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BOOK REVIEW

Principles of Corporate Insolvency Law (3rd ed.) BY SIR ROY GOODE [London: Thomson Sweet & Maxwell, 2005. lxxxvi + 655 pp + Appendices. Hardback: £145, Paperback: £50]

Previous editions of this book have established themselves as leading texts for students studying corporate insolvency law and an essential tool for insolvency practitioners. This new edition continues the excellent scholarship and pragmatic approach to law which characterises the writing of Sir Roy Goode. Ordinarily this would have made the book a standard work of study and reference. One may however query the utility of the book to law students and practitioners in Singapore, as it is possible that her corporate insolvency law may be set upon an increasingly divergent path of development from English law in the near future. This reviewer would nevertheless recommend the book to a Singapore reader. In the near future, Singapore's corporate insolvency law will still remain largely similar to English law, for which the book will be directly relevant. Where it departs from English law, the book's concise exposition of English law serves as a platform for comparative law research, which is important not only in law faculties but also in courtrooms as well. At a broader level, this book helps the reader to overcome the unprecedented challenges facing all people with an interest in corporate insolvency law, especially in Singapore.

English corporate insolvency law has undergone massive changes in recent years. The UK Insolvency Act 2000 amended the company voluntary arrangement by allowing an eligible small company to obtain a short, interim moratorium pending the institution of the voluntary arrangement by filing the necessary papers. The UK Enterprise Act 2002 virtually abolished administrative receivership (a type of enhanced receivership whereby the security package extends to the whole or substantially the whole of the company's property and the receiver is given added powers), made substantial changes to administration (from which Singapore's judicial management was adopted) by inter alia, providing for a hierarchical order of objectives which an administrator must achieve, gave the holder of a qualifying floating charge the right to appoint an administrator and ring fenced what would otherwise have been preferential Crown debts for the benefits of general unsecured creditors.

Singapore's corporate insolvency law has its roots in English law, but since 1986 when the UK Insolvency Act 1986 was enacted, significant differences have developed between the two systems of law. For example, it does not have administrative receivership, company voluntary arrangement or a separate profession for insolvency practitioners, all of which were introduced by that Act. Some expected developments

will bring Singapore's corporate insolvency law closer to the English model, but the entire picture is rather more complex and the law is still very much in a state of flux. The Company Legislation and Regulatory Framework Committee, set up by the Government to review and update Singapore's company law, in its 2002 report made several recommendations in relation to insolvency law, inter alia, consolidation of insolvency law in an omnibus insolvency legislation, introduction of the English corporate voluntary arrangement and the establishment of an association for insolvency practitioners. The Government has accepted all the recommendations. These developments are significant, but Singapore's insolvency practitioners will find them relatively easy to master. They are based on the same philosophical underpinnings as current corporate insolvency law of Singapore, and reaffirmed the close historical ties between Singapore and English corporate and commercial law.

On the other hand, there is no sign that Singapore will be adopting the much more substantial changes implemented by the UK Enterprise Act 2002. Serious consideration has also been given to the possibility of adapting the US Chapter 11 as an additional form of insolvency proceedings to further develop the rescue culture in Singapore. If that were to happen, Singapore's corporate insolvency law will be a hybrid of the English and American models, the first of its kind in the world. Depending on the extent and care with which that is done, there is potential that it will undermine the internal coherence of the law and lead to uncertainty or even confusion. The difficulties of co-existence arise not only because the philosophical foundations of English and US insolvency laws are completely different, with the former being creditor-driven and the latter debtor-driven, but also because insolvency law is an integral part of the commercial law of any legal system. Clearly, for the adapted US Chapter 11 to work in Singapore, it is not simply a matter of transplanting its statutory provisions. It can thus be foreseen that, if indeed that were to happen, its legal and accounting professions, academics and businessmen will have to overcome a very steep learning curve to familiarise themselves with the new US inspired corporate insolvency proceeding, and its interaction with other insolvency proceedings informed by English law.

To add to the above contingent challenge, insolvency practitioners, not only in Singapore but within the Commonwealth, have to keep pace with many important judgments and the huge amount of recent literature on insolvency law. Some of these cases involve complex interplay between difficult policy choices and extremely technical points of law. Without some kind of overarching structure within which to rationalise or explain the cases, it is easy to founder under their weight and complexity. Academics have been very active working on this front. Not content with simply describing the law, recent writings have sought to impose some kind of theoretical structure on insolvency law, even as they challenge accepted wisdom on principles as fundamental as the *pari passu* principle. Currently it is not clear the extent to which these academic writings will influence the development of the law. Some of the arguments are however persuasive and will offer a useful map and new insights to insolvency lawyers, but busy practising lawyers will probably find it daunting to read all the literature.

The main attraction of this book to a Singapore reader is that, save for the possible adaptation of the US Chapter 11, it is useful in helping to overcome the above challenges. It succeeds largely in presenting English corporate insolvency law as it is but

without losing sight of the broader picture and the insights offered by academic writings. It serves as a useful bridge between works which are purely practice driven and academic works. It weaves into its fabric some of the ideas propounded in leading recent works, such as Vanessa Finch's *Corporate Insolvency Law: Perspectives and Principles* (2002), *Vulnerable Transactions in Corporate Insolvency Law* (2002), which is edited by John Armour and Howard Bennett and Rizwaan Mokal's *Corporate Insolvency Law: Theory and Application* (2005). Readers of this book will thus get a succinct exposition of the law and at the same time gain some understanding of academic opinions.

Compared to the above attractions, the weaknesses of the book are insignificant. For example, its treatment of the *pari passu* principle, in particular its rebuttal of Mokal's attack on the principle, is too brief and not particularly convincing; the discussion of the common law duty of directors to take into account the interests of creditors when the company is insolvent or of doubtful solvency would have benefited from considering what exactly is the content of this duty and the time when it arises; the discussion of fraudulent trading fails to grapple with the different approaches to the meaning of fraud in the cases, etc.

All things considered, insolvency practitioners would do well to acquire this book, and students who are deterred by the price of the hardback edition will find the paperback edition, which is introduced by the publisher for the first time, to be more affordable. This edition is Sir Roy's swan song to corporate insolvency law. Its breadth, depth and excellent exposition of the law are a fitting tribute to a scholar who has been a leading figure in this field for the greater part of the last two decades. In the preface Sir Roy mentioned that 'the mantle will pass to a younger and more energetic scholar'. One can only hope that such a person will be found and that the high standard will be maintained or even surpassed in future editions.

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