CLTA Conference 2008

University of New South Wales

Sydney, Australia

03 – 05 feb 2008

John T McGrath University of Western Sydney, School of Law [1]

ECONOMIC EFFICIENCIES AND INSOLVENCY LAW: A DEVELOPING MISALIGNMENT [2]

Abstract

The implications for Corporate Law Practitioners, of provisions of the Corporations Amendment (Insolvency) Act 2007 and the Cross-Border Insolvency Act 2008, are extensive.

The Acts have five reformist themes :

1. Improving outcomes and information for creditors, through enhanced protection for employee entitlements, and a revised statutory pooling procedural process.
2. Deterring misconduct by corporate officers, with additional regulatory requirements for corporations and new insolvency practitioner information reporting provisions.
3. ASIC registration and disciplinary procedures for Insolvency Practitioners.
4. Enhancing the economic efficiencies of the existing Voluntary Administration procedures.
5. The adoption of the UNCITRAL Model Law on cross-border insolvency thus improving the efficiency and effectiveness of international corporate administration in relation to creditors and debtors.

One approach is to align Australian law with the existing corporate insolvency law protocols of the nation's trading partners.

This paper examines the substantial interface between the adoption of the pro-competition ethos in tertiary-level economies and the strategic management of corporate insolvency, including the role of the law in restructuring processes in transnational insolvencies. In the legal and corporate governance contexts,

reviews by regulators and domestic courts of notions of public benefit and detriment must consider not only the legislative enactments, but also difficult concepts of sector-specific economic efficiencies, competing financial interests and the supervening complex constitutional constraints. The main question posed is the appropriate future proper role of the law in dealing with economic complexities. The paper considers the recent European experience.

---

[1] Fractional Lecturer, UWS: J.MCGRATH@UWS.EDU.AU
Law Units Coordinator, University of Ballarat, University of New England, iibit, Sydney: JMCGRATH@IIBIT.EDU.AU
Practising Barrister, Mediator, Sydney Bar: MCGRATHJT@AOL.COM

[2] Paper delivered at CLTA Conference, Sydney, 04 February 2008.