

BANKRUPTCY AND INSOLVENCY

A NEW REGIME FOR JAMAICA

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The Present Regime

Both corporate and personal insolvency are largely governed by the provisions of the Bankruptcy Act, 1880

The Present Regime

- There have been *ad hoc* amendments, none affecting the basic structure of the law
- The legislation is heavily supplemented by case law

Rules and Procedure

- The CPR 2002 does not apply to insolvency proceedings
- The Government was considering amending the legislation and the Rules Committee decided that special rules relating to insolvency might be required

Rules and Procedure

- Until the Committee makes new rules the UK (Winding up) Rules, 1949 apply – **Section 340, Companies Act**
- Rules were drafted in 2004-5 but not implemented pending new legislation

The Present Regime

- The more fundamental problem is that the interests of creditors are paramount
- There is little or no provision for rehabilitation or restructuring

The Committee

Resulted from discussions between the then Prime Minister and the President of the PSOJ

Broad based membership and specific mandate

The Committee

In those cases where the company or business can be saved, propose a regime that can save it

In those cases where it cannot be saved, fix the winding up process

Objectives of modern insolvency laws

Rehabilitation of the debtor, where this is possible;

Maximizing payments to creditors;

Distributing assets fairly and equitably, and

Penalizing persons found culpable in the insolvency

- Barbados/Canadian model
- Corporate and individual insolvency
- The “Insolvency Act”

Insolvency Practitioners

- Licensed Insolvency Practitioners/
Trustees
- A Supervisor – The FSC?
- A range of qualifications, appropriate to
different “estates”

Insolvency Practitioners

Trustees will handle both restructuring proposals and the winding up process when that is necessary

Insolvency Practitioners

- The Supervisor is responsible for ensuring that trustees meet relevant criteria
- It may terminate or suspend licences
- The Court may remove a trustee

Proposals by insolvent persons

- Notice of intention, naming a trustee and identifying creditors and debts
- All proceedings stayed for 30 days
- 3rd parties cannot terminate contracts

Proposals by insolvent persons

The stay can be extended, and any creditor can apply for it to be lifted or for a declaration that it does not apply to him

Proposals by insolvent persons

- Must make a proposal within 30 days to a trustee
- The trustee has full access to the books and assets
- The trustee investigates the affairs and property of the debtor and reports to the meeting of creditors and the Supervisor



Proposals by insolvent persons

- Proposal is accepted if a majority in number and 2/3 in value agree
- Secured creditors treated separately
- If the creditors accept the proposal it goes before the court for approval
- If the creditors do not accept it the bankruptcy/winding up proceedings commence

The Courts...

- Commercial Division
- Modern rules
- Streamlined, simplified process



Conclusion

Consultations are to take place over the next few months

The Government is committed to enacting this legislation during 2013

Thank you for listening!

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