

CORPORATE RESCUES AND INSOLVENCIES. By J. R. LINGARD. [London: Butterworths. 1986. xxvi + 222 pp. Hardcover: £25]

IT IS not only in Singapore that corporate rescues have been much in the news. The failure of Pan-Electric Industries Limited brought the topic into sharp focus here early in 1986. Nonetheless, this was a small failure compared to others that have occurred elsewhere, such as in Hong Kong, Japan or the United States of America. Yet despite the universal importance of corporate rescues there is very little written on the topic. What there is tends to assume receivership and liquidation, or else a scheme of arrangement, a creature smelling mustily of the nineteenth century.

This new book is therefore particularly welcome, especially as it approaches the subject from a practical viewpoint. It is written by a London solicitor having many years' experience in this field. His aim, as stated in the preface, is to address not mere legal technicality. He also considers the causes of company insolvency, and discusses management and other strategies for a company to seek a way out of difficulty. In this the author succeeds admirably. For the topic, though intellectually challenging, is essentially a practical one demanding a practical treatment. Thus the book is addressed to practitioners. It will assist them in making the many difficult and necessary tactical decisions; whether management should petition for an administration order or propose a scheme of arrangement; how to deal with the ever-present threat of a bank appointing a receiver; and of course the risk if trading continues of directors being held liable in a winding-up for fraudulent trading.

The author answers the many relevant issues which practitioners will want to know, rather than indulging in academic extravagances. Nonetheless the book is primarily a legal work and it contains some solid exposition of the law.

The introduction deals with the causes of insolvency. Part 1 then examines the stage at which the company is ceasing to trade. This considers fraudulent trading, voidable preferences and misfeasances, and ends with a discussion of bank rescues of companies with cash flow problems. Part 2, the largest third of the book, covers schemes of arrangement, receivership and voluntary and compulsory liquidation. Part 4 includes a substantial sixty page section on administration orders. This contains a description and analysis of rescuing companies by a court order appointing an insolvency practitioner as administrator. Like a judicial manager in Singapore, the administrator is responsible for making a proposal for rehabilitation of the company. As the first substantial piece of writing on this important topic, it is much to be welcomed.

Having concluded that the book is a skilful presentation of considerable interest for academics and practitioners, it now remains to consider how relevant it is to circumstances in Singapore. Singapore has of course followed Australian companies legislation, while England has followed the flow of E.E.C. principles. As a result there are now significant differences in the respective statute laws. Though the detail of the law in the two jurisdictions differs, most of the principles remain the same.

Thus, apart from disqualification and wrongful trading, a new English concept found in the Insolvency Act 1986, much of the first part of the book, including bank rescues, is of direct relevance in Singapore. Though again care has to be taken with subtle differences of detail, the material on schemes of arrangement, receivership and winding up is broadly applicable to Singapore. The third part on administration orders is of particular topical interest here. At the time of writing (March 1987), the Companies (Amendment) Act 1987 has just been passed. This enables the appointment of a 'judicial manager', whose responsibility, during a 180 day moratorium in which the company is safe from enforcement action, is to obtain the creditors' approval for proposals designed to rehabilitate the company. Though Singapore's legislation has borrowed South Africa's terminology of 'judicial manager,' it is in fact based closely on the English provisions for appointment of an administrator found in the Insolvency Act 1986. As this book is the first substantial written analysis of administration orders, the book will be of particular interest in Singapore.

Again one has to repeat the caveat that there are differences in the two sets of legislation. For example, the Singapore petitioner has some initial hurdles to be overcome before the petition may be heard, and there are special penalties as to costs. The range of purposes to be attained by judicial management orders are marginally different. Thus the court must be satisfied that the Singapore company 'is or *will be*' (as opposed to '*is likely*' to be) unable to pay its debts. Secondly the English purposes assume rescue of the company, whereas Singapore's permit survival of part of its undertaking only while the company fails. Singapore's provisions require the applicant to nominate an approved company auditor (whom the creditors may oppose), though the Court may appoint someone else not so qualified. A chargee entitled to appoint a receiver and manager of substantially the whole of a company's property may effectively bar an order not only by appointing a receiver and manager, but also merely by opposing the making of an order. However the most striking difference is that an order may be made despite the appointment of a receiver and manager if the Court considers that 'the public interests so requires.' Further, a judicial management order is for an initial period of 180 days. Unlike in England, the judicial manager wholly takes over the powers of the board, and is personally liable on contracts including employment. However he has an indemnity out of the assets, including those subject to a floating charge, and may obtain a release from liability. There are also several other significant differences including a moratorium on paying ordinary pre-order debts, the approval of modified proposals, trade union representation and undue preferences. These and other differences are significant and constant care has to be taken not to place unquestioning reliance on the book.

Nonetheless in broad terms it will be of immense use to readers in Singapore. Of great value is constant reference to the relative advantages and disadvantages of administration orders and other forms of rescue or moratorium. Also valuable is the distilled wisdom of an old campaigner. An example is his view that pre-packaging commercially viable proposals before a petition is presented, is of great importance to a successful rescue. He also warns as to the risks of financial haemorrhage in the commercial limbo after presentation but before the hearing.

One can only say that this book must become essential reading for Singapore professionals concerned with clients who might conceivably come to require a rescue. Pan-Electric, which so long teetered on the brink of liquidation, protected only by a Court appointed receivership, was a rare case where a judicial management order might have been appropriate. Even in bad times there will be few cases where the banks are unable to dominate the stage by appointing a receiver and manager. Thus there will be few occasions when it will be appropriate to resort to the courts for a judicial management order. Hopefully times will improve and so experience of judicial management will be uncommon. Nonetheless, unlike in early 1986, it is important to be prepared for the worst. Being able to borrow experience from larger jurisdictions, especially through books such as Lingard's, is therefore of prime importance.

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