

VIEWING THE PROPOSED SOUTH AFRICAN BUSINESS RESCUE PROVISIONS FROM AN AUSTRALIAN PERSPECTIVE

C Anderson*

Summary

This article makes some comparisons between the Australian corporate rescue provisions and those proposed to be adopted in South Africa in the *Companies Bill 2007*. By so doing it may assist in the debate in South Africa over how the legislation is framed as the experience in Australia may be useful as an indicator of issues to be considered. One of the findings of the comparison is that the aims of the Australian legislation and that proposed in South Africa are almost identical. The article identifies a clear concern in the South African proposals with the position of employees which is not apparent in Australia. On the other hand there appears to be less concern in South Africa with the position of secured creditors than is evident in the Australian provisions. The article also notes that the South African proposals do not divide the procedure clearly into a decision-making stage and the period whilst the company is operating under the rescue plan. The Australian provisions provide for a clear break between a period where the creditors have yet to make a choice about the company's future and the period once a plan (or deed of company arrangement) has been adopted. The article also finds that the South African model of rescue as proposed does cover many similar areas as identified in the Australian legislation. It therefore argues that there are sufficient similarities to suggest that much will be common in the experience if they are adopted into the legislation.

* Dr Colin Anderson, Griffith Business School, Griffith University Australia.