The continued emergence of these undercurrents could result in some fundamental changes to the insolvency laws to provide a more efficient and expeditious "communal" form of formal rescue administration.

V. VIETNAM AND THE PEOPLE'S REPUBLIC OF CHINA

Bankruptcy law and practice in both Vietnam and China is, at present, viewed primarily as part of the legal and micro economic infrastructure required for the macro economic transition process that is steadily taking effect in both countries.

Although this transition involves the abandonment of command economics and the adoption of a market economy framework, it should be observed that the nature of the economic renovation or reform, which has taken place in these two countries during the last decade or so, is quite different from that which has occurred in countries that emerged from the collapse of the economic and political systems previously practised in the former Soviet Union and its satellites. Neither Vietnam nor China has so altered their respective basic political and social attitudes to the point of embracing a "market economy." Rather, their respective ideals are centered on establishing a "socialist" market economy. So, while there is a

heavy commitment to reform the state enterprise system of production, neither country is prepared to countenance the privatisation or the dismemberment of the state enterprise sector. To the contrary, in both countries, the retention of state enterprises is considerably vital to the retention of socialist political ideals. This is a fundamental which differentiates Vietnam and China from many other former "command" economy countries.

Even so, the reform of the economies of Vietnam and China has meant considerable internal institutional upheaval in the state enterprise sector. Although it has been a "gradualist" process and is far from complete, the aim of this reform is to equip the state enterprise sector to take its place in a competitive market.⁵⁷ This has required that the state give up its control of and abandon subsidies and financial support for state enterprises. It has resulted in the introduction of autonomy into the sector along with management responsibility.⁵⁸ The process has advanced to the point where many state enterprises in both countries have been corporatised.⁵⁹ A not insignificant by-product of all of this has been the exposure of a considerable section of the state enterprise sector as inefficient, incompetent, and insolvent. Inevitably, the question then was what to do with them. It is here that the development of insolvency laws in both countries became important, as illustrated by this observation:

The practice of bankruptcy, in fact, realises the principle of the state enterprises assuming responsibility for the profits and losses and the state subject only to limited liabilities. Meantime it helps the flow of state assets in the market through trading and non-trading channels and the establishment of a social security system.⁶⁰

What form were these insolvency laws to take? Neither

57. See Harmer, *supra* note 4, at 2576; Geoffrey Murray, *China Makes New Bid to Rescue State-Owned Enterprises*, Japan Economic Newswire, May 25, 1996, available in LEXIS, Asiapc Library, Allasi File.

58. See Harmer, *supra* note 4, at 2577.

59. See *id.*; see also William C. Kirby, *China Unincorporated: Company Law and Business Enterprise in Twentieth-Century China*, 54 J. ASIAN STUD. 43, 52 (1995).

60. Q-G Jiang, *Enterprise System Reform in China*, in ASIA-PACIFIC ECONOMIC LAW FORUM PAPERS 5 (1994) (on file with author).

country has had much, if any, exposure to or knowledge of an insolvency law.⁶¹ In that circumstance, it might have been expected that the governments of both countries might have simply taken administrative measures to deal with problem state enterprises, by either termination, merger with or acquisition by other enterprises (similar to the technique adopted in Germany through the Treuhandanstalt).⁶² In part, this was attempted. In Vietnam, for example, there were a number of administrative directions given for the "liquidation" of insolvent state enterprises between 1989 and 1992, but these seem to have been ineffective. They were certainly largely ignored. In the end, both China and Vietnam elected to introduce insolvency laws of the "traditional" style to deal with insolvent state enterprises.

The Enterprise Bankruptcy Law of 1986 of China was the first;⁶³ it applies only to state enterprises.⁶⁴ Chapter XIX of the Chinese Code of Civil Procedure Law of 1991 attempts to deal with the insolvency of legal person enterprises other than state enterprises.⁶⁵ In Vietnam, the Law on Business Bankruptcy was approved in December 1994.⁶⁶ Although it extends to all forms of enterprise, it is primarily directed at state enterprises.⁶⁷

61. For a detailed discussion of this point in relation to China, see Harmer, *supra* note 4, at 2563-65.

62. See *supra* note 4 and accompanying text.

63. Zhonghua Renmin Gongheguo Qiye Pochanfa [Law of the People's Republic of China on Enterprise Bankruptcy] (promulgated Dec. 2, 1986, effective Nov. 1, 1988, 18th Sess. of the Standing Comm. of the 6th National People's Congress) [hereinafter Enterprise Bankruptcy Law], translated in 2 CHINA LAWS FOR FOREIGN BUSINESS: BUSINESS REGULATION ¶ 13-522, at 16,869 (CCH Austl.); see Harmer, *supra* note 4, at 2569-70.

64. Enterprise Bankruptcy Law, art. 2; see Harmer, *supra* note 4, at 2569.

65. Zhonghua Renmin Gongheguo Minshi Susong Fa [Civil Procedure Law of the People's Republic of China], arts. 199-206 (promulgated & effective Apr. 9, 1991), 1991 Zhonghua Renmin Gongheguo Guowuyuan Gongbao [Gazette of the State Council of the People's Republic of China] 481, translated in CHINA L. & PRAC., June 17, 1991, at 15; see Harmer, *supra* note 4, at 2570.

66. Law on Business Bankruptcy (promulgated Dec. 30, 1993, 4th Sess. of the 9th Legislature) (Vietnam) [hereinafter Business Bankruptcy Law], translated in 3 FOREIGN INVESTMENT LAWS OF VIETNAM, sec. XIV, at 47 (1994); see Decree on Implementation of Law on Business Bankruptcy, No. 189-CP, ch. 1, Dec. 23, 1994 (Vietnam) [hereinafter Business Bankruptcy Decree] (implementing regulations of the Law on Business Bankruptcy), translated in 3 FOREIGN INVESTMENT LAWS OF VIETNAM, *supra*, sec. XIV, at 201.

67. See Business Bankruptcy Law, *supra* note 66, art. 1; Business Bankruptcy Decree, *supra* note 66, art. 1(a)-(h).

Both the Chinese and Vietnamese laws feature a bankruptcy "review" system which provides the opportunity for rescue or liquidation.⁶⁸ The Vietnamese law is the more advanced of the two. It provides for a process under which an insolvent enterprise may apply for bankruptcy review;⁶⁹ an asset retaining team is appointed to preserve the assets;⁷⁰ the enterprise may continue its operations and any "new" debt is given absolute priority;⁷¹ the enterprise may submit a plan which is then voted on by creditors;⁷² if it is approved (a high positive vote is required), the bankruptcy proceedings are "suspended" pending performance;⁷³ the plan may be of any nature; if a plan is not proposed, or approved, or fails, the court declares the enterprise bankrupt.⁷⁴ The Chinese law follows something of a similar pattern, though it is far less detailed and does not give appropriate weight to the prospect of "rescue."⁷⁵

Unfortunately, the use of an insolvency law as an instrument of economic reform tends to both obscure and frustrate the appropriate application of the law, whether viewed in an essentially historical "liquidation" sense (as a measure to give effect to a free competitive market) or in the more modern legal/economic framework (to provide a possible "rescue" framework). The record of the actual application of these insolvency laws, particularly in China, which has had by far the longer exposure, has not been all that inspiring. There is clear evidence in China of intense government control and intervention which reaches the point (since that is what the law itself provides) of requiring that a state enterprise need something approaching a "license" from the state to submit itself to the insolvency law process.⁷⁶ But this is explicable. There are insufficient supporting mechanisms in China to permit the insolvency law to operate as it might. Chief among these is the

68. See Enterprise Bankruptcy Law, *supra* note 63, arts. 17-20, 23-24; Business Bankruptcy Law, *supra* note 66, arts. 20, 36.

69. Business Bankruptcy Law, *supra* note 66, art. 9(1).

70. Business Bankruptcy Decree, *supra* note 66, arts. 17-19.

71. Business Bankruptcy Law, *supra* note 66, art. 23.

72. *Id.* arts. 28, 31(1).

73. *Id.* arts. 33-35.

74. *Id.* art. 36(1), (3).

75. See Enterprise Bankruptcy Law, *supra* note 63, arts. 17-22.

76. See Harmer, *supra* note 4, at 2578.

absence of a sufficient social welfare system to address the quite massive social and political problem of unemployment that would certainly result if the insolvency law was permitted to operate according to the normal dictates of market conditions.⁷⁷ Moreover, the economic and financial problems that affect many state enterprises are systemic in nature, almost totally unsuited to cure, remedy, or relief through any insolvency process.⁷⁸

The Chinese government has recognised the difficulties and proposes the enactment of a new law which will extend to all forms of legal entities and which will place heavy emphasis upon reconstruction techniques. However, in relation to the state enterprise sector, reform to the insolvency law will be ineffectual unless it is accompanied by considerable and critical reform to social welfare; the advancement of modern accounting and financial practices; and a way around the problems of triangular debt and leftover bank debt.

Before leaving China it is relevant to mention Hong Kong. It will become part of China on June 30, 1997.⁷⁹ It will be a unique occasion, not the least because of the "one country, two systems" approach to the law and its administration. It raises interesting and important questions for Hong Kong (or the Hong Kong Special Administrative Region, as it will be known) and for China in implementing this "one nation, two systems" principle as established by the Sino-British Joint Declaration of September 1984.⁸⁰ Particular interest centres on the manner in which the Basic Law of the Hong Kong Special Administration, enacted in April 1990 to take effect on July 1, 1997, will operate. It essentially preserves the continued operation of existing Hong Kong laws and provides for a limited right of further legislating. In that environment, the Hong Kong government is presently contemplating the introduction of a new

77. *See id.* at 2565-66.

78. *See id.* at 2563.

79. The approach of midnight on June 30, 1997 has been cartooned by vendors of T-shirts at the Star Ferry terminal in Hong Kong as the "Greatest Chinese Take-Away" on Earth. *See* James Pringle, *Colony in Despair at 'Chinese Takeaway'*, *TIMES* (London), Aug. 19, 1996, at 8.

80. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Sept. 26, 1984, U.K.-P.R.C., 1985 Gr. Brit. T.S. No. 26 (Cmdn. 9543), 23 I.L.M. 1366, at 1 [hereinafter Sino-British Joint Declaration].

form of "administration" insolvency regime (based on the recommendations of the Hong Kong Law Reform Commission published in 1995).⁸¹ It remains to be seen whether this will become the event. If it does, Hong Kong will have a modern and quite sophisticated "rescue" technique available with which to treat insolvent or near insolvent companies. Enterprises in the rest of China, on the other hand, will be dealt with under the Chinese insolvency law which, as mentioned above, is a decidedly problematical affair. Interesting questions will also arise in relation to cross-border insolvency issues because of the degree of Chinese investment in Hong Kong companies; the presence of companies in Hong Kong controlled by Chinese shareholders (and vice versa); and various business interests held by Chinese and Hong Kong enterprises across the "border." Which law will apply and will there be recognition of cross-border insolvency cases?

81. LAW REFORM COMMISSION OF THE HONG KONG SUBCOMMITTEE ON INSOLVENCY, CORPORATE RESCUE AND INSOLVENT TRADING CONSULTATION PAPER (1995).

AUSTRALIAN CORPORATE

Date	Provisional Liquidation	Court Liquidation	Creditors' Liquidation	Members' Liquidation	Receiver	Other Controller	Managing Controller
Nov-91	52	357	74	273	21	0	0
Dec-91	65	337	68	466	10	0	0
Jan-92	29	185	45	242	9	0	0
Feb-92	66	397	62	218	10	0	0
Mar-92	50	618	94	316	22	0	0
Apr-92	52	590	78	316	15	0	0
May-92	56	336	64	337	17	0	0
Jun-92	60	350	80	723	11	0	0
Jul-92	39	309	83	248	6	0	0
Aug-92	36	366	68	219	14	0	0
Sep-92	35	310	57	196	8	0	0
Oct-92	60	306	58	200	18	0	0
Nov-92	34	320	63	251	8	0	0
Dec-92	59	318	65	353	10	0	0
Jan-93	33	191	47	148	4	0	0
Feb-93	50	227	56	165	4	1	0
Mar-93	65	320	83	320	11	0	0
Apr-93	45	246	90	309	3	0	0
May-93	49	303	77	370	10	1	0
Jun-93	53	237	66	614	4	10	0
Jul-93	30	248	51	219	13	39	2
Aug-93	30	196	72	187	3	49	1
Sep-93	32	216	53	181	8	49	2
Oct-93	25	217	40	197	4	60	0
Nov-93	34	177	69	213	13	57	3
Dec-93	25	166	46	374	8	38	0
Jan-94	13	119	17	127	2	44	1
Feb-94	24	92	30	151	1	34	0
Mar-94	36	167	50	231	8	37	3
Apr-94	12	129	35	212	4	33	1
May-94	14	153	36	238	12	46	0
Jun-94	12	165	34	493	11	33	1
Jul-94	25	154	33	207	6	36	1
Aug-94	19	162	44	163	10	37	1
Sep-94	18	150	39	184	11	51	0
Oct-94	16	163	29	147	9	29	1
Nov-94	18	154	28	248	3	31	0
Dec-94	13	138	36	342	5	29	0
Jan-95	10	107	26	131	4	23	0
Feb-95	15	137	28	135	8	20	1
Mar-95	14	169	40	246	4	30	1
Apr-95	12	92	34	178	0	21	0
May-95	12	173	49	290	7	25	0
Jun-95	22	142	44	688	5	37	1
Jul-95	10	68	31	219	7	29	0
Aug-95	62	92	38	192	5	28	1
Sep-95	18	50	50	241	5	21	0
Oct-95	17	58	34	165	7	34	0
Nov-95	20	57	33	230	8	16	1
Dec-95	21	31	42	324	7	19	0
Jan-96	7	36	23	186	1	16	1
Feb-96	14	52	38	225	9	31	0
Mar-96	20	42	39	288	9	25	1
Apr-96	13	54	38	275	3	19	1
May-96	18	63	34	346	9	20	0
Jun-96	18	57	46	558	8	10	1
Jul-96	15	62	49	258	3	16	0

INSOLVENCY STATISTICS 1991-1996

Date	Receiver & Manager	Scheme Administrator	Company Administrator	Deed Administrator	Foreign Liquidation	Total	Incorporations
Nov-91	57	0			1	835	3789
Dec-91	93	4			1	1044	2944
Jan-92	58	0			0	589	3137
Feb-92	49	1			0	803	3830
Mar-92	78	0			0	1176	3911
Apr-92	48	9			2	1108	3859
May-92	77	2			0	889	4327
Jun-92	89	0			1	1313	7547
Jul-92	58	1			0	743	4718
Aug-92	93	1			0	797	3832
Sep-92	72	0			0	678	4174
Oct-92	78	2			0	720	4101
Nov-92	67	7			0	750	3945
Dec-92	59	4			0	888	4022
Jan-93	38	0			1	482	3550
Feb-93	40	0			1	544	4598
Mar-93	67	1			0	887	5405
Apr-93	64	0			1	758	4638
May-93	89	0			0	899	6052
Jun-93	74	3	3	0	0	1064	11422
Jul-93	55	5	44	2	0	708	6233
Aug-93	44	3	37	13	1	638	5742
Sep-93	75	2	50	18	0	686	5797
Oct-93	58	1	46	24	0	662	5383
Nov-93	43	9	61	20	0	689	5993
Dec-93	45	2	66	47	0	817	5244
Jan-94	39	2	62	21	0	447	4654
Feb-94	46	10	84	33	0	505	6387
Mar-94	47	1	85	30	0	695	7333
Apr-94	37	3	65	48	0	579	5820
May-94	38	0	89	45	0	678	8384
Jun-94	36	7	69	47	1	909	18000
Jul-94	29	0	69	49	0	609	6451
Aug-94	45	2	76	37	0	596	6088
Sep-94	32	2	71	48	0	606	5888
Oct-94	43	3	83	30	0	553	5736
Nov-94	29	3	96	45	0	655	6096
Dec-94	34	5	89	52	1	744	5375
Jan-95	25	1	73	37	0	437	5001
Feb-95	41	0	120	42	0	547	6110
Mar-95	48	6	183	73	0	814	8584
Apr-95	28	4	97	55	0	521	5227
May-95	28	6	167	82	0	829	7421
Jun-95	30	5	142	82	0	1198	13779
Jul-95	25	1	98	107	0	595	5620
Aug-95	45	2	155	54	0	674	5886
Sep-95	53	0	108	54	1	601	5552
Oct-95	20	2	135	58	1	531	5786
Nov-95	33	1	138	64	0	611	5731
Dec-95	22	0	111	71	0	648	4865
Jan-96	31	1	97	33	0	432	5682
Feb-96	30	1	166	39	0	605	6788
Mar-96	30	0	167	60	0	681	6730
Apr-96	39	2	128	62	0	632	6204
May-96	42	2	157	83	0	774	8069
Jun-96	28	3	127	64	0	920	12366
Jul-96	45	2	182	71	0	703	8873

