WORK-OUTS

PANEL DISCUSSION - QUESTIONS AND ANSWERS

Question - John Cadell (Panel):

Does Philip Wood feel that the need in the UK to obtain a court order is harmful to the ready adoption of a work-out procedure?

Response - Philip Wood (Panel):

It is quite difficult to answer these questions because one has to look to the realities of the procedure.

In the UK the experience has been that most of our administration orders are initiated by the directors - 90% of the petitions come from directors. They can come from the company, they can come from creditors, they can come from others; but in practice it has been the directors who have brought them in and it has been the directors who in practice have appointed the insolvency administrator who is going to run the business. He is the chap who is going to hire and fire them - he is going to be in control of the business.

The reason for the court involvement is that this procedure does involve changes/interference with the rights of those dealing with the company and in some respects the debtor, who you might say is the sort of defaulter, is put in a better position as a defaulter than he would be if he were solvent. And there needs to be some control, some umpire, some referee on the exercise of those rights, if only to see that the proper procedures have been followed - and that is the court. In practice what happens - when a company is getting into difficulties, the directors, if they are well informed directors, will be aware of the wrongful trading liability, which acts as a terrific incentive to go into these rehabilitation proceedings earlier rather than later. They will call in the accountants, they will get a report, and then there will be a pre-packaged plan, a pre-packaged proposal to the court, and an affidavit as to the company's position, which will be taken round to the court.

We have found that these administration orders are granted extremely quickly - there are no long, drawn out hearings. Drexel, for instance, happened in about an hour and a half. They had a pre-packaged plan and the court gave its order extremely quickly. There have been cases where there has been a delay, between petition and order, of perhaps eight days or perhaps two

weeks; but in the meantime the court has been prepared to make an interim order, one way or the other, to preserve the position. So as far as the rapidity of action is concerned, I think it very much depends upon the readiness of the judicial system to cope with the requirements of insolvencies which do require, I think, very quick, rapid decisions to be made.

I myself think that it is extremely important at the opening of these proceedings which are storm trooper type proceedings, which are ambush, which are surprise, that there should be some court involvement in the procedure even though one may often say the court can't make up its mind - it is not in a position to make up its mind about some of the very difficult commercial considerations involved in insolvency.

Question - John Walter (Clayton Utz, Melbourne):

Some consideration has been given to the role of creditors. I wonder what role is given to the position of employees under the various jurisdictions? In particular, employees may be seen as one of the stake holders in organisations in difficulty.

Response - David Huggin (Panel):

As I mentioned, all creditors' claims have to be dealt with in the plan or re-organisation and claims of employees have a priority position ahead of unsecured creditors and just below administrative claims. In addition, you quite often have in the large reorganisation cases, claims of unions relating to their union contracts which are not wage claims - wage claims are subject to certain statutory limits so that the priority that you get for wage claims is not an unlimited amount, it is subject to fairly stringent limits - but the contractual rights of the unions under their contracts are quite often the subject of quite a bit of dispute in the course of the proceedings.

In *Continental Airlines*, a number of years ago, the issue was whether the Bankruptcy Court could repudiate a union contract. The *Bankruptcy Code* was amended subsequent to that case in which a union contract was in fact repudiated. The *Bankruptcy Code* was subsequently amended to make it much more difficult, although not impossible, to repudiate union contracts. One of the results of this is that quite frequently the unions play an important role in the creditors' committee.

Question - David Bruce (Chairman):

David Crawford, I understand that when you move into a company as a receiver or some other undertaker, you regard the role of the staff of the company as absolutely vital. Would you like to talk about the question in that context?

Response - David Crawford (Panel):

I take John Walter's point that the employees are very much significant stake holders in any corporation that gets into financial difficulty. However, as most of you will be aware, the *Companies Code* has been significantly amended in the past few years to give greater protection to employees. They have statutory priorities which effectively rank ahead of everyone except the Taxation Department, and you might question that; but they do rank ahead of everyone else, whilst there is a restriction, however, in respect to amounts owing to employees who are also directors.

An interesting side-light to the amendment in the legislation back in 1984 when amount owing in respect of retrenchment benefits were granted a priority, the interesting side-light is this, that it is only amounts owing in respect of retrenchment benefits pursuant to an industrial instrument that rank as priority. So the amendment, as I see it, was a bit of a plug for organised unionism.

But leaving that point aside, the employees are pretty well protected under our legislation, with only the directors, who it is said should have known the financial position anyway, having a limitation on amounts owing to them in respect of their employee claims.

Question - David Bruce (Chairman):

What is the New Zealand position? I'll let John King and Roger Drummond work out who is going to answer it.

Response - John King (Panel):

I have just got the legislation in front of me and John Walter will be interested to hear that the employees are given a very tough time under the *Corporations (Investigation and Management) Act*. Under s 49 of the Act the statutory manager has the power to terminate any contract of employment, even though the corporation, if it wasn't in statutory management, would not have had the power to do so.

Question - Charles McMillan (Dunhill Madden Butler, Melbourne):

This is a question addressed to all of the Panel. In the case of contractual work-outs, how does the Panel see the liability of those officers of banks who interfere in the affairs of a corporation in relation to the fraudulent trading sections of the Code?

Response - Philip Wood (Panel):

We have a provision in our insolvency legislation which states that shadow directors are treated in all respects as directors and therefore are liable for the duties of officers in relation

to fraudulent trading, wrongful trading and so on. A shadow director is somebody in accordance with whose instructions or directions the directors are accustomed to act. That has sometimes been treated as that the most vulnerable class of person has been considered to be the spouse of the managing director. This has also flowed over onto banks. There has been some fear that banks which are over-intrusive in directing the directors what to do, might be caught by the shadow director principles; but on the whole, the quite small amount of case law which we have had so far tends to indicate that the courts will require an oppressive intrusion into the affairs of the company, and that the mere giving of advice, suggestions, persuasive suggestion of possibilities, is not in itself managing a company. I think most banks are able to do that without getting too involved. The real danger, I think, comes from putting in a nominee director, who actually is a director, as a company doctor, because naturally company doctors will always want an indemnity from the banks. And that is another reason why our contractual work-out procedure is becoming more difficult - it is very difficult to get a company doctor to go in in the first place, and even more difficult to get the banks to indemnify him.

Response - John Cadell (Panel):

I think the situation is the same in Australia. I have participated in drafting a couple of these moratorium agreements and we have struggled with the same considerations. The technique has been to call the work-out specialist a financial adviser, give him a power of veto, but not the power to initiate things, while at the same time having the board continue to sit and carry out its normal functions. An interesting thing about the Hooker administration in its early days - and perhaps David Huggin can talk about this also - is that in that case we had about forty or fifty banks, many of which were American banks. The concept of lender liability is far more developed in the United States than in Australia, and we had quite severe concern expressed by the American head officers of banks with representative officers in Australia when they heard that their representatives were sitting on committees of creditors discussing what the strategy would be with the company. So I think the Australian position is probably the same as the UK, but let us hear where it might be going.

Response - David Huggin (Panel):

This is a matter of a great deal of concern for American bankers. There have been three or four cases in which multi-million dollar judgments have been rendered against banks for allegedly engaging in managing the company or taking action which is deemed to be in effect kicking out the existing management or requiring that the existing management be replaced. All American bankers will tell you about their concern about this issue. They will be extremely reluctant to do anything like act as financial adviser to a company or take some official position with respect to an enterprise that they are lending to. However, I think that while

I do not want to minimise the concern, there has been the trend with a couple of recent cases that we have had in the federal appellate courts that have gone the other way. They have, in effect, dismissed lender liability claims, and have taken a much more realistic approach in situations where the bankers are attempting legitimately to work out the repayment of their debt and are not involved in some ulterior motives or attempting to do something with the company that is improper. While this is of concern, I think it is something that is becoming hopefully less of a concern.

Response - John King (Panel):

There is not really much to add. I think the position in New Zealand is really much the same as in Australia and the UK. There has always been that difficulty of influencing and advising but keeping the banks and the lenders apart from that liability. Of course it is a disaster if people get into the nominee director situation where they totally prejudice their position and they have to start carrying out fiduciary duties as directors and yet looking after the interests of their banks. So that has always been a hopeless position.

Question - David Bruce (Chairman):

I am sure David Crawford has never put himself in the position of a nominee director - perhaps he can tell us how he does it?

Response - David Crawford (Panel):

I am not sure that I can tell you that David, but what I find fascinating when these work-out discussions start, is the incredible thirst for information by the banking community. They do, as John Cadell said, suddenly start to do their due diligence or want somebody else to do it for them, and want to know everything about the organisation that they have been supposedly monitoring for some significant time. That thirst for information is invariably accompanied by horror when they find out what the real position is, which is very quickly followed by - "How do we get control?" It is then that they focus their minds on this question of to what extent they have got to compromise control and whether or not they are going to expose themselves to liability pursuant to the provisions of the Code relating to shadow directors.

In essence, the way it has worked to date - and a few of us are sitting here with crossed fingers and legs and everything else - is along the lines of having a creditors' committee which is entitled to receive reports from a financial adviser, and the financial adviser is somebody who is acceptable to those creditors, but not appointed by the creditors, rather appointed by the company. So there is an endeavour to break the nexus between the relationship of the financial adviser and the creditors, but the financial adviser is specifically authorised

to report back to lenders on the conduct of the affairs of the company.

Question - Rowan Russell (Mallesons Stephen Jaques, Melbourne):

I would like to take up another topic along the same issue which is the thirst for information. Obviously that is the key in any early part of any work-out. The creditors, as John Cadell said, want to know as much as possible as soon as possible. I would like the members of the Panel to comment on the balance between giving that information openly to a large group of creditors - and perhaps all creditors - against the danger of that information becoming part of the public arena and then damaging the financial affairs of the company as a result of being publicly aired. Is the solution some form of contractual confidentiality? Is that enough? Or should some statutory provision be inserted to limit the information that is provided and the group to whom it is provided, or is some other solution required?

Response - John Cadell (Panel):

I think the practice which has been adopted on a couple of occasions has been to have some form of confidentiality arrangement between the administrator and the committee of banks. Now that raises problems. It highlights the desirability, I think, of ensuring that that committee is representative. Because if you are going to say to that committee "look, here is some information which you can consider and then give me guidance", you have got to stop them passing it on for the reasons you have mentioned; particularly if it goes to estimates of likely realisable value of assets. I think that if I were a bank that was not on that steering committee I would want to be pretty confident that the steering committee were the right people before I would lie down and accept that. So I think maybe we do need some statutory involvement.

Response - David Bruce (Chairman):

Yes, I think the problem is what David Crawford is smiling at. We have been involved in things over the years where confidentiality agreements are always in place, but we always seem to read about it the next day in the Sydney Morning Herald and that report seems more accurate than my own recollection. What do you think David?

Response - David Crawford (Panel)

Well, it is a very fundamental issue and is one which needs to be addressed head on. There was a stage in the *International Harvester* negotiations which involved 35 banks over a period of three or four months where we did stop taking minutes and we just cut out a copy of this article in The Australian the next day.

There are confidentiality agreements already in existence between bankers and customers. But it never ceases to amaze me how there are leaks by banks and those leaks effectively have the result of shooting the banks in the foot, because confidential information does get out. It raises very squarely the question of what information should be provided and to whom should it be provided. One of the fascinating aspects, again at the commencement of a work-out, if you talk about a creditors' committee, and I say I wholeheartedly support the concept of a creditors' committee, is who should serve on it? If you have got a group of 25 banks, you see if you can get unanimity inside of three days as to who out of those 25 banks will be elected to the committee with the complete authority to liaise directly with the insolvency administrator, but contain confidential information and not disseminate it. That is a very hard concept for banks to come to grips with.

The other aspect is whether or not the representatives on that committee are representatives of the creditors or are they still employees of the banks to which they belong. Because if they are still regarded as employees of the banks to which they belong, then the information they get is channelled back through the system in the bank and again provides greater scope for that information to be disseminated in a manner which is prejudicial to the interests of the company.

Creditors' committees I think are fundamental, and the people who are appointed do need to be representative, but they do need to be there to advise the administrator and not obligated, if they are going to be able to advise properly, to pass on all of that information to the rest of the community at large.

Response - Philip Wood (Panel):

My first comment would be that information in these situations is inherently very volatile, unpredictable, unreliable, partly because companies at that point are moving from a going concern basis to breakup values, which are completely different. And it is very difficult to tell exactly what the position is going to be for anybody. Prophecy has always been much more difficult than history. If you take Moses, for example, and he really only had one thing to prophesy, and there is still some question in some people's minds whether even he got that right, so I don't think one can expect too much in the way of reliable information. And I think this thirst for information from that point of view is really somewhat misplaced.

The position in England is that creditors' committees can be inaugurated, constituted, where there is an administration. But the only right which they have is to fix the administrator's remuneration at the beginning. They don't have any right to sack the administrator, they have very limited rights to information, and they are purely there to act as a sort of liaison committee to talk to the administrator and to help him.

In insolvency, I think it is very important, particularly when you are looking at insolvency legislation - what to write in, what rules you should write in about things like confidentiality - is to leave a lot of it just to the operation of commercial bargaining power. The commercial bargaining power which we have is that creditors' views have to be taken account of because they cannot be bound by an administration order. The proposal, the plan, unlike the United States, does not bind them, therefore their views have to be considered by the administrator. He has to take their views into account. On the other hand, their hand is very much weakened by the fact that they cannot take proceedings. So that sort of balance is something which I think is very important. It is very subtle actually. But it is very important to aim at that, rather than to write in too many rules.

Response - David Huggin (Panel):

I would make a couple of observations. One is to confidentiality agreements with respect to projections and other information regarding public companies. I should not say that there have not been problems, but in general I think there have not been significant problems in having major leaks of confidential information regarding public companies. One of the reasons I think for that is the insider trading concerns and the fact that people can go to gaol in the United States for trading on the basis of inside information. So I think there is a great deal of sensitivity amongst bankers, investment bankers and lawyers, accountants and others who obtain inside information to deal with it in a careful way. And that obviously is a generalisation to which there are exceptions.

One other observation I would make though in connection with creditors' committees is that I think one of the advantages that is perceived in being a member of a formal creditors' committee in a Chapter 11 is the fact that you generally have access to information that otherwise is not available. You can typically get all of the company's projections and are able to interrogate the management about the accuracy of those projections. And quite frequently when a significant creditor is considering whether or not it wants to devote the time and energy that is required to be on a creditors' committee, one of the major considerations is just access to information and the fact that that creditors' committee will no doubt know a great deal more about that company than anybody else, than any of the other creditors.

Comment - David Bruce (Chairman):

I do know that David Crawford feels very strongly about (and properly so) the need for confidentiality. I should also point out that one very windy day in George Street (I think his bag wasn't done up) we had the undignified spectacle of David diving between buses and taxis trying to retrieve the balance sheet of Ariadne!

Comment - John Cadell (Panel):

David Crawford raised the point of how do you select this creditors' committee. I think that is where we can look to the American system where you have the US trustee who sits down and selects it himself. And I think it is absolutely critical that this be done quickly. As I understand it, he holds a formal hearing and people stand up and say "I want to be on it". He thinks about it and says "you're it".

Response - David Huggin (Panel):

That's right. As I have said, sometimes if you are a major creditor in a reorganisation there are a number of considerations that go into whether or not you really want to be on the creditors' committee. Quite often even though you may be a major creditor, being on the creditors' committee you are obligated to be acting not on behalf solely of your own interest, but on the interests of all of the unsecured creditors. And if you have in mind as a creditor trying to take some renegade positions or try to go off on you own tack and perhaps attack security or attach other creditors, it may be that you decide that as a strategy matter that you do not want to be on the creditors' committee. Another consideration is simply the enormous time and energy of the individuals who have to be on that committee, who have to really participate in an active way, and some companies are reluctant to dedicate people to that type of endeavour. Obviously, if it is a major exposure for a bank, they will, but many times companies, banks, lenders, simply do not want to be on the creditors' committee. But that is sort of a strategic decision that one has to make at the outset of any case and I think that the process of appointing the committee - the committee is a very powerful committee - goes usually by size of creditor; the largest unsecured creditors are basically given an option to be on the committee and if they decline then others will be considered. But it plays a very powerful role and many times if you are a major creditor it is really vital to be a part of it, because as I said, one reason is just simply getting the information flow that you might not otherwise get.

Question - Richard McLean (Buddle Findlay, Wellington, NZ):

I would like to address this to all of the Panel. Do the individual bank officers on committees have anything to worry about personally, or is it the bank they represent which would be liable? Should the banks give indemnities to their officers who are on these committees? And are they allowed to by local law?

Response - David Huggin (Panel):

I think it is common that bank officers who are on committees are indemnified by their companies. They are, as far as a Chapter 11 committee is concerned, in fact representing all of the unsecured creditors, and as I indicated, that can sometimes cause a dilemma; but basically bank officers who are on committees can be

held liable for their actions on the committee if their actions are inconsistent with the best interests of the unsecured creditors. I cannot think off hand of any recent examples of that actually happening. I think in most cases the members of the creditors' committee are very careful. They retain their own counsel, particularly in all of the large reorganisation cases; they retain investment bankers and accountants; and they are very careful to try to conduct the necessary due diligence to be sure that they are in fact not exposing themselves to potential liability. But I do think indemnities are fairly common.

Response - Philip Wood (Panel):

The position in England would be that because the members of the creditors' committee do not have any real powers other than to fix remuneration, the risk that somehow they might incur liabilities seems to me virtually zero. Of course they would be liable if they picked up insider information and then traded in the very valuable shares on the back of that; and naturally that being a criminal offence, normally an indemnity would not be available. But, I think one would not see a serious risk, or really any risk at all, of sitting on a creditors' committee. I think that maybe those who sit on creditors' committees ought to get a very significant rise in their meagre stipends on account of the incredible boredom of the proceedings.

Comment - David Bruce (Chairman):

Well that would not be the case if they had approved the loan originally!

Comment - John King (Panel):

Well I suppose there are clearly two separate areas. There is the committee area, but then if you go back to our unofficial work-outs etc. and you have the whole question of the banks' representatives advising and assisting the work-out, clearly in this day of law suits and the litigious society we live in, I would think if you are going to go into that sort of situation, sure, you should be looking for some sort of indemnity.

Response - David Crawford (Panel):

I think it is in the area of the work-outs that the problem arises, but it seems to me that if you are seeking an indemnity in respect to actions you may take, when in essence you should only be there to be the recipient of information and the disseminator of that information to other banks, that to take an indemnity almost creates an impression that you are there to do a little bit more than that.

Question - Paul Hanly (Lloyds Bank NZA Limited, Sydney):

I would welcome the comments of the Panel and indeed of the Association on the adequacy of funding of investigation and

enforcement of companies and securities law in the context of work-outs and liquidations.

Comment - David Bruce (Chairman):

I do not think the Association has a view on it, which is not surprising. I think my personal view is that it is essential for Australia to have a well funded and well skilled corporate watch dog, if for no other reason than to restore our falling international credibility in this area. Perhaps David Crawford might have a view.

Response - David Crawford (Panel):

That is almost a "Dorothy Dixer" for me. I have been saying for some time now that I think we as a nation have not been prepared to face up to adequately funding the regulatory authorities, to fund them sufficiently to be able to employ the very best of all of the professions and to be able to pursue investigations through to finality in the shortest possible time frame. There is no doubt in my mind that we are suffering as a nation as a result of our lack of success in that area. If I could just refer to the Ivan Bofsky situation, my recollection is that he was caught in March 1987 and in May of this year he has been tried, convicted and completed two years of a sentence. I think we are hard pressed in Australia to think of any of our corporate people who have been brought to task in the last three years.

Comment - David Huggin (Panel):

Perhaps the SEC is even better funded now that Mr Milkin is having to pay a $600,000,000 fine! I think that this is a sensitive issue in the United States. As I am sure most of you know there are those who think that the prosecutors have been overly aggressive in pursuing insider trading claims and other securities law violations. However, I think that as a general matter it has had the enforcement of the securities laws and the knowledge in the industry that the securities laws will be strongly enforced, has had a very salutary effect on the markets and on the behaviour of people in the markets, and I think in general that has been a good thing regardless of the fact that there have been over-aggressive prosecutors who have done some things that probably they should not have.

Question - David Bruce (Panel):

Roger, in view of your comments before I suppose we should ask do you have investigators in New Zealand?

Response - Roger Drummond (Panel):

Our Securities Commission does have a brief to investigate matters of corporate concern and we have actually set up recently an equivalent of the UK Serious Fraud Office to look into serious fraud matters.

Question - Philip Wood (Panel):

David, I wonder if I could just take this opportunity to ask John Cadell a question because he made the comment earlier on in talking about law reform in Australia to assist in work-outs that we should not be bogged down in age-old arguments about priority status relating to security. That is a point I alluded to earlier on. It seems to me it is a very important point and I know a concern arises relating to cherry picking. But my view always was that if a bank took security over the best apple tree in the orchard then they were entitled to the apples from that tree and did not have to share them round with the unsecured creditors. I think the concern that I would have is that we proceed with danger, particularly for the Australasian area and the reputation we have with some international financiers now that if we introduced further areas of uncertainty which affect the rights of secured creditors, we do so at our peril.

Response - John Cadell (Panel):

Let me be brief. As I see it, it is one thing to say that a bank has priority which enables it to have its money back before anyone else gets its back. I have no objection to that, and I think that the British and the Australian system recognises that. What I am concerned about is that we don't accept that the fact that you have first share of the money when it comes back means that you and you alone, can drive the process by which money comes back to all of the creditors. And it seems to me that that is of fundamental importance. I am not suggesting that we deny secured creditors their rights and I don't think the Australian law at present, nor the Australian Law Reform Commission's proposals, nor the British systems do so. In Australia if an administrator is appointed under the Law Reform Commission's proposals then the secured creditor has seven days within which to move in; in the UK he is given a chance to have his say before the order is made. What I am concerned about is where secured creditors with security perhaps for a small amount of the total debt are in a position to go in and drive the ship, possibly (and I am sure this never happens) with disregard for the interests of the ship as a whole, when in fact it may be perfectly possible to get them their money back and to get other creditors back their money as well by taking action in a different way or in accordance with a different timetable.

Comment - John King (Panel):

That is one of the difficult areas, or I think very wrong areas in our Act. You can have a secured creditor sitting there with a straightforward mortgage over property, you might have bags of security, he sits there under our regime and the interest continues to mount and he can do absolutely nothing, and it just eventually puts him from a very good security into the situation where he may well have substantial deficit. And it really does strike right at the heart of just about any other exercise of your mortgage security. And in fact if you were going to lend

money to Fletcher Challenge for example on the security of a mortgage, that company being so large in New Zealand, you would have to say that the one time you might have to enforce it will be the one time that the statutory manager will appear.

Comment - David Bruce (Chairman):

I think we are just about out of time, but I thought by way of summary we might ask all of the Panel members to perhaps very briefly give their views. I think we have seen the contrast between the US situation on one hand where the law I think really, David, seeks to protect the company, which is to be contrasted with the Australian and UK position where the law really is driven by the desire to protect the creditors. If we were all altruistic dictators, you know someone like Idi Amin, what sort of law would we really want to structure? How would we want to shape the law to give us the best possible work-out legislation?

Response - David Huggin (Panel):

This is the question of how we structure utopia, I guess. I am not sure that there is an answer to that question because I think that it depends a great deal on, as I think Philip said earlier, as to where you are coming from, what your position is and to what extent you are prepared to have creditors' rights compromised in the interests of continuing and reorganising a business enterprise. I think in general that the proper balance is that there should be a scheme that permits the reorganisation, the restructuring of a business that is capable of being restructured, with appropriate stand-stills by creditors. And having said that, which is basically over-simplistically the scheme that we have with Chapter 11, I think one of the difficulties that we have with this arrangement is that the process requires bankruptcy judges and a team of experts who devote an enormous amount of time to the process. It is very expensive and in many ways very inefficient. We have good judges and bad judges. Many bankruptcy judges are not very adept at dealing with complex corporate enterprises and many have dealt principally with individually bankruptcies and find themselves totally baffled when they are dealing with a very complex corporate reorganisation. But I think that having said that that on balance I would opt for this system because I think it does give appropriate protections to creditors. I think in many areas, particularly since the 1978 Act, our *Bankruptcy Code* has tended to be more pro-debtor than as a bank lawyer I would support, but nevertheless I think in general it has worked reasonably well.

Response - Roger Drummond (Panel):

Well, bearing in mind in terms of the comment I made earlier about harmonisation of business laws between Australia and New Zealand, we obviously have a critical interest in what happens with the Harmer Report. And as you have probably gathered from

my comments, I am strongly for protecting the position of the banks and particularly where they take security. It seems to me that there needs to be a system to act quickly, particularly where there is not a debenture holder in existence who can take control of a company's assets. But I think the need to preserve the sanctity of contract between the banker and borrower needs to be paramount in any consideration we give to law reform in this area.

Response - David Crawford (Panel):

Insolvency administrators have a universal catch-cry which is "if only you had acted earlier there might have been something which would have been capable of being saved". Therefore I think any amendment in the legislation should be directed to enabling quick appointments to be made, for those procedures to be implemented to be as inexpensive as possible, with access if necessary to the courts as happens in the UK on a very quick basis. I personally support the concept of the controlling administrator and I was particular attracted to what Philip had to say about the UK experience which is that although on the surface the rights of the secured creditors appeared to be interfered with, in reality that interference has been very minor. So I would support the concept of the way the UK has gone.

Response - Philip Wood (Panel):

I had hoped not to enter into this specific discussion! I am very much in favour of predictability and the run, the routine of ordinary commercial affairs not being too much disturbed or overrun by just a few over-borrowed and sometimes badly managed corporations. I really do think that ordinary commercial life must not be dragged down and have itself upset because of these accidents. I think that attitude, which is in some ways a ruthless attitude and in some ways I think a more liberal tolerant one, you know you leave people to sort out their affairs themselves as best they can, can tend also to moralise them off. It is inevitable here that you are going to have a rehabilitation process and I think it is probably a good thing, but I do think that you have many rehabilitation laws to choose from, some right over on one side of the scale, some on the other, and if I were in your position I would go for one which is really towards the twos and the threes.

Comment - David Bruce (Chairman):

Ladies and gentlemen, on your behalf I would like to thank David Huggin, Roger Drummond, John King, David Crawford, Philip Wood and John Cadell for quite a masterly production. Thank you very much.