Corporate Rescue Law — An Anglo-American Perspective BY GERARD MCCORMACK
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It is received wisdom that American bankruptcy law is pro-debtor whereas English insolvency law is pro-creditor. But other than a few short articles comparing the basics of these two systems of law, it seems that no commentator has yet subjected them to in-depth comparison. This lacuna is regrettable. Comparative insolvency law is no longer a luxury for any sophisticated legal system. It is essential for its proper development of insolvency law, whether domestic or international. This monograph by Professor McCormack comparing American and English corporate rescue laws provides a sustained discussion of the extent of divergence between them in philosophical underpinnings, substantive law and legal practice. It does not seek to espouse any grand theory on how and why the two systems of insolvency law are similar or different. Some scholars would no doubt be disappointed. But this reviewer believes that is the great virtue of this book. Given the current meagre scholarship on comparative American and English insolvency law, it is probable that any theory at this stage is premature. We need the detailed comparisons to provide the base upon which the process of abstraction and theoretical development may perhaps take place in future. In that regard the book fulfils this function admirably well.

The book starts with an introduction of some of the key concepts of corporate rescue (*e.g.*, the idea of the going-concern value and its applicability in the modern service sector-oriented economy, economic distress versus financial distress, etc.) and various theories of corporate insolvency law. Readers who are knowledgeable in these matters may be tempted to skip this chapter completely. But that would be a mistake. The discussion of the theories of insolvency law is incisive and refreshingly honest on the difficulties inherent in explaining something as complex and messy as insolvency law by reference to a single theory. More importantly, through his critique of the theories of insolvency law, the author implicitly sets out what he considers are the key features and main themes which comparative insolvency law should focus on. This provides the normative justification for the approach and methodology of the book. It would perhaps have been better had the author devoted a section in the chapter to explain his approach, but this is really a minor criticism.

The next two chapters, Chapters 3 and 4, are devoted to explaining corporate restructuring law in the U.K. and the fundamental features of the U.S. Chapter 11 respectively. The discussion is pitched at a rather high level of generality, which provides an easy introduction to the two different corporate rescue regimes, and sets the ground work for the comparison of the technical rules in the later chapters. It would have been difficult to appreciate the two legal regimes fully without an understanding of their history. The author is clearly aware of this, for he summarises succinctly the major events leading to the current state of law. He also discusses the changes in practice over the years, including the latest developments such as pre-packaged administrations, the use of Chapter 11 for small business bankruptcies and the increased role of creditors in Chapter 11. The attention to history and practice helps put the law in proper context.

In Chapter 3, the author examines administration, scheme of arrangement and company voluntary arrangement. In view of the recent amendments to the administration regime by the *Enterprise Act 2002*, it is understandable that the author devotes more space to discuss this method of corporate rescue. However, as the author himself acknowledges, administration, unlike Chapter 11, is not a stand alone corporate rescue mechanism. Scheme of arrangement has become an important insolvency procedure for insurance companies in U.K. Indeed, it was the corporate rescue procedure of choice in Singapore in the last economic recession. As for company voluntary arrangement, this is actually the only insolvency procedure in English law devoted to corporate rescue. Unfortunately, it has received relatively little attention from academics. It would have, for many purposes, provided the best vehicle of comparison between English and American corporate rescue laws. Chapter 3 would thus benefit much from a more complete discussion of scheme of arrangement and company voluntary arrangement.

The author devotes five chapters to compare how English and American corporate rescue laws deal with specific issues, *viz.*, entry routes and corporate control, the automatic stay (or moratorium), financing, the role of employees and the restructuring plan. The issues are well chosen. They are easily the most important aspects of any corporate rescue law. The careful analysis of the technical provisions, the incorporation of the extensive scholarship on the two corporate rescue regimes and the reference to practice in the real world all help to make these chapters an indispensable tool for any scholar wishing to gain a better understanding of the similarities and differences of English and American corporate rescue laws. The chapter on employees is particularly useful, as insolvency law scholars have seldom focused on the treatment of employees in insolvency, let alone conduct a comparative analysis between two legal regimes.

This monograph could not have come at a better time. We live in an age of shortened and highly volatile economic cycles. Globalisation has broken down the boundaries between national economies and the world has become very much an integrated market for capital and goods and services. For countries in this trading web it is only natural that increasingly the kinds of insolvency law issues that they face do not differ very much from country to country. Any country hoping to embark on insolvency law reform would learn much from the experience of other countries. The English and American corporate rescue regimes are two of the world's most influential rescue regimes. The comparative account in this book will help law

reformers, judges and scholars to have a better grasp of the issues and appreciate better how the two systems have dealt with them.

Greater understanding is however relevant not only in the field of domestic insolvency law. The collapse of multinationals spanning the globe has given rise to high profile litigation, a variety of initiatives and debates on how international insolvencies should be dealt with. But progress will be slow if those involved have only vague notions of the insolvency laws of other jurisdictions, or worse, become prejudiced as a result of misunderstanding. Comparative law has a critical role to play in promoting mutual understanding and respect. It is hoped that this monograph will help in that respect.

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