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PERSONAL LIABILITY FOR LIQUIDATORS FOR BREACH OF THE ESTATE COSTS RULE

Ho Wing Chong Christopher and Ors. v. ECRC Land Pte. Ltd. (in Liquidation)[1]

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I. INTRODUCTION

No one doubts the importance of the estate costs rule. Its existence is itself uncontroversial.[2] It is a recognized common law rule of priority in the liquidation of companies and supplements the *Companies Act*,[3] which provides that the costs and expenses of winding up including the remuneration of the liquidator shall be paid in priority to all other unsecured debts. The estate costs rule supplements this by clarifying the relative priorities between the various types of liquidation expenses. In particular, the estate costs rule provides that a successful litigant against a company in liquidation is entitled to be paid his costs in priority to the other general expenses of the liquidation, including the costs and remuneration of the liquidator.[4]

In the *ECRC* decision, the Singapore Court of Appeal held that a liquidator, who commences an action on behalf of the company and breaches the estate costs rule, will be held personally liable for any shortfall if the company is unable to meet a costs order in favour of the defendants.[5] In the course of his judgment,

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[1] [2006] 4 S.L.R. 817 [the *ECRC* decision].

[2] It should be noted that the estate costs rule also applies to probate proceedings.

[3] s. 328(1)(a) of the Singapore *Companies Act* (Cap. 50, 2006 Rev. Ed. Sing.) provides that, "in a winding up there shall be paid in priority to all other unsecured debts—(a) firstly, the costs and expenses of the winding up including the taxed costs of the applicant for the winding up order payable under section 256, the remuneration of the liquidator and the costs of any audit carried out pursuant to s. 317." Other priority debts include all wages and salaries of employees, retrenchment benefits or *ex gratia* payments of employees and workmen's compensation. The scope of the estate costs rule is limited to the costs and expenses of the winding up as stated above. While it is unclear whether the costs of unsuccessful litigation would take priority over the taxed costs of the applicant for the winding up order, it is clear from the line of authorities, including the decision discussed here, that litigation costs take priority over the remuneration of the liquidator and his solicitors.

[4] *Supra* note 1 at 822.

[5] *Ibid.* at 841.

Chan C.J. recommended that liquidators who do not wish to fall foul of the estate costs rule should seek an indemnity from the company's creditors before commencing or continuing with litigation. However, closer scrutiny will show that the *ECRC* decision has neither clarified the operation of the rule nor answered the ultimate question of "what constitutes a breach of the estate costs rule."[6]

This note explores the operation of the estate costs rule, and argues that by imposing personal liability on liquidators the *ECRC* decision will cause liquidators to defer to the company's creditors the decision whether or not to commence or continue litigation. More importantly, it will do so without careful consideration of how creditors behave as a group and whether they are the most effective people to decide on the conduct of liquidation.

II. The Scope of the Estate Costs Rule

It is clear that the operation of the estate costs rule is premised upon the occurrence of two events: the commencement of litigation on one part and the ordering of costs by the court on the other part. Consequently, a liquidator finds himself faced with the estate costs rule during these three situations: (1) after a costs order is made against the company; (2) after the commencement of an action but before the costs order is made; and (3) before the commencement of an action.

With respect to the first situation, if a liquidator makes payments towards the general costs of the liquidation after a costs order is made against the company and thereafter there are insufficient assets to satisfy the costs order, the liquidator will have breached the estate costs rule. This was the case in *Re Pacific Coast Syndicate Ltd.* [1913] 2 Ch. 26 where:

> at the date of the judgment [the liquidator] had a balance of about £500, out of which he paid some £375 for costs to his solicitors in the action and a few small debts of the company. This left him a balance of £86 14 s. and 2 d., which he had paid to the defendant company's solicitors.[7]

Furthermore, after a costs order is made, a successful litigant is *prima facie* entitled to immediate payment.[8] It is easy to ascertain liability on the part of the liquidator for breach of the estate costs rule for his conduct in this situation.

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[6] Another uncertainty also arises as a result of the *ECRC* decision. The estate costs rule also applies to judicial managers. See *In the matter of Riverside Nursing Care Pty. Ltd. (subject to deed of company arrangement) David James Lofthouse in his capacity of Administrator of the Deed of Company Arrangement for Riverside Nursing Care Pty. Ltd. (subject to deed of company arrangement)* [2004] A.C.L.C. 215. How the principles stated in the *ECRC* decision apply to judicial management would require further clarification, as judicial management aims to keep the company as a going concern. Litigation of outstanding claims by the company is frequently an important part of this exercise. In addition, the effect of the *ECRC* decision may be exacerbated by fact that the Singapore statutory framework for corporate insolvency does not allow liquidators to continue litigation commenced by a company's judicial managers. See *Neo Corp. Pte. Ltd. (in liquidation) v. Neocorp Innovations Pte. Ltd.* [2006] 2 S.L.R. 717. See too, Wee Meng Seng, "Avoidance Law in Judicial Management" [2006] 2 Sing. J.L.S. 505.

[7] See *Re Pacific Coast Syndicate Ltd.* [1913] 2 Ch. 26 at 26.

[8] See *In Re London Metallurgical Company* [1895] 1 Ch. 758. In the *ECRC* decision, payments to the liquidators' solicitors were made on various occasions after the main suit was commenced. In particular, two payments totaling $26,391.85 were made to the liquidators' solicitors while the main appeal was pending and after the main trial judge had ordered costs in favour of the defendants. These two payments were clearly made in breach of the estate costs rule.

Yet the same cannot be said of the next two situations — after the commencement of an action but before the costs order is made, and before the commencement of an action. Finding breaches of the estate costs rule from a liquidator's conduct in these situations is not as clear cut as it seems.

III. Knowing the Costs of Litigation After the Commencement of Litigation but Before the Costs Order is Made

In the *ECRC* decision, the Singapore Court of Appeal considered that payments made before the costs order but after the commencement of an action can fall foul of the estate costs rule.[9] This proposition was made on the basis that "the liquidator is the 'person who can see what the position is' and has the means to ascertain the company's financial position at any time."[10] Thus, if the company's assets appear to be insufficient to sustain both the company's legal fees and the opposing litigant's legal costs, the proper course of action is for the liquidator to seek an indemnity from the company's creditors. Yet the Singapore Court of Appeal did not clarify what standard of knowledge is required for a liquidator to see that "the company's assets appear to be insufficient to sustain"[11] the costs of litigation.

In *In re Beni-Felkai Mining Co. Ltd.*,[12] which was cited with approval by the Singapore Court of Appeal, the Inland Revenue Authority sought to claw back remuneration that had been paid to a company's liquidator on the basis that he had paid himself in breach of the Authority's priority. On the facts, the liquidator had remunerated himself before the notice of assessment had been issued by the Authority. Further, the Authority had argued that:

> the final assessment for the income tax year 1929-1930 was based on profits for 1928, and that the appropriate amount of those profits must have been known to the liquidator a year before July, 1930 when the company's business came to an end.[13]

However, Maugham J. did not consider that:

> …the Court ought to be unwilling to declare that the liquidator is entitled to retain the remuneration which he has paid himself out of the assets of the company at a time *when he had no reason to suppose that there would be an insufficient amount available for the payment of the costs, charges and expenses incurred in the winding up. In my opinion it is impossible on the materials before me to fix exactly the date as from which the remuneration of the liquidator ought to be inquired into*, but I think I am justified on the whole in making an order that *the liquidator's remuneration received by him or paid to himself before December 8, 1930 (that being the date of the assessment of £487 16 s.) shall not be disturbed*.[14]

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[9] C.f. *In re R. Bolton and Co. Salisbury-Jones and Dale's Case* [1895] 1 Ch. 333. The Singapore Court of Appeal disagreed with the decision here. It should be noted that due perhaps to the antiquity of the case, the reporter does not document the background facts to the case as well as might have been expected.

[10] *Supra* note 1 at 845.

[11] *Ibid.* at 841.

[12] [1934] Ch. 406 at 411.

[13] *Ibid.* at 411.

[14] *Supra* note 12 at 422 to 423 [emphasis mine].

In this case, the Court found that there was no reason to suppose that there would be an insufficient amount available for the payment of costs, charges and expenses incurred in the winding up prior to the notice of assessment. Hence, the only payments made to the liquidator which were impeached were those made after the tax liability of the company had been assessed and quantified.[15]

Is there a significant difference between quantifying the tax liability of a company and quantifying the costs of litigation? Of course, a liquidator should have no excuse for not having knowledge of the financial state of the company that he is winding up. However, why should a liquidator have knowledge of the potential costs of litigation? After all, subsequent to the filing of pleadings, the costs of litigation can swell immensely and unexpectedly as interlocutory proceedings take over.[16]

The Singapore Court of Appeal's formulation appears to be premised upon a notional stop-date which a liquidator must set for himself when the company is in litigation. A liquidator must not only keep track of his lawyer's costs but also estimate the opposing litigant's costs at each step of the proceedings.[17] Accomplishing the former may be reasonable enough, but estimating the latter is more challenging than it seems, especially since costs are ordered at the discretion of the court.[18] Unfortunately, the *ECRC* decision does not clarify how a liquidator can calculate this notional stop-date.

Absent an indemnity from the company's creditors, some may say that the answer lies in having the liquidator refrain from remunerating himself and his solicitors. After all, the entire controversy in the *ECRC* decision arose because the liquidator had done exactly that before satisfying his opposing litigants' costs order. As noted by the Singapore Court of Appeal:

> Most of the payments to ECRC's solicitors, ALP, took place whilst the main suit was still ongoing and before the costs order against ECRC had been made. The liquidators' infringements of the estate costs rule were therefore a direct consequence of having to finance the suit from which the company's subsequent liability to costs to the appellants arose…[19]
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> …Few lawyers would be willing to hold their legal fees in abeyance or to agree to defer receiving payment thereof until: (a) the opposing litigant's potential entitlement to costs is resolved; and (b) if a costs order against a company is indeed made, the opposing litigant's costs are fully paid.[20]

However, this possibility may not be as far-fetched as it seems. A liquidator's solicitors may choose to withhold billing for the litigation until the end of the matter. If the company succeeds, the liquidator's solicitor gets paid. If the company fails, the

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[15] *Ibid.*

[16] Costs may be set from $500 to $2000 or more for each interlocutory hearing, depending on the length of the hearing. Interlocutory hearings may commence the moment pleadings are filed up to the day of the trial.

[17] Of course, this situation is exacerbated in a multi-suit scenario. How is a liquidator to choose which one to continue and which one to abandon? The best a liquidator can do is to leave it up to the creditors, providing them with his recommendation on which litigation has the best chance of success relative to its costs. Again, the answer lies with the creditors.

[18] See the Singapore *Rules of Court* (2006 Rev. Ed. Sing.), Order 59 Rule 3.

[19] See *supra* note 1 at 827.

[20] *Ibid. at* 837.

solicitor's fees rank behind the costs order and he may not get paid. The result is a *de facto* contingent fee regime.[21] Moreover, it is reasonably clear that lawyers are willing to work on a contingent basis.[22]

Nonetheless, as the Singapore Court of Appeal stated, this issue is moot, since:

> …if a liquidator believes that the company has a viable cause of action against someone, but the company's assets appear to be insufficient to sustain *both* the company's legal fees and the opposing party's costs, the proper course of action is for the liquidator to seek an indemnity for the costs of the litigation.[23]

Hence, the Singapore Court of Appeal left open the possibility that a liquidator who starves himself and his solicitors of fees may still be personally liable if there are, ultimately, insufficient assets to satisfy a costs order. Accordingly, well-intentioned liquidators, heeding the advice of the Singapore Court of Appeal, will err on the side of caution and refer the decision back to the company's creditors, asking for an indemnity.

IV. Before the Litigation: Personal Liability for the Mere Commencement of Action

The *ECRC* decision continues:

> This rationale for imposing personal liability should apply equally to situations where a liquidator commences proceedings though the company's coffers are completely empty and it has no assets to satisfy either its own or the defendant's legal costs…[24]

Consequently, as the mere commencement of litigation becomes a matter of personal liability for liquidators, liquidators will be forced to exercise more foresight in the course of the company's liquidation. However, such foresight is often unavailable to the liquidators at an early stage of the liquidation.

First, there is always an information gap for the liquidator to fill when he is first appointed. Potential causes of action available to the company might not be apparent to the liquidator from the outset, and may be uncovered only following an investigation into the company's affairs. Such investigation would require the liquidator to expend some of the company's resources either reviewing the company's accounting documents (which may or may not have been properly kept)[25] or interviewing the previous management (some of whom may be adverse parties in the causes of action uncovered by him, and may therefore be uncooperative in the investigation process). This leaves the possibility that the liquidator, after expending funds to

[21] This is despite the fact that contingency fees are prohibited by the *Legal Professions Act* (Cap. 161, 2001 Rev. Ed. Sing.). See Rule 37 of the *Legal Professions (Professional Conduct) Rules* (2000 Rev. Ed. Sing.).

[22] Gary Chan, "Re-examining Public Policy: A Case for Conditional Fees in Singapore?" (2004) C.L.W. Rev. 130.

[23] *Supra* note 1 at 841 [emphasis mine].

[24] *Ibid*.

[25] This would require the liquidator to reconstruct the company's accounts.

uncover a cause of action, is left to continue with a suit without funds and without an indemnity from the company's creditors.[26]

Second, upon discovery of a cause of action available to the company, the liquidator may then be forced into making some hard decisions. In order to conserve resources for litigation, the liquidator may have to choose to suspend some other part of the liquidation process. In fact, the liquidator may be forced to choose between one of any number of potential actions to commence. At that juncture, it may not be possible to know which actions are more beneficial to the company and its creditors. After all, assessing the probability of recovery to the creditors will require further information regarding the financial state of the potential opposing litigants, as well as legal advice based on the evidence at hand (which, as has already been stated, may not be readily available at this point). Furthermore, the time-line to commence action is tightened if the causes of action are for unfair preference or transactions at an undervalue, as the Companies Act provides various time-lines to which liquidators must adhere.[27] Thus, liquidators may be caught between a rock and a hard place in seeking to ensure that the company is afforded the best opportunities for recovery without exposing themselves to personal risk.

Ultimately, we can see that at this juncture the liquidator does not have sufficient information to proceed safely. To err on the side of caution, he may very well defer this judgment-call to the company's creditors. Hence, much rests on the decision of the creditors. Are we asking too much of creditors in expecting them to make rational and effective decisions as a group, especially in cases where information concerning prospective recovery from litigation remains relatively scanty?

A corollary effect of hesitance on the part of the liquidator in commencing an action due to the factors discussed above is that any policy to deter errant conduct on the part of a company's directors may then be undermined. A company director who intends to breach his director's duties by entering the company into transactions at an undervalue or in unfair preference for related parties or other acts of misfeasance may be tempted to exhaust all of the company's assets in the process. After all, if the company has no more funds to litigate against him or his related parties when it goes into liquidation, he may possibly escape the effects of the civil justice system.[28]

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[26] As was the case in *Metalloy Supplies Ltd. v. M.A.(U.K.) Ltd.* [1997] 1 W.L.R. 1613, where interlocutory skirmishes exhausted the company's funds.

[27] See generally Lee Eng Beng, "The Avoidance Provisions of the Bankruptcy Act 1995 and their Application to the Companies Act" [1995] Sing. J.L.S. 597.

[28] Civil action against former officers of a company may be commenced by the liquidator on behalf of the company in the same way that a company may commence proceedings if it is not in liquidation. See Order 88 of the Rules of Court, *supra* note 18. Additionally, s. 341 of the *Companies Act* provides that a liquidator, contributory or creditor of the company in liquidation may also apply to Court to "examine into the conduct of such person, liquidator or officer and compel him to repay or restore the money or property or any part thereof with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust or duty as the Court thinks just." By analogy, the estate costs rule would apply to such an application. Further, s. 342 of the *Companies Act* (*supra* note 3) also prescribes that the Court may direct the prosecution of delinquent officers of the Company if, in the course of the liquidation, they are found to have committed criminal offences, such as corporate fraud (s. 406) and criminal breach of director's duties (s. 157).

V. The Trouble with Indemnities: The Creditor-Liquidator Game

At this juncture, it may be helpful to reproduce the passage in the *ECRC* decision which suggests that a liquidator should seek an indemnity from the company's creditors before commencing an action.

> It may well be that where, as here, the law allows a liquidator to desist from taking action if the company does not have any or sufficient assets to meet the full costs of the litigation, and where, as here, he is entitled to an indemnity from the creditors in performing his duty to augment the pool of assets for their benefit, a liquidator who proceeds to commence litigation without an adequate indemnity will be liable personally for the unsatisfied costs of a successful defendant.[29]

This is not a novel solution. In *In Re London Metallurgical Company*, the rationale behind the indemnity was articulated:

> If the result of the rule of practice I am laying down is that, where liquidators now start proceedings knowing there is no estate on which the adverse litigant can come, creditors should find that liquidators will not go on without an indemnity fund, so much the better.[30]

Naturally, these issues would resolve themselves if the creditors of the company were willing to provide the indemnity in the first place. As stated by Chan C.J., as the ultimate beneficiaries of successful litigation, creditors should also bear the ultimate risk of unsuccessful litigation. This is a very reasonable proposition. However, creditors of insolvent companies hardly ever see it that way.

Most creditors may think of this as throwing good money after bad—a situation which is exacerbated by the fact that most corporate insolvencies involve multiple creditors.[31] In this respect, it is close to impossible to have a situation where all creditors collectively indemnify the liquidator. In most cases, some creditors will support litigation and be willing to provide an indemnity, and others would rather distribute the assets in hand than pursue a cause of action which might cost more money. Of course, this is exacerbated if the liquidator is unable to provide the creditors with sufficient evidence or a firm assurance that commencing or continuing litigation will swell the assets of the company. After all, faced with the risk that the litigation may prove unsuccessful, many creditors may choose not provide indemnities. Ultimately, this results in a free-rider problem.[32] Why would one creditor

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[29] *Supra* note 1 at 841.

[30] See *supra* note 8 at 768.

[31] After all, the economic basis of corporate insolvency law is to ensure an equitable distribution of corporate assets between multiple and varied creditors of the company and in so doing to avoid a situation where creditors engage in a mad grab for the company's assets. In law and economics terms, this envisages a hypothetical pre-bankruptcy bargain being struck. See J. Bradley Johnston, "The Bankruptcy Bargain" (1991) 65 Am. Bankr. L.J. 213.

[32] See Christopher W. Frost, "The Theory, Reality and Pragmatism of Corporate Governance in Bankruptcy Reorganizations" (1998) 72 Am. Bankr. L.J. 103. In a United States Chapter 11 litigation scenario, Frost identifies one of the main culprits in sustaining collective actions in bankruptcy are widely dispersed creditors each holding small claims who adopt a posture of rational indifference. For greater analysis of creditor behavior in bankruptcy scenarios, see Scott F. Norberg, "Debtor Incentives, Agency Costs, and Voting Theory in Chapter 11" (1998) 46 U. Kan. L. Rev. 507 and Robert K. Rasmussen, "Behavioral Economics, the Economic Analysis of Bankruptcy Law and the Pricing of Credit" (1998) 51 Bankr. L.

provide an indemnity when other creditors do not, especially if he alone bears the risk of loss but all creditors share the fruits of successful litigation?

The greatest obstacle to obtaining an indemnity from creditors is that the *ECRC* decision contemplates an indemnity being provided by the creditors at an early stage in proceedings, or even before proceedings are commenced.[33] However, the costs of litigation cannot be estimated in an accurate manner at that time. At best, a fair estimate can only be made after discovery is completed and/or after the matter is set down for hearing. By this time, too much expense might already have been incurred in the course of the litigation.

Moreover, an indemnity might not in itself be sufficient to protect the liquidator from personal liability. Indemnities are basically promises to make good losses to another party. Hence, when a creditor provides the liquidator with an indemnity, it merely provides the liquidator with a cause of action against the indemnifying creditor.

There are a number of difficulties here. First, this would force the liquidator to pursue another action against the creditor to enforce the indemnity. Such enforcement proceedings would then leave the liquidator out of pocket. Second, in the event that the creditor was impecunious, the indemnity would be useless, as the defendant would have a cause of action for costs against the liquidator who might not be able to recover the same against the indemnifying creditor. It would then become the liquidator's prerogative to ensure the credit-worthiness of the creditor. Third, and following from the second point, the liquidator would have to weigh the strength of each creditor's indemnity against the others' in light of the credit-worthiness. This begs the question whether a bank's indemnity is better than that of a small partnership. If so, the free-rider problem referred to above will arise again.[34] What happens then, if a liquidator heeds the advice rendered in the *ECRC* decision and seeks and obtains an indemnity from the company's creditors, but after the costs order the company's creditors are unable or unwilling to satisfy the indemnity to the liquidator? Would the liquidator still be personally liable? Unfortunately, this was not clarified in the *ECRC* decision either.

Ultimately, the requirement of having to obtain an indemnity leaves a great deal in the hands of the creditors and their politics.[35] The creditors have to agree to stop existing recovery, as a liquidator must also place a halt on all other activities in the

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Rev. 1679. While the author recognizes the difference in substance between the Singapore liquidation regime and the United States Chapter 11 regime, analyses of how creditors behave generally are relevant and useful to the discussion in this note.

[33] Moreover, this is predicated on the assumption that creditors even know what they are doing: see, John M. Czarnetzky, "Time, Uncertainty and the Law of Corporate Reorganizations" (1999) 76 Fordham L.Rev. 2939 at 2983. Czarnetzky argues that upon insolvency the creditors become "investors" in the firm to the extent of their pre-insolvency claims. However, creditors are often ill-equipped, either by inclination or ability, to direct insolvent firms.

[34] One solution is to allow creditors' committees to commence actions as estate representatives, as found in United States jurisprudence. See generally, Daniel J. Bussel, "Creditors' Committees as Estate Representatives in Bankruptcy Litigation" (2004) 10 Stan. J.L. Bus. & Fin. 28.

[35] As noted earlier, extensive scholarship has been conducted in the United States with respect to the politics in the course of a corporate insolvency. In particular, Chapter 11 scholarship has been vibrant in this respect. See generally, Kurt F. Gwynne, "Intra-committee conflicts, Multiple Creditors' Committees, Altering Committee Membership and other Alternatives for ensuring Adequate Representation under Section 1102 of the Bankruptcy Code" (2006) 14 Am. Bankr. Inst. L. Rev. 109.

course of the liquidation for fear that additional costs are incurred. As noted by the Singapore Court of Appeal:

> Where the company has insufficient assets, he may have to exercise prudence to hold in abeyance his duty to recover the company's assets. The estate costs rule therefore assumes primary importance. In our view, a Singapore liquidator does have a positive duty to avoid subjecting a defendant to the unfairness of an unsatisfied costs order.[36]

In addition, if there are multiple causes of action available to the company, the creditors have to decide which action to maintain. They also have to agree to provide indemnities to the liquidator for the causes of action with which they have decided to proceed. These are all issues which the creditors may not have the expertise to deal with, and having them do so defeats the purpose of appointing specialized and independent liquidators.[37]

VI. Conclusion

The principles in the *ECRC* decision appear to provide a convenient solution for the courts which indirectly throws the onus of decision-making with respect to the conduct of litigation in liquidation onto the company's creditors. However, looking at it through broader lenses, the *ECRC* decision belies a greater misapprehension that a company's creditors should play a more significant role in decision-making simply because they are the main beneficiaries of the conduct of the liquidation.

This is incongruent with the Singapore corporate insolvency regime's efforts to adopt an "enterprise" or "rescue" culture.[38] After all, the basis of a "rescue" culture is the recognition that corporate insolvency has repercussions which go beyond the company's creditors, shareholders and management.[39] If so, the *ECRC* decision may have inadvertently brought back a "creditor-centric" view of corporate insolvency law, and should for this reason provoke the corporate community into greater discourse with respect to creditor behaviour in corporate insolvency.

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[36] *Supra* note 1 at 839.

[37] See *supra* note 32. See too s. 273 of the *Companies Act* (*supra* note 3), which provides that a liquidator shall have regard to directions provided by the company's creditors in general meeting or by the company's committee of inspection. However, s. 273 also leaves the general management of the affairs of the company to the discretion of the liquidator. It is clear from this that the statutory framework assumes that if the creditors in general meeting or through the committee of inspection do not give directions, the liquidator is to act independently.

[38] See para 2.7 of Sing., *Report of the Company Legislation and Regulatory Framework Committee*, found online: Attorney-General's Chambers <http://www.agc.gov.sg/publications/docs/CLRFC_Oct_2002.pdf> (read in Parliament in Sing., *Parliamentary Debates*, vol. 76 (24 April 2003) (Mr. Lee Hsien Loong)). It states: "[w]e note that the U.K. Department of Trade & Industry has commenced a further review of the U.K. insolvency regime: 'Insolvency—A Second Chance', the Enterprise Bill and 'An update on the Corporate Insolvency Proposals', 14 Jan 2002. Such reviews have been prompted against the backdrop of promoting an enterprise culture and are designed to encourage entrepreneurs who have failed honestly to try again. At the same time, there are sufficient remedies against those who take advantage of their creditors. We recommend that the Singapore omnibus insolvency legislation take into account these recent developments."

[39] See U.K., H.C., "Report of the Review Committee on Insolvency Law and Practice", Cmnd 8558 in *Sessional Papers* (1982) 1 at para. 203. See also, Muir Hunter, "The Nature and Function of a Rescue Culture" (1999) J. Bus. L. 491.