
WORK-OUTS — THE CHALLENGES OF THE 90S

QUESTIONS AND ANSWERS

Question: Pam Gray (Charles Sturt University):

I have a question for David Ryan. What scope is there in the negotiation of the workout for minority dissenting people to agree to disagree? The people who have minority entitlements who hold up the works, so to speak.

Response - David Ryan (Commentator):

They can clearly cause you major problems which is why you keep on walking around with a scheme in your pocket so that if necessary you can go that route. The other thing that we used in the Adsteam case was a debt buyback, so that if they did not want to hang around for the process, they were given an exit to the door with a pile of cash - but clearly not 100 cents in the dollar.

Question: Pam Gray (Charles Sturt University):

How subtle can the negotiations get in terms of making provisions for exceptions.

Response - David Ryan (Commentator):

They can get pretty subtle if we talk in terms of getting the baseball bat and beating some of them to death!

Question - Ron Harmer (Blake Dawson Waldron, Sydney):

Philip, I would just like to explore this French position. That might sound an inelegant way of stating it, but if there is a threat from the very word go that directors of companies, or whatever they call them in France, are going to be not only possibly personally liable but mainly suffer penal consequences, is there not an incentive on their part to endeavour to do a work-out so as to save their necks? In other words, is it too penal or is it not penal enough? I would have thought that having reached a stage where they are staring doom and disaster in the face, that they would be then much more inclined to stay and do something to get out of it rather than let it go. But the French are an exception to every rule!

Response - Philip Wood (Commentator):

Yes, it is certainly true that in France the Gallic ways of doing things do not normally behave normal rules. And I must say that the experience over there I think does reflect both things. Sometimes the directors sort of stick it out as long as possible and at other times they give up very early. The basic French position, and it is the position I think in a lot of countries, is the way you stop insolvency is the way you maintain recoveries, the way you protect creditors, is to call a halt early. And so the whole of the law in those countries is dedicated to making sure that people stop early. I myself am very doubtful about that because I think a lot of companies which have got a balance sheet insolvency ought to keep going and that the best way to save them is actually to do some sort of private confidential work-out and

hope that they will trade themselves out of it. I think to stop companies too soon is a very grave mistake. But the big problem about insolvency is there is such an accumulated mass of differing experience because no two situations are the same, and one is trying to strive to find a generalised norm which is going to apply to the best cases and produce the best possible result. It is very difficult, as I said this morning, because one of the problems that we face is we just do not have enough statistical, really careful, objective statistical information to see which system works best.

Question - Dennis Bluth (Abbott Tout Russell Kennedy):

Just in relation to your ranking, I was curious as to not necessarily where Australia and New Zealand fitted in or England for that matter, but why number one, the Germanic countries. I mean for example, the Germans, and I speak from family experience, are not traditionally known to be soft and warm people and would necessarily embrace a work-out. Is it because either in 1948 Germany had a major work-out itself with the Marshall plan or is that in Germany, when banks lend to major institutions and make a commitment that an officer of the bank actually joins the board of the company and participates in the decision-making of the company, and therefore, as a result of the bonding between the bank and the company, that they are more sympathetic to work-outs, or is there some other reason as to why Germanic countries are ranking number one as being sympathetic to work-outs? That is a question for Philip Wood and the panel.

Response - Phillip Wood (Commentator):

I think the reason is partly the legal system and partly the culture. The legal system does not push, it is quite unlike the French legal system, and does not insist that people stop early or impose terrible penalties if they do. Things like fraudulent trading are virtually unknown in Japan, Switzerland, Austria and Germany. The other reason I think you have quite rightly identified is that the banks are very much on the side of their industry and they have got equity stakes and they really are very slow indeed to put the boot in. And the result is that if you look at liquidation figures in Germany, although they are relatively high of course - like all countries in Europe at the moment, the fact is that dividends are round about 2%. Why are they only 2%? Because they only go into liquidation when it really is absolutely hopeless. You see their view is that either you try and sort the company out or you have the nuclear bomb. You have the nuclear bomb at the other end. When the nuclear bomb falls, of course it blows up the company, but it also blows you up as well. And that is why they do not have anything in between, because if you have something in between you have a sort of slightly soft option. That seems to be the reason.