

# CREDITOR PARTICIPATION IN INSOLVENCY PROCEEDINGS

by  
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*Unless creditors are involved in the insolvency process the law will seem irrelevant.*

Ron Harmer, ADB<sup>1</sup>

*[C]reditor participation is increasingly regarded as an important element of an insolvency law, especially as a counter-balance to the roles assigned to other participants under the law and as an important means of safeguarding creditor interests.*

UNCITRAL<sup>2</sup>

Creditor participation in insolvency proceedings has been widely seen as an essential feature of any well-developed insolvency administration system. This notion has been expressed in different ways in national systems of insolvency law, ranging from principles such as the *pari passu* rule, to the holding of creditor meetings to decide matters of importance in the insolvency proceedings, to the role of insolvency representatives in such proceedings. Over the last decade we have seen the emergence of a number of multilateral efforts to more clearly articulate insolvency norms or “best practice” guidelines. These have included such outcomes as the Asian Development Bank’s 2000 Good Practice Standards, the World Bank and IMF’s 2005 draft Principles for Effective Insolvency and Creditor Rights Systems, and the monumental 2004 UNCITRAL Legislative Guide on Insolvency Law (the UNCITRAL Guide). The emergence of these multilateral statements witnesses the regional and global significance of insolvency laws and the role that they play in providing a foundation for a market economy. This paper will examine the creditor participation standards evident in this body of international best practice norms. Ultimately, it is argued that creditor participation in insolvency is an essential element in a rule of law based market economy.

## 1) Introduction

Creditor participation in insolvency proceedings has long been regarded as an important feature of any mature insolvency law system. The level and nature of such participation will vary depending upon the kind of insolvency proceeding that is involved.

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Such participation should be greater in situations of corporate rescue than in the winding up of companies with little remaining value. Such involvement may be seen to rest upon a number of widely accepted principles of insolvency law that seek to ensure that creditors are not unfairly prejudiced by the actions of corporate controllers, and that there is a fair and equitable system for the ranking of creditor claims.

Professor Roy Good of Oxford University has expressed this basic view as follows: “[I]t is a fundamental principle of insolvency law, and one which has many aspects, that the debtor’s assets are to be distributed *pari passu*.”<sup>3</sup> But, as many commentators have observed, exceptions to the centuries old *pari passu* rule are often as well known as applications of this rule.<sup>4</sup> Despite this basic principle, it is often the case that few assets remain for ordinary unsecured creditors or those who are not beneficiaries of a statutory exception to this principle. The good practice guideline that creditors should be involved in insolvency is an expression of the *pari passu* principle. The appointment of an insolvency representative has been one of a number of readily observable means of involving creditors in such insolvency proceedings.<sup>5</sup>

Ultimately, creditor participation is concerned with ensuring that justice is “seen to be done”. In this regard, creditor participation may be seen as a reflection of a rule of law based system of insolvency administration. Where creditor participation is lacking or non-existent, confidence in the fairness of an insolvency system is called into question. This has been recognised in good practice standards that have been published by the Asian Development Bank and reflected in the statement that “[u]nless creditors are involved in the insolvency process the law will seem irrelevant.”<sup>6</sup>

A notable feature of the international conversation with regard to insolvency law reform over the last decade or so has been the effort to draw upon a broad range of insolvency law practice and experience in an effort to develop generic principles and guidelines which may be readily adapted by individual countries to the task of fashioning their own insolvency laws. The World Bank and UNCITRAL have played an important role in this effort and have drawn heavily upon the collective experience of the wider insolvency practitioner community through the inputs of professional bodies such as INSOL International and individual insolvency consultants associated with such professional bodies.

## 2) The emergence of international insolvency law standards

Since the Asian financial crisis of the late 1990s, international efforts have been underway to fashion a comprehensive set of guidelines and principles that are applicable to a modern body of insolvency law and practice. Many of these principles and guidelines emerged from an earlier period of insolvency law reform that took place since the mid 1980s. These earlier insolvency reform efforts were reflected in official reports such as the 1982 Cork Report in the United Kingdom<sup>7</sup> and the 1988 Harmer Report in Australia.<sup>8</sup>

These reports led to the passage of subsequent landmark legislation, such as the 1986 Insolvency Act in the United Kingdom and amendments to the Australian Corporations Act<sup>9</sup> that came into effect in July 1993. Comparable reform legislation was enacted in the United States in the form of the 1978 Bankruptcy Reform Act. The experience gained from the enactment of these national bodies of law has been disseminated internationally and provided the basis for the development of global insolvency norms or benchmarks.

All of these laws contained corporate rescue provisions which emphasised the importance of creditor involvement. These included the corporate restructuring

provisions found in Chapter 11 of the US Bankruptcy Code, the voluntary administration procedures of Part 5.3A of the Australian Corporations Act and the Administration Order procedures of the 1986 UK Insolvency Act. Similar reform efforts were evident in other countries. The experience gained during these country based reform efforts provided insights that have facilitated the development of broader international guidelines or principles of insolvency law.

This paper looks at three such efforts and refers especially to what they have to say in regard to creditor involvement in insolvency. These three multilateral efforts are: 1) the Asian Development Bank's Good Practice Standards report<sup>10</sup> published in April 2000;<sup>11</sup> 2) the UNCITRAL 2004 Legislative Guide on Insolvency Law;<sup>12</sup> and 3) the World Bank/IMF 2005 revised Principles for Effective Insolvency and Creditor Rights Systems.<sup>13</sup>

At a different level, INSOL International has developed a statement of principles for a global approach to multi-creditor workouts that also emphasises creditor participation in such workouts.<sup>14</sup> Various principles and guidelines were developed following the financial crises that occurred in emerging markets in the late 1990s. For example, UNCITRAL's 2004 Legislative Guide on Insolvency Law was developed between 2001 and 2004. The World Bank has noted that these efforts sought to provide flexible: "[I]nternationally recognised benchmarks or standards to evaluate the effectiveness of domestic creditor rights and insolvency systems" and to provide "a broad-spectrum assessment tool to assist countries".<sup>15</sup> However, it has been recognised in all of these efforts that, ultimately, any insolvency law system must be based upon a particular country's own circumstances, culture and traditions. This requires some flexibility in the application of these principles and standards. As the World Bank has pointed out, effective insolvency systems:

*...must be rooted in the country's broader cultural, economic, legal and social context.... The Principles are designed to be flexible in their application, and do not offer detailed prescriptions for national systems. The Principles embrace practices that have been widely recognised as good practices internationally.*<sup>16</sup>

Some such standards have focussed specifically upon particular regions, such as the Asian Development Bank's efforts under its Regional Technical Assistance for Insolvency Law Reform (RETA) which examined the insolvency laws of eleven Asian economies. It was recognised by the ADB that prior to the economic crisis of the late 1990s, insolvency laws in the Asian region were often "out of date and irrelevant to modern commercial needs."<sup>17</sup>

One solution to this problem was to compare local laws to broader global standards so as to assess the nature of the gap between local practice and international insolvency norms and practices. As one ADB report observed, "[a]n evaluation of a formal corporate law regime can be best approached by reference to comparative standards."<sup>18</sup> Similarly, the World Bank has noted that its principles "are a distillation of international best practice in the design of insolvency systems and creditor rights."<sup>19</sup> Of course, the use of standards and principles has long been seen as a valuable method of evaluating law reform efforts.<sup>20</sup>

### 3) New multilateral insolvency standards

The World Bank/IMF 2005 Revised Principles for Effective Creditor Rights and Insolvency Systems were based on the work of a task force of 70 international expert.

These principles are, however, still regarded as being draft principles although they have emerged through a process of extensive international discussion and feedback. The principles were vetted by regional roundtables involving over 700 participants from 75 countries and have drawn upon feedback from regional forums like the Forum for Asian Insolvency Reform (FAIR).

The World Bank principles are seen as facilitating “contextual, integrated solutions and the policy choices involved in developing these solutions.” As we have seen, the principles urge adapting “international best practices to the realities of countries”, especially in developing countries.<sup>21</sup> This is because there is a need to be sensitive to problems such as weak laws, unclear social protection mechanisms, weak financial institutions, poor corporate governance, and shortages of capacity and resources.

In regard to creditors and creditors committees, the World Bank principles C7.1 and C7.2 are relevant. Thus, principles C7.1 provides that:

*The role, rights and governance of creditors in proceedings should be clearly defined. Creditor interests should be safeguarded by appropriate means that enable creditors to effectively monitor and participate in insolvency proceedings to ensure fairness and integrity, including by creation of a creditors’ committee as a preferred mechanism, especially in cases involving numerous creditors.*

Principle C7.2 goes on to deal with the role and conduct of the committee of creditors. The World Bank principles can be compared to the General Practice Standards that were developed by the Asian Development Bank in 2000, which, among other things, urged that “[a]n insolvency law should make proper provision for the involvement of creditors as part of the liquidation or rescue process.”<sup>22</sup> The involvement of creditors is especially important during the rescue proceedings as the “interests of creditors should prevail in decision making as part of the rescue process.”<sup>23</sup> The influence of the ADB Standards and the World Bank principles is to be seen in the more detailed UNCITRAL Legislative Guide on Insolvency Law.

Ensuring complementarity between the UNCITRAL guidelines and the World Bank principles has been an important goal. The UNCITRAL Guide provides a much more detailed discussion of particular principles and provides lengthy discussion of the theme of creditor participation in insolvency proceedings. The 2004 UNCITRAL Guide drew upon inputs from experts in 87 states, 14 inter-governmental organisations and 13 non-governmental organisations.<sup>24</sup> It could, therefore, be seen to have considerable authority. As the preface to the guide notes:

*The final negotiations on the draft legislative guide on insolvency law were held during the thirty-seventh session of UNCITRAL in New York from 14 to 21 June 2004 and the text was adopted by consensus on 25 June 2004.... Subsequently, the General Assembly [of the United Nations] adopted resolution 59/40 of 2 December 2004... in which it expressed its appreciation to UNCITRAL for completing and adopting the Legislative Guide.*<sup>25</sup>

It is appropriate to look more closely at the manner in which the issue of creditor participation has been dealt with in these multilateral statements.

#### **4) The emerging consensus on the role of creditor participation**

We have seen that there is an increasing consensus to the effect that creditor participation is vital to the integrity of insolvency proceedings. Thus, the World Bank has

urged (in principle C7.1) that “[t]he role, rights and governance of creditors in proceedings should be clearly defined.”<sup>26</sup> The bank urged that creditor interests should be safeguarded by appropriate means that enable creditors to effectively monitor and participate in insolvency proceedings to ensure fairness and integrity, including by the creation of a creditors’ committee as a preferred mechanism, especially in cases involving numerous creditors (principle C7.1).

Similar sentiments were expressed in the Asian Development Bank’s Good Practice Standards and the accompanying text. This is reflected in the first quote at the head of this paper. Thus, the background discussion to the ADB Good Practice Standards argues that:

*A rescue process is largely the province of creditors working, hopefully, in concert with the debtor. Creditors are vital to the process. They need to be organised, available and involved. A rescue or reorganisation process should, in effect, create a market place of its own where the bargaining, dealing and negotiation of people of commerce can be given full and fair effect.*<sup>27</sup>

On the subject of creditor participation, the UNCITRAL Legislative Guide on Insolvency Law has also urged that:

*The insolvency law should specify that creditors, both secured and unsecured, are entitled to participate in insolvency proceedings and identify what that participation may involve in terms of the functions that may be performed.*<sup>28</sup>

The justifications for the involvement of creditors in insolvency proceedings, whether formal or informal in nature, are based on the fact that they usually have a major interest in the business of the debtor and their financial interest will often be greater than that of most other stakeholders. This is especially so in rescue situations, as an ADB report has noted:

*The interests of creditors should prevail in decision making as part of the rescue process. That is dictated by the fact that, because the corporation is insolvent or in extreme financial difficulty, the capital or equity of owners will have been severely depleted, if not completely lost and, although they have been affected, it is the creditors whose interests should become paramount. It should be the decision of the creditors that will determine whether a proposal of rescue is accepted or not (and, under some regimes, if it is not accepted, that the company be liquidated).*<sup>29</sup>

However, it should be remembered that the situation of unsecured creditors in a corporate insolvency is not a comfortable one given their “lowly status” in the context of secured creditors and other preferential claims.<sup>30</sup> The discomfort of unsecured creditors is even more serious where they are creditors of so-called “phoenix companies” (usually private companies) whose assets have been stripped by dishonest insiders, leaving only debt.<sup>31</sup>

Nevertheless, where creditors can be persuaded to take an interest in insolvency proceedings, it should be recognised that they may be in a good position to monitor the actions of the insolvency administrator because of the considerable expert knowledge that creditors will have of the workings of the debtor’s business. Creditor participation may also provide a brake against abuses by corporate insiders who may seek to protect their own interests at the expense of the interests of creditors. As the UNCITRAL Guide points out:

*...creditor participation is increasingly regarded as an important element of an insolvency law, especially as a counter-balance to the roles assigned to other participants under the law and as an important means of safeguarding creditor interests.<sup>32</sup>*

Nevertheless, corporate insiders may from time to time improperly seek to inhibit the capacity of creditors to be involved in such proceedings. Where this occurs, the confidence of creditors in the proceedings may be undermined. However, creditor participation should occur efficiently and not undermine the proceedings, such as by creating undue delay. This calls for an effective form of creditor representation in such proceedings.

Similarly, because disagreements between creditors are often inevitable, efforts need to be made to ensure that such disagreements do not undermine the efficiency and fairness of insolvency proceedings. It is important that key elements of the role of creditors are preserved as much as possible. These include their role in the selection, remuneration and oversight of insolvency representatives, their role in the sale of assets outside of the ordinary course of business, their role in approving reorganisation plans and their role in approving a committee(s) of creditors. As the UNCITRAL Guide points out:

*The desirability of facilitating high levels of creditor participation must be balanced against the need to ensure that the creditor representation mechanism remains efficient and cost-effective and avoids creditors involving themselves in matters that will not have an impact on their interests....<sup>33</sup>*

The degree of creditor participation will be affected by the extent to which there is an adequate body of well-trained insolvency practitioners in an insolvency regime and the degree to which that regime has in place a well developed system of legal mechanisms and remedies. Consequently, creditor participation may need to be enhanced where there are inadequate numbers of well-trained insolvency practitioners and a lack of effective institutional infrastructure in a particular jurisdiction.

This is part of the balancing that occurs in regard to selecting the degree of creditor participation. The involvement of experienced insolvency representatives in insolvency proceedings should be encouraged as it is likely to reduce the delays and costs that may arise where a large number of individual creditors seek to monitor and regulate an insolvent debtor.

## **5) Forms of creditor participation in insolvency proceedings**

The extent of creditor participation will vary in different legal systems. In part, this is a reflection of the absence of other monitoring and control mechanisms, although it may also reflect different models of participation. The UNCITRAL Guide, for example, distinguishes between the “low level of participation” approach (where insolvency practitioners fill the gap) and “greater participation” approaches where creditors assume an ongoing participatory role.<sup>34</sup>

These more participatory roles range from mere advisory functions performed by creditors, to the statutory provision of specific functions to creditors, such as the supervision of the insolvency representative, and requiring consultation between creditors and the insolvency representative, to creditors requesting or recommending action by the

courts. Participation may be by way of a creditors' committee or through the use of a creditors' representative to represent creditor interests.

The establishment of a creditors' committee may often be an effective means of articulating the views of creditors. In regard to the creditors' committee, the 2005 World Bank draft principles (principle C7.2) provide that:

*Where a committee is established, its duties and functions, and the rules for the committee's membership, quorum and voting, and the conduct of meetings should be specified by the law. It should be consulted on non-routine matters in the case and have the ability to be heard on key decisions in the proceeding. The committee should have the right to request relevant and necessary information from the debtor. It should serve as a conduit for processing and distributing that information to other creditors and for organising creditors on critical issues. In reorganisation proceedings, creditors should be entitled to participate in the selection of the insolvency representative.<sup>35</sup>*

In regard to meetings of committees of creditors, standard 9.2 in the 2000 Asian Development Bank Good Practice Standards provides that “[a]n insolvency law should clearly define the voting rights of creditors and should prescribe minimum requirements for the approval of a plan of rescue.” The ADB’s supporting paper noted that meetings of creditors are important in this regard and observed:

*Meetings of [creditors]... as a whole are obviously important. Also important is the selection, appointment and formation of a small committee of their number, which can take a more active and involved role in considering the adequacy or otherwise of information, the formulation of a plan and, possibly, the implementation of a plan. Meetings, to be effective, require organisation and control. Rules and procedures are required to deal with such things as the calling of meetings, the eligibility of persons to attend and participate in meetings (including voting rights and establishing quorum) and the chairing and general conduct of meetings.<sup>36</sup>*

These themes have been more fully articulated in the UNCITRAL Guide. The guide recommends that:

*129. The insolvency law should facilitate the active participation of creditors in insolvency proceedings such as through a creditor committee, a special representative or other mechanism. The insolvency law should specify whether a committee or other representation is required in all insolvency proceedings. Where the interests and categories of creditors involved in insolvency proceedings are diverse and participation will not be facilitated by the appointment of a single committee or representative, the insolvency law may provide for the appointment of different creditor committees or representatives.<sup>37</sup>*

The UNCITRAL Guide also recommends that insolvency laws should specify how the costs of a creditors committee are to be met and should also specify the creditors who are entitled to be appointed to a committee of creditors (e.g. excluding related persons). In addition, the mechanisms for appointment of creditors to the committee should be identified by the law. In regard to the rights and functions of the creditor committee, UNCITRAL recommends that:

*133. The insolvency law should specify the rights and functions of the creditor committee in insolvency proceedings, which may include:*

- (a) Providing advice and assistance to the insolvency representative or the debtor-in-possession;*
- (b) Participation in development of the reorganisation plan;*
- (c) Receiving notice of and being consulted on matters in which their class has an interest, including the sale of assets outside the ordinary course of business;*
- (d) The right to hear the insolvency representative at any time; and*
- (e) The right to be heard in the proceedings.”<sup>38</sup>*

As the UNCITRAL Guide has also noted, creditors’ committees are not always required, but are appropriate in cases where there are large numbers of creditors, where they have diverse interests, or where creditors may be geographically widely dispersed or where the case is such that costs and time may be saved by the appointment of a creditors’ committee.<sup>39</sup> Creditors’ committees usually only represent the interests of unsecured creditors, but there may be circumstances where the establishment of a committee of secured creditors may be justified. Sometimes it may be useful to include others (such as shareholders) on a creditors’ committee, such as in a reorganisation.

Creditors’ committees can be appointed in a number of ways, such as by the creditors themselves or by the court, but once appointed “the creditor committee should be able to act independently of the insolvency representative to ensure fair and unbiased representation of creditors’ interests.”<sup>40</sup>

The committee’s role will generally be advisory in nature in that it will make recommendations to creditors as a whole in regard to how major issues (such as the sale of a substantial asset or the details of a reorganisation plan) are to be decided. The UNCITRAL Guide recommends that insolvency laws set out details of the types of matters that creditors should be required to vote on, such as the approval or rejection of a reorganisation plan.<sup>41</sup>

Meetings of creditors are clearly very important vehicles for creditor participation. As noted earlier, committees of creditors usually only represent the unsecured creditors (although some laws provide otherwise, e.g. where secured creditors are affected). In Australia, a secured creditor who votes at a meeting of creditors for the whole of their debt or claim is taken to have surrendered their security. The voting rights of creditors can be expressed by simple majority or by reference to the value of their debt and their number. Creditors should meet in different classes based on the nature of their security. A majority vote of creditors in a class is binding on all creditors in that class.

Local culture and tradition may affect the nature of creditor participation in insolvency proceedings. This may also be affected by other factors such as creditor expectations of such proceedings. The degree of creditor participation in insolvency proceedings will vary depending upon the nature and context of the proceedings.

For example, in a liquidation proceeding, the role of creditors will be more limited (although they can provide valuable advice to the administrator on the debtor’s business). On the other hand, in a rescue situation, their role will be crucial and their interests should prevail over those of the owners of the company’s equity or capital. However, to be effective, creditors need to be organised and controlled to efficiently express their views.



## 6) Encouraging greater creditor participation

Creditor participation is clearly a desirable feature of rule of law based insolvency systems. However, creditors are not always enthusiastic about participating in such proceedings due to the costs involved, or due to the low returns that are anticipated. A number of key concerns have been identified as affecting the level of creditor participation.

Four such concerns are worth mentioning: 1) the perception that proceedings are likely to be manipulated; 2) the transparency of insolvency proceedings; 3) a broader sense of creditor apathy; and 4) giving creditors a sense that their participation will have an effect at key stages of the insolvency decision making process. Personal liability fears may also be an issue.

**Manipulation:** It is necessary to avoid manipulation of voting in insolvency proceedings by insiders. Consequently, the law should include provisions that ensure that the rights of genuine creditors are not undermined. This is a concern that was evident in the 2000 Insolvency Law Reforms Report of the ADB when it noted:

*Under any system of voting it is important to ensure that voting powers are not manipulated and that the interests of genuine creditors are not interfered with nor prejudiced by the voting powers of persons connected to the corporation. These are commonly referred to as “insiders”—persons who have some intimate connection or relationship with the debtor, its directors, managers, owners and shareholders. The law must ensure that the rights of commercial creditors are not abused [or] else they will be totally disaffected by the process.<sup>42</sup>*

**Transparency:** To ensure transparency and confidence in the insolvency administration, creditors should receive reports on the conduct of the proceedings. The UNCITRAL Guide notes that it “may also be desirable for creditors to receive reports on the conduct of the liquidation to ensure their confidence in the proceedings, as well as its transparency.”<sup>43</sup> However, issues of confidentiality of information will also have to be addressed in this regard.

**Creditor apathy:** Creditor apathy is very real but this may be overcome by the careful selection of the members and the functions given to the creditors’ committee, by use of electronic forms of voting, and by the provision of immunity from liability for creditor actions.

**Making a difference:** Participation by creditors may be encouraged by the law, providing that full meetings of creditors should be held at key points in the insolvency administration process. However, where the available asset pool of a company has been significantly reduced, such a participatory experience may be somewhat pyrrhic.

**Liability concerns:** Creditors may also be reluctant to participate in insolvency proceedings due to fears that they may incur additional liability through participation. This problem can be addressed by providing creditors with immunity from liability, except where they act fraudulently or wilfully.<sup>44</sup>

### **Secured creditors**

It is appropriate to refer briefly to the participation of secured creditors. It has already been noted that it is not generally the case that secured creditors form creditors committees. In many laws the rights of secured creditors are not affected by the commencement of insolvency proceedings and they are still in a position to enforce their rights. However, in other legal systems, once insolvency proceedings have begun, secured

creditors are prevented from enforcing their rights with the imposition of a stay on such enforcement action.<sup>45</sup>

A fuller discussion of the participation rights of secured creditors is beyond the scope of this short paper. However, the rights of secured creditors are important and an insolvency law need to have regard to these. As the ADB's 2000 Insolvency Law Reform Report notes:

*The law should be sensitive to the position of secured creditors. If the rescue proposal is such that it might affect secured creditors (in the sense of reducing the value of their security or seriously impairing their rights to enforce a security), they should normally be afforded voting rights as a separate class.<sup>46</sup>*

The World Bank's Revised Principles also emphasise the importance of a robust legal system for protecting the rights of secured creditors, noting (in principle A2) that:

*One of the pillars of a modern credit economy is the ability to own and freely transfer ownership interests in land and land use rights, and to grant a security interest (such as a mortgage or charge) to credit providers with respect to such interests and rights as a means of gaining access to credit at more affordable prices.<sup>47</sup>*

## 8) Employees as creditors

The protection of the interests of employees in a situation of corporate insolvency has increasingly been seen as an important concern. Of course, this has usually been dealt with in the past through the priority enjoyed by claims that may be made by employees for such things as the unpaid wages and superannuation contributions of employees. Increasingly, greater legislative attention is being given to protecting the entitlements of employees in an insolvency situation, such as by imposing liabilities upon a company's directors for knowingly failing to protect employee entitlements.

In some countries trade unions have become active and governments have intervened to protect employee interests and entitlements, as occurred in 2002 following the collapse of Ansett Airlines<sup>48</sup>, at that time, Australia's second largest airline. This presents a new dimension to the idea of creditor participation.

## 9) Some conclusions

Creditor participation has been widely seen as a desirable feature of a modern insolvency law system. This is especially so in regard to corporate rescues. There are, however, considerable disincentives to participation and these need to be overcome. Some corporate law scholars would argue that participation is the basis for happiness upon the part of shareholders in companies. Whether this is also so with creditors is problematic and it therefore remains an open question.

But, as evident from the above survey of multilateral insolvency principles, guidelines and benchmarks, it is clear that international expert opinion favours greater participation in insolvency proceedings on the part of creditors. In the context of broader corporate governance concerns and international stakeholder debates, creditor participation is likely to become an increasingly important international concern in insolvency law and practice.

## Notes

1. Asian Development Bank (2000), “Insolvency Law Reforms in the Asian and Pacific Region: Report of the Office of the General Counsel on TA 5795-Reg: Insolvency Law Reforms”, *Law and Policy Reform at the Asian Development Bank*, Edition, Vol. 1, April 2000, pp. 10-86. (R.W. Harmer prepared the report).
2. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 242.
3. Goode, R. (2005), *Principles of Corporate Insolvency Law: Student Edition*, London, Thompson–Sweet & Maxwell, p. 56.
4. See, for example, Duns, J. (2002), *Insolvency–Law and Policy*, Oxford University Press, South Melbourne, p. 319.
5. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 241.
6. Above at note 1.
7. Report of the Insolvency Law Review Committee, chaired by Sir Kenneth Cork, Command Paper 855, 1982. See further, the UK government’s white paper, *A Revised Framework for Insolvency Law*, Cmnd. 9175 (1984).
8. Harmer, R.W. (1998), *General Insolvency Inquiry, Report No. 45*, Australian Law Reform Commission, Australian Government Publishing Service, Canberra.
9. The legislative background to these reforms can be found in the government’s *Corporate Law Reform Bill 1992, Draft Legislation and Explanatory Paper*, prepared by the Commonwealth Attorney General’s Department, Canberra, Australian Government Publishing Service, February 1992.
10. See generally, Ziegel, J.S. (1994), *Current Developments in International and Comparative Corporate Insolvency Law*, Clarendon Press, Canberra; and Wood, P.R. (1995), *Principles of International Insolvency*, Sweet & Maxwell, London.
11. Asian Development Bank (2000), “Insolvency Law Reforms in the Asian and Pacific Region: Report of the Office of the General Counsel on TA 5795-Reg: Insolvency Law Reforms”, *Law and Policy Reform at the Asian Development Bank*, Edition, Vol. 1, April 2000, p. 41.
12. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*.
13. For these draft World Bank Principles for Effective Insolvency & Creditor Rights Systems see: [http://www.worldbank.org/ifa/rosc\\_icr.html](http://www.worldbank.org/ifa/rosc_icr.html).
14. INSOL International (2000), *Statement of Principles for a Global Approach to Multi-Creditor Workouts*, INSOL International, London, available at <http://www.insol.org/pub.htm#statement>.
15. *Draft World Bank Principles for Effective Insolvency & Creditor Rights Systems*, p. 1, see above.
16. *Ibid*, p. 2-3.

17. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, p. 11.
18. *Ibid*, p. 25.
19. *Draft World Bank Principles for Effective Insolvency & Creditor Rights Systems*, above, p. 2.
20. There is a large literature on the use of standards in legislation and law making; see generally, Tomasic, R. (1980), “The Sociology of Legislation”, *Legislation and Society in Australia*, Allen & Unwin, Sydney, pp. 19-49.
21. *Draft World Bank Principles for Effective Insolvency & Creditor Rights Systems*, **above at pp. 2-3.**
22. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above at p. 43.
23. *Ibid*, p. 42.
24. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*.
25. *Ibid*, pp. 1-2.
26. *Draft World Bank Principles*, p. 17.
27. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above at p. 42.
28. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 258.
29. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above, at p. 42.
30. See generally, Millman, D. and C. Durrant (1999), *Corporate Insolvency—Law and Practice*, Third Edition, Sweet & Maxwell, London, p. 135.
31. See generally, Coburn, N.F. (2003), *Coburn’s Insolvent Trading: Global Investment Fraud and Corporate Investigations*, Law Book Co., Sydney, pp. 231-241.
32. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 242.
33. *Ibid*, p. 241.
34. *Ibid*, pp. 242-243.
35. *Draft World Bank Principles for Effective Insolvency & Creditor Rights Systems*, p. 26.
36. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above, p. 42.
37. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 259.
38. *Ibid*, p. 260.
39. *Ibid*, p. 250.
40. *Ibid*, p. 250.
41. *Ibid*, p. 258.
42. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above, p. 43.

43. UNCITRAL (2004), *UNCITRAL Legislative Guide on Insolvency Law*, p. 245.
44. *Ibid.*
45. These are matters that are dealt with more fully in the UNCITRAL Legislative Guide, see generally at p. 263.
46. Asian Development Bank, “Insolvency Law Reforms in the Asian and Pacific Region”, above, p. 42.
47. The World Bank Principles for Effective Insolvency & Creditor Rights Systems (Revised), 21 December 2005, p. 11.
48. See generally, Easdown, G. and P. Wilms (2002), *Ansett–The Collapse*, Lothian Books, Melbourne.

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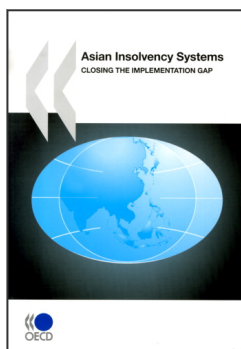
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