WORK-OUTS

JOHN CADELL

Allen, Allen & Hemsley
Solicitors, Sydney

Mr Chairman, Ladies & Gentlemen,

We have heard this morning of various aspects of the law and practice in relation to work-outs in the United Kingdom, the United States, New Zealand and finally Australia. In three of these jurisdictions, significant parts of the total legislative scheme against which work-outs must be considered are of recent origin.

In the United States the enactment in November 1978 of the *Bankruptcy Reform Act* marked the culmination of many years of revision and modernisation of Federal bankruptcy law. In the United Kingdom, the *Insolvency Act* of 1987 followed the report of the Review Committee headed by Sir Kenneth Cork and a Government White Paper. In New Zealand, the *Corporations (Investigation and Management) Act* of 1989 was introduced to extend the field covered by the *Companies Special Investigations Act* 1958 to companies which may be operating fraudulently or recklessly.

As you all know, here in Australia the government has before it at present the comprehensive report of the Law Reform Commission which proposes far reaching changes to Australian law including the adoption of principles similar in part to those existing in the United States *Bankruptcy Code* and the UK *Insolvency Act*.

It is my intention to raise two topical issues and to consider the extent to which they are dealt with under the laws of the four jurisdictions.

The first is the role of creditors in the work-out. The second is the notion that a work-out delayed is a work-out lost.

1. ROLE OF CREDITORS IN WORK-OUTS

Let me begin by considering briefly the formal role given to creditors under Australian law against the background of six types of administration through which the work-out might proceed. I will begin with the position under the present Australian law.

A. AUSTRALIA

(a) Provisional Liquidation

While the *Companies Code* makes provision for a committee of inspection to be formed from among the creditors for the purpose of granting or withholding approval for the exercise of some of the powers conferred on a liquidator in a winding up (see ss 373(3)(a), 377(1)(a)-(d), 379(1)) it makes no provision for such a committee in the case of the appointment of a provisional liquidator. A provisional liquidator is subject to the overriding jurisdiction of the court or the NCSC under s 420 of the Code, but is under no formal obligation to consult with creditors. Now, one might say this is hardly surprising because, after all, the traditional role of a provisional liquidator has been to protect the assets of the company pending an imminent decision as to whether a winding up order should be made. They key word, of course, has been imminent.

(b) Official Management

Part XI of the *Companies Code* provides for creditors to resolve that a company be placed under Official Management with the effect that the official manager assumes the management of the company to the exclusion of the directors who cease to hold office. The creditors may resolve that a committee of management be appointed to comprise three representatives of the creditors and two of the shareholders (s 339). The functions of the committee of management are set out in s 357. These are to assist and advise the official manager of the company in relation to any matters concerning the management of the company on which he requests the advice and assistance of the committee. Where the official manager does not seek the advice and consent of the committee or seeks it, but does not take it, the committee may cause a meeting of creditors to be called which may give directions to the official manager with which he must comply under s 347 of the Code.

Thus, the Code establishes a formal role for creditors, from the beginning of the administration.

(c) Scheme of Arrangement

Schemes of Arrangement pursuant to Part VIII of the *Companies Code* contain no express grant of any role to creditors following the establishment of the scheme. It is customary for Schemes of Arrangement to include provisions for the appointment of a committee of creditors but there is no requirement that this be the case. Were a Scheme of Arrangement silent on the matter and the company then to go into liquidation, the normal committee of inspection provisions would, however, presumably apply.

In light of the practice adopted in Schemes of Arrangement in recent times, it is probably unlikely that sophisticated

creditors would approve a scheme which did not incorporate the establishment of a creditors' committee.

(d) **Court Appointed Receiver**

In recent years we have seen the Victorian Supreme Court appoint receivers pursuant to Victorian *Supreme Court Act* 1958 over companies which have not given security to their creditors. They comprise most of the larger recent bankruptcies in Victoria. While I am sure there are many others, names such as Massey Ferguson, International Harvester, Co-operative Farmers & Graziers, TEA, Qintex and Linter all spring to mind.

The powers of the receiver are as set out in the court order and in Part X of the *Companies Code* (subject to the terms of the court order - s 324(2)) and so that is where we look for any formal role given to creditors. I have not seen an order, which provides for creditors to consent to actions by the receiver or for any formal representations of creditors. The Linter order does call upon the receiver to report to creditors from time to time but that is as far as it goes.

(e) **Law Reform Commission Proposals**

(i) **Appointment of Administrator:** The Law Reform Commission recommends that where an administrator is appointed to a company pursuant to Clause VA5 of the draft legislation included as Appendix A to the Commission's report, he is required within 21 days to convene a meeting of creditors to be held not later than 28 days after his appointment. This meeting considers the administrator's report as to the company's affairs and if there is to be one, a proposal that it make a Deed of Company Arrangement which corresponds with a Scheme of Arrangement. (Clause VA28). The period of 21 days may be extended by the court (Clause VA28(b)) and it is probably not being too pessimistic in light of the experience of recent work-outs which have made the headlines, that extensions would in many cases be sought and granted.

It does not appear that the Commission's recommendations contain <u>any</u> provisions for creditors to be involved in <u>any</u> way in the process prior to this meeting. It would appear that the only remedy available to creditors who are dissatisfied with the conduct of an administrator would be to take action under Clause VA19 and seek his removal.

(ii) **Deed of Arrangement:** As with the existing *Companies Code* there are no statutory provisions proposed dealing with the involvement of creditors in the administration of the company's affairs after a Deed of Arrangement has been executed. The proposed provisions to be deemed to be contained in a Deed of Company Arrangement

unless otherwise excluded do provide for the establishment of a committee of inspection for the purpose of "advising and assisting the administrator of this Deed". The draft provisions do not, however, give any specific powers so presumably there are none unless they are deliberately written into the Deed of Arrangement. The Commissioner's report does not say what "advising and assisting" means.

(f) **Formal/Informal Moratorium**

There have been several cases in recent years of work-outs which proceeded either in whole or in part through a realisation of assets by a company which remained under the control of its directors subject to varying degrees of input from a "financial adviser" against the background of a contractual moratorium entered into between the company and some or all of its bank creditors. Ariadne is of course, the best example of this. These work-outs have proceeded in the absence of specific statutory provisions in Australia and so the issue of participation of creditors was settled as a condition of the execution of a moratorium agreement.

The cases to date of which I am aware, have involved committees being established representing bank creditors who have met regularly with the financial adviser and officers of the company. These committees have not hesitated to make their views known on proposed strategies. I think there is probably a common view that in certain cases this is a feasible way of proceeding subject, of course, to the problem of avoiding being deemed a director.

The difficulty is, that these committees have been representative of bank creditors only and even amongst the bank creditors may be representative of those banks which because of their size happen to be the better organised and the more aggressive at the time the arrangements were entered into.

B. UNITED KINGDOM POSITION

(a) **Appointment of Administrator**

An administrator appointed pursuant to s 8 of the *Insolvency Act* of 1986 is empowered to do all things necessary for the management of the affairs, business and property of the company. Pursuant to s 23 he is obliged within three months (or such longer periods as the court approves) to submit a statement to creditors setting out his proposals for achieving the purpose specified in the court order pursuant to which he was appointed.

Now what are the rights of creditors during the period of three months or longer?

It does not appear to me that they have <u>any</u> role to play in the administration during that period. Section 26 of the *Insolvency*

Act provides for the establishment of a creditors' committee but this is only after the creditors pursuant to a meeting convened by the administrator have approved his proposals. That is quite an incentive for approving his proposals!

Once the committee has been established it may require the Administrator to furnish it with information. Beyond the right to obtain this information it appears that creditors' only involvement is the power to make an application under s 27 seeking an order from the court that the administrator has managed the company's affairs in a manner which is unfairly prejudicial to the interests of creditors.

(b) **Appointment of Administrative Receiver**

An administrative receiver, being a receiver of the whole or substantially the whole of the company's property appointed by or on behalf of debenture holders secured by a floating charge, is bound by a similar duty to an administrator to present a report to creditors within three months (or such longer periods as the court may allow) of his appointment (s 48). In these circumstances creditors are permitted to establish a committee with the same powers as applicable where an administrator has been appointed (s 49).

It does not appear that there is any equivalent of s 27 providing for the court orders on the application of creditors in the case of an administrative receiver. Indeed, an administrative receiver cannot even be removed by the secured creditors who appoint him. The only remedy appears to be to seek the removal of the administrative receiver from office by court order pursuant to s 45.

C. UNITED STATES POSITION

As David Huggin has pointed out, under a Chapter 11 reorganisation the management of the debtor continues to operate the business as debtor in possession. It does so however, under the scrutiny of the Bankruptcy Court and the official committee of creditors. The creditors' committee is selected by the US Trustee, a governmental official reporting to the Attorney-General from amongst persons who hold the largest claims of each class of claims held by creditors. There may be more than one creditors' committee.

Creditors' committees, which are entitled to engage professional advisers to be paid out of the estate of the debtor, frequently play a very active role in investigating the assets and liabilities of the debtor. They and their professionals, participate on a day-to-day basis in presenting the creditors' view on matters referred by the debtor to the court. Ultimately, the creditors' committee participates in the negotiation and formulation of the reorganisation plan.

In short the creditors' committee plays a significant institutional or formal role in the work-out.

D. NEW ZEALAND POSITION

(a) Provisional Liquidation

The position in New Zealand appears to be the same as in Australia namely that the *Companies Act* makes no provision for the appointment of a committee of inspection of the type applicable after a winding up order has been made.

(b) Corporations (Investigation & Management) Act

Most importantly for the present purposes, s 60 provides for the Minister of Justice by notice in the Gazette to appoint an advisory committee. Its functions are to advise the statutory manager on the conduct of the statutory management including the exercise of his or her powers to do all such other things as may be specified by the Minister. It should be noted that the committees owe their existence to the Minister of Justice not to choice by either the statutory manager of the creditors themselves that there should be a committee.

From speaking with John King, I understand that an advisory committee was appointed in the case of Equiticorp under the 1958 Act which consisted of some eight people. It appears they were not directly representative of individual creditors. Under the old Act the committee was appointed by the Governor-General. Under the 1989 Act, I understand there has been an appointment in the case of Chase though this consists of a barrister and a valuer. In the case of DFC the committee has been appointed but this time I understand under the *Reserve Bank Act*.

Thus these seem to be advisory bodies <u>not</u> creditors' committees.

E. GENERAL COMMENTS

A number of conclusions may be drawn:

1. In Australia, with the exception of Official Management there appears to be no recognition that creditors have <u>any</u> role to play in the interim administration.

2. In the UK the position is similar, with no formal role for creditors prior to being able to vote on the interim administrator's proposals.

3. The position under Chapter 11 of the US *Bankruptcy Code* is fundamentally different. The official committee or committees of creditors play an integral role in the administration of the debtor's affairs from the outset. The creditors' committee is deliberately chosen so as to be representative of the various interests of creditors and is provided with access to professional assistance.

4. In New Zealand the position has some good news and some bad news. The good news is that there is specific statutory recognition of an advisory committee though there is nothing to suggest that it should be made up of creditors. However, the provisions only apply in the very limited circumstances where the *Corporations (Investigation & Management) Act* itself applies.

Now you may well say that the interim administrations presently existing in Australia, existing in the United Kingdom and proposed under the Law Reform Commission's report all deal with administrations of a short duration whereas a Chapter 11 Proceeding in the United States may continue for years.

While this is a fair distinction in theory, an examination of a number of recent administrations in Australia such as those referred to above, Hooker, Linter, Qintex and others, indicates that this distinction is not always so clear cut. A number of administrations adopting one or more of these interim forms have continued for many months. In some of them, the provisional liquidator or receiver has for various reasons sold many of the company's assets during the period of his administration. This may be because it was necessary to effect immediate sales if wages were to be met or because the market for the company's assets is declining and so urgent action must be taken to maximise value. Alternatively, it may simply be that because of the complexity of a particular group's affairs it may take many months to determine what is the appropriate form of administration. For example, it may be that in the normal course a great many of the group's assets have been realised before it can finally be determined whether what remains is appropriate to be managed under a Scheme of Arrangement or whether there should be a winding up order.

What is clear is that those responsible for these interim administrations are exercising powers which may have far reaching consequences for creditors and shareholders.

In the period immediately after the company has been placed under the interim administrator's control he will be swamped with requests for information.

In some of the above cases, provisional liquidators or receivers have been faced with as many as fifty banks all seeking urgent information such as: the financial position of individual companies within the group; whether their security is to be challenged; views as to their priority as against other creditors; an indication as to whether certain payments for example, lease payments are to be treated as ordinary operating expenses and thus paid notwithstanding a moratorium on the servicing of bank debt; and of course an accurate estimate at the earliest possible opportunity, preferably immediately, of the amount of the likely return to each creditor so that those banks can make appropriate provisions. There is no doubt, I think,

that the dissemination of this information can more readily be achieved with the least pain to the interim administrator and the greatest speed to the creditors, by having a representative committee of creditors.

In addition to bank creditors there will be the usual diverse collection of trade creditors whose interests will vary widely. Many will be less sophisticated than bank creditors and less able to understand the complexities and the consequences for them of the group structure exposed before their eyes for the first time. In many respects I think they more than banks would benefit from organised formal representation before the interim administrator and assistance in understanding what the company's financial position means for them.

Invariably during the early stage of an interim administration the interim administrator will have his hands full endeavouring to ascertain the company's position and trying to keep it afloat. There is no doubt that during those early days there is great opportunity for friction developing between the interim administrator and the creditors through his failure to give what they see as adequate attention to answering their individual questions. The compulsory establishment of a representative creditors' committee or committees which can meet with the interim administrator face to face on, say, a weekly basis and hear at first hand a summary of what has been done will provide a forum at which a spirit of co-operation can develop and concerns explained before they grow to discontent.

This is exactly what has happened in the case of the Linter administration where a committee of banks has met with the receiver, Mr Maxsted, almost every week since his appointment. In other words we have the existence in the Linter administration as a result of agreement between the receiver and the banks rather than by force of law of a committee incorporating some of the aspects of a Chapter 11 creditors' committee. My understanding is that this is one of the few occasions on which such a committee has met quite as regularly right from the commencement of the administration. Again, it is my understanding and others here today may wish to confirm this, that this arrangement is working very well. There are no surprises, everyone knows what the other parties are doing from week to week and there are very clear lines of communication established between the receiver and the banks. Certain creditors such as the holders of subordinated debentures are not represented on the committee but are in regular communication with the receiver. The receiver also has dealt directly with individual trade creditors.

I suspect the practice adopted in the Linter administration will be followed in future. It would not surprise me if the pressure to do so comes not only from creditors but from interim administrators.

The Cork Report (Chapter 19) contains a comprehensive analysis of the issues involved in giving creditors a greater control of the administration of insolvent companies. The remarks made in the report were in many cases directed not to work-out situations but rather final administrations. This does not disqualify these views from our consideration because it is increasingly the case in complex work-out situations, that decisions normally not taken until a final administration, cannot be avoided. Recent experience indicates to me that no matter what may have been the case in the past in relation to interest shown by creditors in the actions carried out by administrators - (the Cork Committee was told of apathy and indifference on the part of creditors (page 214)) - today they are very interested. Some banks, rightly perhaps, regard their previously highly valued customers which now appear to be insolvent as but shells standing between the banks and assets which now belong to them. They are impatient to recover their loans and are increasingly, taking the view that they know best how to achieve this most quickly.

Now you may say, well things appear to be developing in a sensible fashion. Creditors' committees will be established when everyone thinks this will be a good idea so why bother to change the law?

The reason I believe the role of such creditors' committees needs to be formalised in interim administrations is that if this is not done it is unlikely, that such committees will be truly representative of the creditors as a whole.

In addition to the major bank creditors there may be public debenture holders; there will certainly be trade creditors, there will be employees and, as ever, there will be the tax man, all of whom have an interest in the affairs of the company. There are also the shareholders. The risk as I see it, of not formalising the establishment of creditors' committees, is that one or more of these groups either because they are better organised or because they are more aggressive will present views to the administrator which are not truly representative of the position.

The objection may be taken that the position in Australia or the United Kingdom is different from that prevailing under a Chapter 11 administration where the debtor company continues to manage its own affairs as debtor-in-possession with the result that there is a greater need for supervision. Certainly under the Australian law the interim administrator is obliged to have certain qualifications and is subject to various statutory duties to have regard to the interests of creditors. There can be no better way of ensuring that the administrator does carry out his duties in an impartial fashion and, perhaps just as importantly, there is no better way of making it easier for him to ascertain the views of all creditors, than for their views to be placed before him by a legitimate, properly constituted representative body.

As to the relationship between the interim administrator and this committee on an ongoing basis I see no better solution than that proposed in Paragraph 956 of the Cork Committee's Report. This was that the interim administrator should be under a duty not only to keep his creditors' committee informed of the progress of his administration, but so far as practical, to inform it in advance of any important action he proposes to take. If the majority of the creditors' committee are opposed to the proposed action, then he should be able to proceed only with the leave of the court.

Notwithstanding the close attention given to this matter by the Cork Committee, the White Paper published by the UK Government which led to the 1968 *Insolvency Act* did not develop these issues.

I hope that the Australian Government will give this suggestion some consideration. No doubt in the time to follow David Crawford will let you have his thoughts on my ideas and David Huggin may give you a more balanced and experienced assessment of the usefulness of creditors' committees.

A WORK-OUT DELAYED IS A WORK-OUT LOST

The second issue I would like to turn to and examine briefly against the background of the various jurisdictions is that of the desirability of doing everything that one can in framing the law to ensure that the work-out phase starts as early as possible.

There are ample statistics to show that by the time most companies are placed in one or other of the forms of formal administration it is too late. While in many cases, small parts of the former business will continue to operate, it is almost always impossible to save the bulk of the group.

The reasons for this are obvious, businessmen tend to be optimistic, the stigma and trauma of being placed under one of the forms of formal administration are profound and in any case the company will not be pushed into the administration by its creditors simply because they will not know how bad things are until it is too late. If you doubt that this is the case, then pause for a minute to consider some of the recent collapses in Australia.

The issue then is, have the law makers made it as easy as possible for management to elect to enter into a work-out phase? I will briefly look at this in each of the jurisdictions.

A. AUSTRALIAN POSITION

Assuming that it is desired to avoid the stigma of liquidation or provisional liquidation the two forms of administration existing under present law are Official Management and a Scheme of Arrangement.

1. Official Management

The directors of a company may resolve, pursuant to s 335 of the Code, to call a meeting of creditors to appoint an official manager. A minimum of paper work is required and the court does not become involved. Where creditors pass the appropriate resolution the official manager takes over the affairs of the company and replaces the directors who cease to hold office. Thereafter, the official management continues either until the company is wound up or the committee of management or the court agrees that it be terminated. The fact that the directors automatically cease to hold office is a disincentive to calling in financial and managerial assistance, even where those directors because of their shareholding may take the view that they will subsequently be re-elected to the board if the company is saved.

2. Scheme of Arrangement

A Scheme of Arrangement is, of course, far more difficult to get up and running. A minimum of 6 to 8 weeks is required and several approaches to the court are necessary. During this protracted period the company's financial position will be under the scrutiny of all creditors and possibly the press and there is no assurance that action will be taken to wind up the company though, the court may restrain formal proceedings, under s 315(18) once a scheme has been proposed. There are other ways in which the creditors may bring the company to its knees during such a lengthy period of uncertainty.

3. Law Reform Commission Proposals

(a) Appointment of Administrator

Under Clause VA5 of the draft legislation the Law Reform Commission proposes that a company may make a declaration that it seeks the administration of its affairs through the appointment of an administrator. No order of the court is involved and thus the procedure may be initiated and placed in effect by the directors' voluntary action. The administrator has power, but is not obliged, to remove directors from office. Except where the holder of a charge determines within the period of 7 days to enforce its charge the administrator will carry out his duties subject only to the overriding supervision of the court. The court's role is carried out pursuant to Clauses VA19, 22, 32, 34-37 and 40.

Two further points are worth noting.

The administrator is selected by the company though he must be a registered insolvency practitioner. Directors will like this.

Finally, the declaration which gives rise to the commencement of the procedure requires no statement as to the circumstances

surrounding the declaration or the grounds upon which the company relies in believing that it can claim the benefit of the provisions.

B. UNITED KINGDOM POSITION

(a) Administration Order

Under s 9 of the *Insolvency Act*, a company may petition the court for an administration order. To protect the company during the hearing of the petition, a moratorium operates from the date of presentation from the petition (s 10) subject to the right of a secured creditor to appoint an administrative receiver.

There does not appear to be any restriction upon who may be appointed administrator, though presumably the court will have to satisfy itself as to the qualifications and independence of anyone recommended by the company. For example, it is presumably quite likely that a company may have had prepared a report on its financial affairs to support its petition under s 9. There may be good reasons for selecting as the writer of a report a person who it was thought the court would approve as an administrator. It appears therefore, that the directors will have some ability to influence the choice of an administrator.

Section 8 requires that the court be satisfied that the tests specified are met before an order is made. The effect of this will be a public airing of the company's financial affairs following the presentation to the court of possibly quite detailed financial information. This may be harmful.

C. UNITED STATES POSITION

A company may file a bankruptcy petition under Chapter 11 of the US *Bankruptcy Code* at any time without the necessity for any court order and with the immediate effect of imposing an automatic stay from the commencement or continuation of any action or the enforcement of any judgement, the collection of any claim or any set-off. After filing, the directors and officers of the company continue to manage its operations though as "debtor-in-possession" and subject to the supervision of the Bankruptcy Court and the creditors' committees.

D. NEW ZEALAND POSITION

The New Zealand *Corporations (Investigation & Management) Act* is not one which I should have thought as likely to be activated by the company's directors. Therefore, it does not provide any encouragement for directors commencing a work-out procedure sooner rather than later.

COMMENTARY

The recommendations of the Australian Law Reform Commission represent a position somewhat between the present positions in

the United Kingdom and the United States. The immediate differences between the UK position and that recommended for Australia are the necessity that a court order be made and that this be made only after the judge has been satisfied that various statutory requirements have been met. This, it would appear, must inevitably involve delays and a degree of publicity to the financial affairs of a company.

From my reading of the Cork Report, no consideration was given as to the necessity of having a court order initiate the process of administration. There was some discussion both in the Cork Report and in the subsequent White Paper to the desirability of spelling out the precise terms which the court was to consider. Needless to say, the government did not accept the advice of those with practical experience and so we have s 8.

The Australian Law Reform Commission regarded one of the important considerations in framing a new voluntary procedure was that of swift implementation. There is no doubt that its proposal must win, hands down, over the UK arrangements on that score. Recent Australian experience would suggest that if those in control of companies are to be encouraged to act sooner rather than later and to place their companies under an interim administrator's control, they must be able to be convinced that the company can quickly be put under the control of someone with credibility who is in a position to deal with the creditors. Any public discussion as to whether or not the company's affairs are as the directors state they are and whether or not someone and if so who should be appointed to take over, will probably exacerbate existing problems. I would not have thought that this negative publicity was offset simply by imposing the moratorium from the presentation of the petition.

I would be interested in hearing from Philip Wood whether it is anything more than natural British reserve which has left the power to appoint an administrator to the court.

There is one final matter I would like to look at on this subject. During the last six months, we have seen several large companies in Australia placed into a workout administration following the appointment and report by independent financial advisers. In some cases the financial advisers have been suggested to the companies by their creditors, in other cases the directors themselves called for the report and then presumably unable to ignore it, gave the bad news to the creditors. Subsequently, those persons responsible for preparing the reports have in some cases been appointed as court appointed receivers or as provisional liquidators.

It seems to me that it is desirable to enable a company to nominate the person who is to be the administrator if this will, even if only to a small extent, encourage directors to take the plunge because the person they have got to know will be running the ship.

The Australian Law Reform Commission at paragraph 70 of its report considered alternative modes of appointment, such as the appointment by rotation from a central registry and they considered a number of objections.

Although I have not read the submissions which contain some of those objections, it appears they deal with the competence of directors who have caused a company's financial difficulties from making a good selection or alternatively that the interests of impartiality might not be served. Each of these objections seems to miss the point. The point I suggest, is that the company be placed under the control of an interim administrator as soon as possible even if that administrator may not be the best person from all available insolvency practitioners to do the job. So long as the nomination must be made from those recognised as having appropriate qualifications and so long as that person is then subject to appropriate duties of impartiality, to quibble about who the directors appoint is a luxury which ignores reality.

Of course, in the case where there is a secured creditor who holds the charge over all the property of the company he is in a position to enforce his charge if he does not like the proposed appointee. This will exert a moderating influence on the directors' nomination.

CONCLUSION

To sum up then Mr Chairman, I start with the proposition that in a number of recent Australian bankruptcies, creditors have been caught unawares. By the time they found out what the true position was it was probably already too late to avoid taking a bath. Unless banks adopt a quite different degree of supervision over their customers' affairs in the future, then no doubt this will happen again. Every incentive should therefore be given to enable anyone else who knows about a company's perilous position ahead of the creditors to initiate a work-out procedure in a way which avoids too much public scrutiny, too much loss of face and too much uncertainty while the company's affairs are debated in the press.

So long as the creditors are given an adequate opportunity through the obligatory formation of creditors' committees who are given real teeth, I see every reason for making it as easy as possible for directors to place their company in a work-out administration with the appropriate temporary bar on actions. Mr Chairman, the experience of the last year bears witness to the need for reform of Australian insolvency law. I think it is high time that banking lawyers looked beyond the somewhat hysterical criticisms of minor aspects of the Law Reform Commission's Report dealing with secured creditors and realised that a slightly better world for everyone, might be a better goal than the defence of historical priorities given to mortgagees on the basis that they have existed since the reign of King Henry VIII.

Mr Chairman, might I suggest that we start the questions asking our speakers whether they have any comments upon the matters I have raised in relation to the role of creditors during an interim administration. Secondly and I guess this is a question directed principally at Philip Wood, it is my understanding that since the introduction of the *Insolvency Act* there have been a considerable number of companies placed under the control of an administrator, would Philip let us know whether in his view, the procedure requiring a court order has had the effects which I so confidently have predicted in my comments.