Chapter 6
An Introduction to Corporate Insolvency Law and Reforms in Australia

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ABSTRACT

The Corporations Act of 2001 regulated the probable insolvency proceedings of all companies incorporated in Australia and companies incorporated or possessing separate legal. For personal insolvency, a specific legislation called Bankruptcy Act is there, but the basic framework of corporate insolvency law has been there since the inception of Corporations Act 2001 enactment, which includes all the aspects of company formation, management, governance, and dissolution. The authors have highlighted recent reforms; however, the main concentration of this chapter is on the legal infrastructure of corporate insolvency law at present as the reforms are not yet in force. The chapter also puts forth the problems faced by corporate debtor and creditors in the proceedings of insolvency resolution and has also expressed the scenario of cross-border insolvency in Australia in light of UNICTRAL Model law of cross-border insolvency which has been adopted by the Australian government in 2008.

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INTRODUCTION

In Liberalized & Globalized world, in which companies participate in multinational investments and agreements, the way in which they involve in resolutions of insolvency & management of bad debts becomes the subject matter of critical economic significance. Corporate Insolvency law in Australia is an effort to pursue a reasonable equilibrium amongst the conflicting interests of debtors, creditors and community at large in a situation when corporate debtors are unable to his financial obligations. Australia’s legal scheme of corporate insolvency and personal bankruptcy is regarded as highly robust and efficient. It’s also noteworthy that most business closures and transfers occurred without the burden and stigma of failure. The law was unchanged since the 1980s & is primarily based on common law principles. The term insolvency typically refers to companies, and bankruptcy is applicable with respect to individuals under Australian law. Recently, the Australian government has introduced with a desire to build a stronger entrepreneurial culture with these measures considered to support calculated risk-taking and encourage innovation. Australian insolvency law is divided into two streams, each governed by a separate piece of legislation which governs the probable insolvency proceedings of all companies incorporated in Australia and companies incorporated or possessing separate legal. For personal insolvency, a specific legislation called bankruptcy Act is there but the basic framework of corporate insolvency law has been there since the inception of Corporations Act 2001 enactment which includes all the aspects of company formation, management, governance & dissolution. This legislation contains main provisions relating to voluntary administration & judicial management. Nevertheless, authors have given some highlight to recent reforms initiative, however, the main concentration of this chapter is on the legal infrastructure of corporate insolvency law at present as the reforms are not yet in force. The author has emphasised the Australian Insolvency law which is based on UK Model. The Corporations Act 2001, regulates the position of companies which are in financial distress and are unable to pay or provide for all of their debts or other obligations, and matters ancillary to and arising from financial distress. The Act regulates, creditors’ voluntary liquidation, a court ordered or compulsory liquidation & scheme of arrangement. In the event of reforms in business rescuer regulations in Australia, the government have taken baby steps since 2014 with the submission of working paper by Productivity Commission on Business Set-up, Transfer and Closure to government & has reached to the bill on corporate insolvency law reforms which is yet to enforce. The Authors has made an attempt to analyses the insolvency procedures as per the corporations act with an objective to walk through the technical and procedural aspects of corporate insolvency system in Australia & changes made by the Corporate Law Reform in
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