

Insolvency Law in the Channel Islands:
Modern Themes and Reform Perspectives Friday 14 October 2011



Corporate Insolvency Reform Experiences

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OVERVIEW

- Some thoughts on insolvency law reform generally
- Experiences in corporate insolvency law reform in South Africa
- Experiences in corporate insolvency law reform in former British Colonies in Africa

GENERAL REMARKS

- General resistance to change (is change really needed?)
- There can be no meaningful reform without political will
- Reform should not be undertaken without proper consultation
- Involve local experts when designing new laws

SOUTH AFRICA

- Mixed legal system
- Corporate laws based on English statutes
- Insolvency laws contain many elements of English statutes of the time
- Fragmented legislation regulating insolvency law

SOUTH AFRICA

- Various reasons underlying SA reform initiatives, for example:
 - To align legislation with new Constitution
 - To modernise legislation (1936 Insolvency Act, 1973 Companies Act)
 - To address the lack of an effective corporate rescue mechanism
 - To remove duplicate provisions in the various insolvency statutes

SOUTH AFRICA

- Late 1990s: initiative to consolidate SA insolvency law by introducing a unified statute
- Although unified insolvency statute envisaged, corporate rescue now included in 2008 Companies Act
- One specific result of this is that corporate rescue provisions not aligned with insolvency law

SOUTH AFRICA

- Some aspects that have had a negative impact on SA insolvency reform:
 - Inter-departmental politics (DTI and DoJ)
 - Defective consultation
 - The use of international specialists that do not understand SA law and failure to make effective use of local expertise
 - Lack of political will to bring about insolvency law reforms

OTHER JURISDICTIONS IN AFRICA

- Insolvency law reform usually part of a larger agenda for improving conditions for doing business
- Projects are usually well planned
- Foreign aid very often given for a range of reforms, including insolvency
- Main aim to improve ranking of country in order to attract foreign investment

OTHER JURISDICTIONS IN AFRICA

- Mostly insolvency laws are based on UK statutes that applied at the time
- Corporate insolvency mostly based on UK 1948 Companies Act, but have not been updated
- Bankruptcy provisions often based on statutes going back to the late 19th century

OTHER JURISDICTIONS IN AFRICA

- Same resistance to change experienced elsewhere
- Lack of literature to provide background, especially as regards local practices
- Exceptional participation by locals when consulting, although practitioner numbers tend to be very small

OTHER JURISDICTIONS IN AFRICA

- Positive aspects:
 - Usually political will is not a problem in order to implement reforms as these form part of wider reform agenda
 - Funding provided by foreign agencies helps to bring projects to completion
 - Foreign agencies assist in obtaining the necessary expertise in order to complete and implement the reforms

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THANK YOU
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