THE NEW LAW ON BANKRUPTCY IN INDONESIA: TOWARDS A MODERN CORPORATE BANKRUPTCY REGIME?*

STACEY STEELE†

[This article discusses the recent changes to bankruptcy legislation in Indonesia. The article views the new legislation as an indicator of the 'modernisation' of Indonesia's political and economic regime, but warns that there are problems inherent merely in superimposing Western laws into Asian cultures. The author argues that the reform of Indonesia's bankruptcy legislation will have little influence on the economic stability of the nation in the absence of substantive changes to the country's legal culture].

I TOWARDS A 'MODERN' CORPORATE BANKRUPTCY REGIME[1]

In the milieu of the current Indonesian political and economic crisis, the International Monetary Fund ('IMF') has identified the construction of a 'modern' legal infrastructure as one of its highest priorities for Indonesia's return to economic, social and political stability.[2] In particular, the IMF has insisted that, as a condition of providing loans to Indonesia, the Indonesian government must reform its law on bankruptcy.[3] 'Modern' in this context refers to reforming and

* This article was prepared in November 1998 for submission in December 1998. Since it was written, a new loose-leaf service on bankruptcy law in Indonesia has been published, edited by Greg Churchill of Ali Budiardjo, Nugroho, Reksodiputro. The service is a welcome addition to the information available on bankruptcy law in Indonesia, particularly given the rapidly changing nature of events in Indonesia. It contains the new Bankruptcy Law and amendments, including International Monetary Fund letters of intent and myriad ancillary regulations, and summaries of recent decisions of the *Mahkamah Agung* ('Supreme Court') which this article does not take into account.

† BA (Qld), LLB (Hons) (Melb), MA (Japanese Interpreting and Translating) (Mon), LLM student, The University of Melbourne, currently undertaking research as a Research Scholar, International Centre for Comparative Law and Politics, Faculty of Law, The University of Tokyo.

1 The Indonesian Bankruptcy Law deals with both corporations and natural persons. Both natural persons and corporations can become 'bankrupt'. See Kartini Muljadi, 'Answers to Questionnaire on Insolvency Law and System (Indonesia)' (Paper presented at the International Symposium on Bankruptcy Laws and Systems in Asian and Pacific Countries, Osaka, Japan, 18 November 1997) 3. The focus of this article is corporate bankruptcy, which is sometimes referred to generically in Australia as 'corporate insolvency'.

2 Government of Indonesia, 'Supplementary Memorandum of Economic and Financial Policies' (1998) <http://www.imf.org/external/np/loi/041098.htm> [17] (copy on file with author). The memorandum explains:

> To strengthen the incentives for corporations to participate in the corporate debt restructuring scheme, and to improve the business environment more generally, we are overhauling the bankruptcy system and are establishing a special commercial court to provide for fair, transparent and expeditious resolutions of commercial disputes (the activities of the court will initially be limited to bankruptcy proceedings).

3 International Monetary Fund, 'The IMF's Response to the Asian Crisis: Lessons from the Crisis and the Way Forward' (1998) <http://www.imf.org/external/np/exr/facts/asia.htm> (copy on file

changing law to encourage and support a market economy by accommodating the perceived needs of investors and businesspeople.[4] By doing this, the IMF hopes to restore confidence in the Indonesian economy, provide incentives for debtors to participate in corporate debt restructuring schemes and thus encourage a return of investment and entrepreneurial activity.[5] However, it remains to be seen whether bankruptcy law reform itself will enable Indonesia to achieve these goals. Recent developments such as the Jakarta Initiative suggest that alternatives to the New Bankruptcy Law are being sought by government and business, and despite the fanfare surrounding its introduction, so far there have only been 16 cases brought under the new law.[6]

Until Indonesia's Bankruptcy Law was substantially amended in 1998 (the 'New Bankruptcy Law'),[7] there had been no changes to the *Faillissements-Verordening* ('Bankruptcy Law') since the turn of the century.[8] This legislation was enacted under the Dutch colonial administration in 1905 and came into effect in 1906.[9] It was rarely used and this led to a lack of expertise amongst legal

with author). Other measures include: 'promoting regional surveillance' and 'a world-wide effort to promote good governance and fight against corruption'.

4 Cf Reid's comments in the context of post-Revolution Indonesia, on what he describes as the Indonesian government's attempt to adopt 'high modernism'. This is, 'a complete break with the past in the name of scientific transformation, and the re-ordering of society on the basis of simplified codes and categories which can be understood and implemented by a central bureaucracy.' Anthony Reid, 'Political "Tradition" in Indonesia: The One and the Many' (1998) 22 *Asian Studies Review* 23, 35–6.

5 Government of Indonesia, above n 2, [17].

6 This figure is current up to December 1998. A Zen Umar Purba, 'Answers to Questionnaire on Corporate Bankruptcy and Security Law (Indonesia)' (Paper presented at the International Symposium on Corporate Bankruptcy and Security Law, Osaka, Japan, 19 February 1999) 16 (copy on file with author).

7 The law was substantially amended on 22 April 1998 when the then President Suharto issued *Government Regulation in Lieu of Law No 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia). The New Bankruptcy Law was subsequently confirmed when it was enacted as a statute by Law No 4/1998 dated 9 September 1998 with amendments pending at the time this article goes to press. In Indonesia, the President may issue *Peraturan Pemerintah* ('Government Regulations') which are intended to assist in the implementation of *Undang-Undang* ('Laws') enacted by the *Dewan Perwakilan Rakyat* ('House of People's Representatives') on the basis of *Ketetapan* ('Resolutions') made by the *Majelis Permusyawaratan Rakyat* ('People's Consultative Assembly'). Government Regulations do not have the same force as Laws, but in the absence of Law on a topic they form the legal authority. See Benny Tabalujan, *Indonesian Company Law: A Translation and Commentary* (1997) 2–3, 6–8.

8 The Bankruptcy Law was promulgated in the *State Gazette* No 217 of 1905 in conjunction with the *State Gazette* No 348 of 1906: Muljadi, 'Answers to Questionnaire on Insolvency Law and System (Indonesia)', above n 1, 3.

9 The Law is an example of Dutch focus on commercial activities influencing their application of law in Indonesia. The Dutch created parallel legal systems in Indonesia whereby the application of law was predicated on race. Generally, the Dutch preserved the indigenous legal status quo unless social control was threatened or trade was involved. After independence, Dutch law continued to apply unless a new law concerning that matter was promulgated. This is provided for by the *Constitution of the Republic of Indonesia* (1945) in article 2 of the Transitional Provisions: 'All Government bodies and the existing regulations, shall still prevail, as long as new laws have not yet been promulgated'. On legal pluralism in Indonesia, see generally Daniel Lev, 'Judicial Institutions and Legal Culture in Indonesia' in Claire Holt (ed), *Culture and Politics in Indonesia* (1972) 246; M B Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (1975), especially ch 5; and Timothy Lindsey, 'Paradigms, Paradoxes and Possibilities: Towards Understandings of Indonesia's Legal System' in Veronica Taylor (ed), *Asian Laws Through Australian Eyes* (1997) 90.

personnel relating to bankruptcy in Indonesia.[10] According to one law firm, 'in the last 20 years there were almost no bankruptcy declarations pronounced by the courts in Jakarta.'[11] This is not to say that there have not been any insolvent entities in Indonesia; rather, it seems that after a bankruptcy case is filed, 'the debtor usually makes a reasonable offer for settlement.'[12] The New Bankruptcy Law seeks to overcome the reluctance of creditors and debtors to use statutory remedies in order to resolve debt problems.

The New Bankruptcy Law provides for 'a definite time frame for decision making on a declaration of bankruptcy' which is aimed at speeding up bankruptcy proceedings, and interim actions with respect to the debtor's estate, which should be useful for creditors concerned about dilution of the debtor's assets before a declaration of bankruptcy.[13] It is also hoped that the expansion of the professional group known as *kuratur* ('receivers') and the establishment of a new Commercial Court will improve the efficiency and credibility of bankruptcy proceedings.[14] For debtors, an important aspect of the New Bankruptcy Law is that it encourages the use of corporate rehabilitation by limiting the ability of secured creditors to foreclose on loans during reorganisation proceedings.[15] This reform, discussed below, is indicative of trends in modern bankruptcy law reform towards rehabilitation and reconstruction of corporations in financial difficulty.

Other recipients of IMF loans have been forced to reform their national bankruptcy law as a condition of payment.[16] One of the problems with the IMF's approach is that 'modernisation' seems to equate with 'Westernisation'.[17] Critics argue that, by imposing conditions for their loans, international organisations such as the IMF are participating in 'cultural imperialism' or 'neocolonialism'.[18]

[10] *Elucidation of Government Regulation in Lieu of Law Number 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) 1. According to Lindsey, the Ministry of Justice was only able to find 'about 25 written judicial decisions for the period between 1905 and 1998' on bankruptcy: Timothy Lindsey, 'The IMF and Insolvency Law Reform in Indonesia' (1998) 34(3) *Bulletin of Indonesian Economic Studies* 119, 120.

[11] Muljadi, 'Answers to Questionnaire on Insolvency Law and System (Indonesia)', above n 1, 7.

[12] Ibid.

[13] *Elucidation of Government Regulation in Lieu of Law Number 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) 2.

[14] Ibid.

[15] Government of Indonesia, above n 2, app 7.

[16] For example, a precondition for financial assistance and membership for Russia was the enactment of bankruptcy legislation. See Carol Patterson, 'The New Insolvency Regimes in Russia and the Commonwealth of Independent States' in E Bruce Leonard and Christopher Besant (eds), *Current Issues in Cross-Border Insolvency and Reorganisations* (1994) 191.

[17] See, eg, Mary Hiscock, 'Contemporary Law Modernisation in Southeast Asia: A Personal Perspective' in Taylor (ed), *Asian Laws Through Australian Eyes*, above n 9, 31, where 'modernisation' is defined as 'the fundamental change of some aspect of the systemic nature of law to a western model by an act of government': at 31. On the introduction of 'Western' laws into 'Asian' countries, see also Roman Tomasic and Peter Little, 'Corporate Insolvency and Self-help in Six Asian Legal Systems' (1998) 6 *Insolvency Law Journal* 63, 67.

[18] The body of literature on this point has swelled in the past two decades. For some initial thought on the issue of 'law and development' see Lawrence Friedman, 'Legal Culture and Social Development' (1969) 4 *Law and Society Review* 29. For more recent critiques that include a number of references to further reading on this issue, see, eg, Christoph Antons, 'Analysing Asian Law: The Need for a General Concept' (1995) 13 *Law in Context* 106, especially 107; and Anne Orford and Jennifer Beard, 'Making the State Safe for the Market: The World Bank's *World Development Report 1997*' (1998) 22 *Melbourne University Law Review* 195. For a recent

The IMF's use of bankruptcy law reform in Indonesia as an index of modernity can be criticised as an example of a multinational organisation dominated by developed countries, and dictating governmental policy to a developing nation. Moreover, the IMF's role in the Indonesian crisis arguably goes beyond its own objectives.

The genesis of the IMF was the human suffering brought about by the Great Depression and World War Two,[19] and its initial role was to provide short-term loans to countries in balance of payments difficulties in order to foster international economic stability.[20] This role has been critically contrasted with the 1998 package negotiated with the Indonesian government.[21] The IMF itself has admitted that the financial crises in Asia were beyond anything it has ever experienced before, requiring unprecedented capital and intervention.[22] Rather than provide temporary balance of payments relief, the IMF has set a timetable of several years that includes conditions for its loans which arguably intrude on the sovereignty of the Indonesian government; the demand that the government reform Indonesian bankruptcy law is one example.[23]

Whilst the cries of 'neo-colonialism' are in one sense justified, the crisis in Indonesia highlights the impossible position of governments in developing countries. On the one hand, they are under domestic political pressure to 'stand up' to international organisations and find their own solutions to legal and economic problems; on the other hand, there is tremendous pressure on developing and transitional economies to establish a legal infrastructure that will please investors, trading partners and financial institutions.[24] Comments by financial analysts such as Craig James, Chief Economist at Colonial State Bank, reflect this sentiment: 'The bottom line as far as the markets are concerned is will Indonesia make the reforms that the IMF requires to commit further rescue

exposé on the issue in the context of the IMF's current program for Indonesia, see Liz Jackson (Reporter) and Lisa McGregor (Producer), 'The Country Doctors', ABC Four Corners Program, 18 May 1998. Lindsey also notes that the IMF is greatly influenced by the European Union, Japan and most significantly the United States, as the major donors and therefore majority board members: Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10, 123.

19 For a comprehensive, if somewhat unsurprisingly rosy overview of the IMF, its foundations, functions and components, see generally David Driscoll, 'What is the International Monetary Fund?' (1997) <http://www.imf.org/external/pubs/ft/exrp/what.htm> (copy on file with author).

20 Michael Pryles, Jeff Waincymer and Martin Davies, *International Trade Law: Commentary and Materials* (1996) 93.

21 For recent criticism of the IMF's approach, see the comments by American economist Professor Jeffrey Sachs on 'The Country Doctors', above n 18. See also Pryles, Waincymer and Davies, above n 20, 95. See generally on this topic, Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10.

22 Timothy Lane et al, 'IMF-Supported Programs in Indonesia, Korea and Thailand: A Preliminary Assessment (Preliminary Copy)' (1999) <http://www.imf.org/external/pubs/ft/op/opasia/asia1.pdf> [6], [105] (copy on file with author).

23 Government of Indonesia, 'Timetable of Structural Policy Commitments' (1998) <http://www.imf.org/external/np/loi/101998.htm> (copy on file with author). The dates on this timetable range from late 1997 to the ambiguous 'ongoing'.

24 On this point in the context of harmonisation of laws and Asian nations' reluctance to accept comity, see Veronica Taylor, 'Beyond Legal Orientalism' in Taylor (ed), *Asian Laws Through Australian Eyes*, above n 9, 47, 51 fn 19.

packages. That's all that really matters.'[25] The underlying assumption is that the IMF's solutions will bring about a more 'Western', market-orientated legal infrastructure that will support investment and resemble that which exists at 'home'.[26] Arguably, this is what occurs superficially with the introduction of 'black letter' law reform, but the reality requires a closer examination of the political, economic and social context of bankruptcy law in Indonesia.[27]

II FINANCIAL CRISIS, LEGISLATIVE SOLUTIONS AND BANKRUPTCY LAW AS AN INDEX OF MODERNITY[28]

The 'modernisation' and reform of law in Asia is not a new phenomenon.[29] Tomasic and Little argue that 'the introduction of commercial law reforms resembling Western models has often followed some serious breakdown in the economy'.[30] Whilst this is certainly true of many recent reforms, it would be a mistake to assume that financial crisis is the sole impetus for legislative reform in Asia and elsewhere. As Hiscock suggests, there are 'numerous and changing' reasons for reform: 'colonialism, imperialism, democratisation, and perceptions of "modernity" and "progress", sometimes held by a local government, but more often by foreigners'.[31] Moreover, reform is usually brought about by a combination of reasons which are inextricably related. In the Indonesian context, for example, the Government is arguably compelled to implement reform in order to prove its political legitimacy. As Taylor points out:

> Traditional development theory holds that the state enhances its legitimacy through protective legislation, regulating the form and content of consumer and commercial transactions, and through intervention in areas of public interest. ... Such developments are often seen as yardsticks in a legal system's evolution toward 'rational' modernity.[32]

25 Nic Hopkins, 'Market Jury Still Out on Indonesia', *The Australian* (Sydney), 22 May 1998, 24. Hopkins quotes a number of other financial analysts and economists making predictions of a similar effect.

26 In a similar vein, see Taylor's comments with respect to internationalisation of contracts: 'For many lawyers in Asian countries, this kind of contractual "internationalisation" represents a form of neo-colonialism, in which (they assume) the model to which local contracts will converge will be an American one'. Taylor questions whether this is really the case: Veronica Taylor, '"Asian" Contracts: An Indonesian Case Study' in Anthony Milner and Mary Quilty (eds), *Australia in Asia: Episodes* (1998) 169.

27 See below Part IV.

28 In a similar way Taylor suggests that contracts might be used as an 'index of modernity': Veronica Taylor, '"Asian" Contracts: An Indonesian Case Study', above n 26, 168.

29 Another example of recent and voluminous legal reform in Asia is the process occurring in Vietnam. See, eg, Hiscock, above n 17; and John Gillespie, 'Transplanting Legal Models: A Case Study of Administrative Reform in Vietnam' (1997) 33 *International Law News* 23. On the use of the generic term 'Asia' and Australia's relationship with this 'region', see Taylor, 'Beyond Legal Orientalism', above n 24, 47. See also, on the origins and development of the use of the term 'Asia', Tessa Morris-Suzuki, 'Invisible Countries: Japan and the Asian Dream' (1998) 22 *Asian Studies Review* 5.

30 Tomasic and Little, above n 17, 67. They cite the examples of the 'Pan Electric collapse in Singapore in the mid 1980s and the stock market crash in 1987 (especially in Hong Kong and Malaysia)'.

31 Hiscock, above n 17, 31.

32 Taylor, '"Asian" Contracts: An Indonesian Case Study', above n 26, 168.

Although reform has been hastened by the financial crisis, the enactment of the New Bankruptcy Law by the Indonesian Government can be interpreted as an attempt to enhance its legitimacy in the eyes of the international community. The government is also trying to give its domestic constituency the impression that it is doing something about the crisis through its legislative response, whilst at the same time pacifying the Indonesian business elite who want to protect their own position.[33]

Australia has not escaped this trend. The reform of Australia's company law and mechanisms for settlement of corporate debt, for example, was an urgent issue for the Australian Government in the early 1990s in the wake of the spectacular corporate collapses of the late 1980s.[34] But they also accompanied changing attitudes towards government regulation and the scope of legislative mechanisms in controlling the market. When changes to the Australian company law regime were introduced in 1992, the then Attorney-General, Michael Duffy, highlighted the fact that the process of bankruptcy law reform heralded a new approach:

> We need to give Australian business the kind of corporate law that it will need for the twenty-first century. ... I would be looking to commence a process of simplifying and modernising our corporate law as soon as the current Bills were finalised.[35]

During the past two decades, many other countries have reformed their bankruptcy law regimes and others are in the process of doing so.[36] In each case, the mix of catalysts has been quite different, but the focus on bankruptcy law is indicative of its importance to market economies.

III THE NEW VOGUE IN INSOLVENCY REGIMES: CORPORATE REHABILITATION

The IMF's insistence on bankruptcy law reform in Indonesia also suggests that corporate bankruptcy law is a necessary component of a functioning market economy.[37] However, one of the problems with this assumption is that there is

[33] Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10. Lindsey describes the government as being 'caught between three powerful and frequently competing forces: the multilateral institutions; the amorphous "reform movement"; and the local business elite (in most cases, former Soeharto "cronies")': at 122.

[34] See generally, Commonwealth, *Parliamentary Debates*, House of Representatives, 3 November 1992, 2400–2 (Michael Duffy, Attorney-General).

[35] Ibid 2404. See also similar comments in the Explanatory Memorandum, Bankruptcy Legislation Amendment Bill 1996 (Cth). For example, '[the Bill] will make a number of significant and important changes to bankruptcy law, to further the government's commitment to modernising personal insolvency law': at 1.

[36] Other countries to reform their bankruptcy regimes include: Canada, the United States, England, China and Vietnam. See A E Ledger, 'A Discussion Paper: The Nature and Relevance of Voluntary Administration to Indonesian Bankruptcy Law' (Prepared for Economic Law Improvement Procurement System law reform project in Indonesia, March 1996) 2.

[37] Thomas Waelde and James Gunderson, 'Legislative Reform in Transition Economies: Western Transplants: A Short-cut to Social Market Economy Status?' (1994) 43 *International and Comparative Law Quarterly* 347. Waelde and Gunderson argue that company law, including bank-

disagreement as to the parameters of 'market economy' based on different ideological beliefs about a range of important issues such as capitalism, corporate governance and the place of government in protecting insolvent debtors and assisting unsecured creditors. To some extent this explains why wholesale adoption of Western-model laws in Asian countries often fails. Bankruptcy law is indicative of a society's perception of how the nation's economy should operate, how it views the operation of companies and its attitude towards debtors. It is difficult for societies which do not share the same ideological beliefs as the authors of the legal models to instantly embrace law reform. Indeed, recent debate over the introduction of corporate reconstruction mechanisms reveals that, even within countries with longstanding and much used bankruptcy laws, there is disagreement as to the role of bankruptcy law. [38]

The introduction of corporate reconstruction or rehabilitation mechanisms into bankruptcy law reflects concern for the wider social impact that winding up companies has on society, including unemployment and loss of earnings to creditors.[39] A company that can be rehabilitated is usually more valuable to a creditor than a company that is wound up, because a 'live' company will ideally go on to repay its debts. However, this may not be the case where a secured creditor is involved, because they are most likely to receive at least part payment even if the company is wound up. There is some suggestion, particularly in American academic writing on the corporate reorganisation mechanisms in chapter 11 of the American *Bankruptcy Code*,[40] that the sole purview of bankruptcy law should be the distribution of limited assets amongst creditors.[41] Such criticisms of corporate rehabilitation mechanisms reflect the fundamental tension that exists in bankruptcy law between its function as a debt recovery mechanism and its public policy purposes of preventing insolvent trading and assisting debtors. Critics would suggest that the debt recovery mechanism should prevail, some finding no use for rehabilitation mechanisms whatsoever. However, the Harmer Report on insolvency law in Australia concluded that:

ruptcy law, property law and contract law are essential to a 'functioning market economy': at 355.

38 For an excellent summary of the tensions between differing philosophies of bankruptcy law and their ideological and political leanings, see, eg, Axel Flessner, 'Philosophies of Business Bankruptcy Law: An International Overview' in Jacob Ziegel (ed), *Current Developments in International and Comparative Corporate Insolvency Law* (1994) 19. See also, on the future role of governments with respect to regulation in general, the important work by Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (1992).

39 James O'Donovan, 'Corporate Insolvency: Politics, Perspectives and Reform' (1990) 3 *Corporate Business Law Journal* 1, 2 attempts to quantify the loss to Australian creditors due to insolvencies. The estimates made on late 1980s figures are in the order of billions of dollars.

40 *Bankruptcy Code*, 11 USCA ch 11 (1993).

41 For a good overview of the debate in America thus far, see generally Donald Korobkin, 'Rehabilitating Values: A Jurisprudence of Bankruptcy' (1991) 91 *Columbia Law Review* 717. Key texts in the debate include: Thomas Jackson, *The Logic and Limits of Bankruptcy Law* (1987) (applying a law and economics approach to the issue); and Teresa Sullivan, Elizabeth Warren and Jay Westbrook, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (1989) (questioning the assumptions of the law and economics movement by using socio-demographic data on debtors).

> The Commission does not suggest that its approach will result in the salvation of failed companies or even companies which show signs of failing. Nonetheless, the aim is to encourage early positive action to deal with insolvency. It will be worthwhile and a considerable advantage if it saves or provides better opportunities to salvage even a small percentage of the companies which, under the present procedures, have no alternative but to be wound-up.[42]

The Report recommended that a flexible rehabilitation mechanism is a necessary component of corporate bankruptcy law in order to achieve fairness between debtors and creditors.[43]

In a different context, the new corporate insolvency regimes of some of the former Soviet republics have been criticised for relying too heavily on corporate rehabilitation mechanisms. The new laws in countries such as Russia and Belarus try to find a balance between, on the one hand, the urgent need to wind down unprofitable state enterprises which continue to trade even though they cannot meet their debts; and, on the other hand, the desire to maintain insolvent enterprises' obligations to the existing workforce.[44] One of the aims of the new laws in Russia is literally to sell off non-performing enterprises to independent managers, but Patterson argues that whilst these enterprises still have legal obligations to attempt a 'recovery' and maintain the existing workforce or pay redundancy packages, foreign investors are unlikely to be interested in bidding for them.[45] The People's Republic of China ('PRC') is facing similar problems in the move to enact bankruptcy legislation. Communist Party promises of an 'iron rice bowl' no longer apply in the transitional PRC economy, but the government is 'still aware' of the 'special obligations' owed to workers in formerly state-owned enterprises.[46]

Although Indonesia does not face the problem of having to wind up previously state-owned enterprises in the move from a planned economy to a market economy, it does face problems implementing the new system for dealing with corporate debt. In part, this is a consequence of not having a well-developed system of secured transactions; for example, foreclosure of a mortgage in Indonesia is time-consuming and there is no registration system for fiduciary transfers which are widely used by businesspeople.[47] Furthermore, specifically with respect to the implementation of rehabilitation mechanisms, difficulties are foreseeable as a consequence of the economic crisis. The problem for Indonesian companies is that, because the financial crisis is so acute, it may be the case that there are not enough unsecured creditors willing to suspend their obligations for

[42] Australian Law Reform Commission, *General Insolvency Inquiry*, Report No 45 (1988) [53].
[43] Ibid [56].
[44] Patterson, above n 16, 191–7; 199–200.
[45] Ibid 197.
[46] Wang Weiguo, 'The Draft Bankruptcy Law of the People's Republic of China' (Paper presented at a Seminar on the Drafting of a Bankruptcy Law for China, La Trobe University, Melbourne, 29 May 1998) ch 8.
[47] Zen Umar Purba, above n 6, 14. Joining the chorus of calls for a new secured transactions law, Zen Umar Purba notes that there is no legislative basis for the form of security known as 'fiduciary transfer' in Indonesia; it is based on judicial precedent, although the provisions with respect to pledges are used as guidelines: at 3.

payment of debts.[48] The provisions negotiated with the IMF suggest that 'adequate compensation and protection' will be provided to creditors who are prevented from foreclosing on their collateral during reorganisations.[49] It would seem that this has been done by giving unsecured creditors the right to sue an administrator who does not fulfil their obligations under the agreement reached at the meeting where a permanent suspension of obligations for payment of debt was rendered.[50]

It remains to be seen whether unsecured creditors themselves are willing to take this risk of suspending an obligation to pay debts. In the absence of any alternative, perhaps they will. Experience in Australia suggests that, unless the rehabilitation plan is supported by secured creditors, it will be difficult to implement because a secured creditor may still enforce their charge.[51] This may also be a problem with the Indonesian corporate rehabilitation provisions because, according to article 230 'suspension of obligations for payment of debt shall not apply to claims secured by pledge, mortgage, other security rights *in rem*'. A secured creditor may still foreclose on their collateral during the rehabilitation period, subject to the stay on proceedings of a maximum 90 days from the time that a decision declaring bankruptcy is made.[52] If a secured creditor were to do this, the assets that the company would need to operate its business may be sold (leaving no chance for rehabilitation) and there may be little left for unsecured creditors to share.[53]

IV ARE 'BLACK LETTER' LAW REFORMS OF ANY RELEVANCE?

Apart from the lack of a well-defined law of secured transactions and the reluctance of creditors to participate in the reorganisation and rehabilitation of

[48] Under *Government Regulation in Lieu of Law No 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) art 217(5)

> a permanent suspension of obligation for payment of debt or extension thereof shall be stipulated by the Court on the basis of the approval of more than $^1/_2$ (one half) of the unsecured creditors whose rights are acknowledged or provisionally acknowledged in attendance and representing at least $^2/_3$ (two thirds) of all claims which are acknowledged or provisionally acknowledged of the unsecured creditors or their proxies in attendance at said session.

[49] Government of Indonesia, above n 2, app 7.

[50] See *Government Regulation in Lieu of Law No 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) art 234.

[51] This can be done either before the administration commences or 10 business days after notice of the appointment of an administrator or the commencement of the administration. Steps may also be taken to enforce a charge during the administration, although it would not be finalised until the administration is terminated: Roman Tomasic and Keturah Whitford, *Australian Insolvency and Bankruptcy Law* (2nd ed, 1997) 184–7. Despite these problems, Tomasic and Whitford note that the Australian voluntary administration procedure has been widely used since it became available in 1993, suggesting that secured creditors have been willing to support the rehabilitation mechanism: at 163.

[52] See *Government Regulation in Lieu of Law No 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) arts 230, 231A, 56A.

[53] There may be some relief for unsecured creditors in the form of art 230(2) which provides that

> where the assets secured by a right of pledge, mortgage, and other security rights *in rem* are not sufficient to secure claims, the creditors so secured shall have the rights of unsecured creditors, including the right to cast votes during the continuation of the suspension of obligations for payment of debt.

companies in Indonesia in light of the nation's economic difficulties, there are other reasons to think that the New Bankruptcy Law will not have any immediate impact on the course of bankruptcies in Indonesia. Although the importance of 'black letter' law reform cannot be denied, whether these substantive changes are effective in managing corporate bankruptcy and achieving the objectives of their Bankruptcy Law also depends on the social parameters and institutional organisations in which the law operates.[54] The IMF has made some recognition of this by insisting that the Indonesian Government create a Commercial Court to deal with bankruptcy matters.[55] But it will arguably be some time before this court can operate effectively. The alleged corruption and general mistrust of Indonesian courts suggest that lawyers and their clients will not immediately utilise the new law in great numbers, if at all.[56] Moreover, these developments may be undermined by efforts to establish an extensive, government sponsored, out-of-court framework for corporate debt restructuring known as the Jakarta Initiative, as discussed below.

A *Social Stigma of Litigation*

One reason for the possible lack of impact of the 'black letter' law reforms on Indonesian bankruptcies is a desire on the part of debtors to avoid the social stigma of litigation and bankruptcy.[57] Indonesian debtors usually make some sort of offer once a bankruptcy petition is filed.[58] The lack of judicial pronouncements on bankruptcy suggests that creditors usually accept these offers.[59] According to Taylor, '[c]ourts are still associated with criminal justice, or viewed as the refuge of last resort for those who cannot order their affairs properly';[60] thus they are to be avoided. There are a number of reasons to suggest that this may change, including the fact that the worsening economic crisis in Indonesia may mean that debtors are no longer in positions to make 'reasonable' offers to repay creditors and the reformed corporate reorganisation provisions in the New Bankruptcy Law may become a viable alternative for some debtors. However, in the short-term it is unlikely that Indonesian debtors will be any more keen to use the Bankruptcy Law than their creditors, because of the severity of the corporate

[54] See, eg, Waelde and Gunderson, above n 37, 360. With particular regard to 'Asia' see Antons, above n 18, and Annette Marfording, 'The Fallacy of the Classification of Legal Systems: Japan Examined' in Taylor (ed), *Asian Laws Through Australian Eyes*, above n 9, 65.

[55] See below Part IV(B).

[56] On judicial corruption in Indonesia, see Lev, above n 9, especially 259–61; and Lindsey, 'Paradigms, Paradoxes and Possibilities', above n 9, especially 103. There is some evidence to suggest that, having become frustrated with the lack of progress in negotiating with debtors, creditors are beginning to resort to the courts. See, eg, comments by the Chairman of the Indonesian Chamber of Commerce and Industry, Aburizal Bakrie, 'Agreement Between Debtors and Creditors Still Far Off', *Jakarta Post* (Jakarta, Indonesia), 3 November 1998, <http://www.indoexchange.com/jakarta-initiative/eng/pr/pr0406.html>.

[57] Tomasic and Little, above n 17, 67.

[58] Muljadi, 'Answers to Questionnaire on Insolvency Law and System (Indonesia)', above n 1, 7.

[59] Ibid.

[60] Taylor, '"Asian" Contracts: An Indonesian Case Study', above n 26, 173.

debt problem in Indonesia and the power that secured creditors have over the proceedings.

B *Judicial Competency, Corruption and Interference*

The social stigma of litigation does not entirely explain the complete failure of Bankruptcy Law and its attendant judicial mechanisms to capture the imagination of the Indonesian public. There is also a general perception that Indonesian courts are incapable of dealing with commercial disputes fairly and competently. As Taylor points out:

> To be effective laws or regulations must be legitimate — they must command the confidence of those affected — and they must be enforceable. For business, both of these issues turn on questions of infrastructure — the nature of the legislature, government agencies, legal profession and court system of the country with or within which the transaction is taking place.[61]

Because they consider that Indonesian courts are unable to deal with commercial disputes competently and fairly, lawyers representing investors and businesspeople who want to recover debts in Indonesia are unlikely to advise their clients to use the New Bankruptcy Law.[62] Furthermore, even if a judgment in favour of a creditor is obtained, enforcement of judicial decisions in Indonesia is extremely difficult 'without bringing political clout or money into play'.[63]

In response to criticism that Indonesian courts are incapable of dealing with commercial disputes,[64] the IMF has insisted on the creation of a Commercial Court, acknowledging that, '[a]n improved bankruptcy law will have little impact unless it is enforced by an effective judiciary'.[65] Under the previous Indonesian law on bankruptcy, jurisdiction over bankruptcy cases was held by the *Pengadilan Negeri* ('District Court') in whose jurisdiction the debtor was domiciled.[66]

[61] Veronica Taylor, 'Getting Out From Behind the Curve: Lawyers and APEC' (1995) 28 *International Law News* 10, 15.

[62] Similarly, despite a generally glowing review of the English- and American-inspired Bankruptcy Law introduced in the former Soviet Republic of Kazakhstan in 1992, Patterson comments that it remains to be seen how the law will be enforced by the courts and whether creditors will avail themselves of legal protection. She concludes, '[i]t is still too early to tell whether this western-inspired law will correspond to the realities in Kazakhstan': Patterson, above n 16, 199.

[63] Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10, 121, citing Simon Butt, 'The *Eksekusi* of the *Negara Hukum*: Implementing Judicial Decisions in Indonesia' in Timothy Lindsey (ed), *Law and Society in Indonesia* (1999) 247.

[64] On the basis of interviews with local and Australian legal practitioners, Taylor, '"Asian" Contracts: An Indonesian Case Study', above n 26, 175, lists four main problems with respect to Indonesian courts as identified by lawyers in Indonesia:

> Judges are not trained to a level where they can comprehend foreign-investment documentation in English and are not comfortable with international transactions. To foreign clients, it appears that the courts are biased in favour of the Indonesian party. Both lawyers and their foreign clients believe that judges may be corrupted through bribery. Decisions made by Indonesian courts, in commercial cases, are not consistent.

With respect to the new Bankruptcy Law, Lindsey comments that the recent decisions of the new Commercial Court are 'widely seen as bizarre or simply wrong': Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10, 120.

[65] Government of Indonesia, above n 2, app 7 [5].

[66] Kartini Muljadi, 'Certain Aspects of Bankruptcy Regulations in Indonesia', (Paper presented at the International Symposium on Bankruptcy Laws and Systems in Asian and Pacific Countries,

Usually the District Court's decision on the management and settlement of a bankrupt estate would be the final decision, unless there is an express provision for appeal under the Bankruptcy Law.[67] The *Government Regulation in Lieu of Law No 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia) issued on 22 April 1998 inserted a third chapter (articles 280–9) into the Bankruptcy Law, creating a Commercial Court in the courts of general jurisdiction that

> will have jurisdiction over bankruptcy proceedings and general commercial disputes (jurisdiction over the latter will be exercised once the courts capacity is sufficiently developed). The Special Commercial Court will be staffed by specially trained judges, will ensure that rules regarding summary proceedings are strictly applied and will render written decisions that provide that [*sic*] legal basis for the ruling in question. Appeals of decisions rendered by the Special Commercial Court will go directly to the Supreme Court.[68]

Whilst this new specialist court may eventually lead to improved training of judicial personnel and handling of commercial disputes in Indonesia, there are no measures which address either the perception that Indonesian courts are biased in favour of Indonesian parties or the main causes of corruption, such as the low salary and status of judges.[69]

The reforms do not address the possibility of interference in the workings of the new Commercial Court by the Indonesian Executive through the auspices of the Chief Justice of the Supreme Court. According to the *Elucidation on the Regulation* on bankruptcy:

> The Chief Justice of the Supreme Court shall give guidance and shall conduct supervision of the process of adjudication at the first instance, and at the appeal level, if any, so that the Commercial Courts will be run in accordance with the provisions of the Law on Bankruptcy as amended.[70]

Describing the power balance under the *Constitution of the Republic of Indonesia* (1945) in terms of an 'executive hegemony', Lindsey explains that

> power is seen as stemming from the [People's Consultative Assembly], the supreme sovereign body and is 'distributed' between the executive, the legislature and the judiciary. The President, as the 'mandatory' of the [People's Consulta-

Osaka, Japan, 18 November 1997) 10; and Muljadi, 'Answers to Questionnaire on Insolvency Law and System (Indonesia)', above n 1, 8.

67 See art 82 of the Bankruptcy Law. An appeal may be granted in circumstances that conform with arts 8–11. For example, 'Under article 8 of the Bankruptcy Law if the debtor ... has not been given a fair opportunity to be heard during the examination in the District Court, such person shall be entitled to contest the court's judgement within a period of 14 days': Muljadi, 'Certain Aspects of Bankruptcy Regulations in Indonesia', above n 66, 11.

68 Bankruptcy Law, art 82.

69 On judicial corruption in Indonesia, see Lev, above n 9, especially 259–61; and Lindsey, 'Paradigms, Paradoxes and Possibilities', above n 9, especially 103. On the reasons for corruption in the countries which form the Association of South East Asian Nations generally, with particular reference to Vietnam, see Gillespie, above n 29.

70 *Elucidation of Government Regulation in Lieu of Law Number 1 of 1998 Concerning Amendments to the Bankruptcy Law* (Republic of Indonesia), elucidation on art 284(1).

> tive Assembly] can thus claim an implicit right of influence, if not even intervention, in respect of the other two limbs of government.[71]

Because Chief Justices are appointed by the President, they are said to hold de facto ministerial status. The logical conclusion of this in the Indonesian political context is that because the Chief Justice is the equivalent of a minister and ministers are 'assistants' to the President, the Chief Justice is behaving quite properly when he or she acts at the behest of the President. Furthermore, because judges have the status of civil servants without tenure, they are in practice compelled to follow the instructions of the Chief Justice.[72]

To Australian eyes, this possibility that the executive may intervene in litigation translates into a perception that the judicial system is biased against foreign parties to a dispute. Whilst the separation of powers in Australia is by no means absolute, in Indonesia the lines between the executive, legislature and judiciary are extremely fluid because of the power distribution arrangement under the *Constitution of the Republic of Indonesia* (1945). However, it should not be concluded from these comments that foreign lawyers and their clients are the only parties who mistrust the Indonesian court system. Lindsey warns that

> Australians often assume with Orientalist condescension that corruption is an inherent part of Indonesian 'culture'; that it is, therefore, accepted by Indonesians; that it will never disappear; and that it is pointless to criticise it. In fact many Indonesians resent the corruption of their judicial system and the manner in which it subverts the resolution of disputes.[73]

Accordingly, in order to avoid becoming 'guinea pigs' for the new system and possible victims of judicial corruption and incompetence, debtors and creditors may favour alternative dispute resolution arrangements.[74]

C *Avoiding the Commercial Court: The Jakarta Initiative and the Indonesian Debt Restructuring Agency*

One way for debtors and creditors to avoid the new Commercial Court is by using the alternative out-of-court framework for corporate debt reconstruction sponsored by the Indonesian government and known as the *Prakarsa Jakarta* ('Jakarta Initiative'). The Jakarta Initiative is interesting because it detracts from the initial goals that the IMF set out to achieve through bankruptcy law reform; that is, the development of a 'modern' legal infrastructure that will support commerce in the future. In this sense it represents a failure for Western-model laws. The Initiative was established in September 1998 and represents a latent

[71] Lindsey, 'Paradigms, Paradoxes and Possibilities', above n 9, 97.

[72] Ibid 97–8. This is a common interpretation of the *Constitution of the Republic of Indonesia* (1945), although it is not a universally held view in Indonesia.

[73] Lindsey, 'Paradigms, Paradoxes and Possibilities', above n 9, 104.

[74] Taylor notes the growth of this area of law and criticises the tendency to use cultural theories to explain the use of arbitration as somehow inherently 'Asian'. See Taylor, 'Getting Out From Behind the Curve', above n 61, 17. Lindsey also suggests that alternative dispute resolution should not be overlooked in Indonesia as a practical means of solving disputes and avoiding judicial corruption: Lindsey, 'Paradigms, Paradoxes and Possibilities', above n 9, 104.

recognition of the Indonesian courts' inability to speedily and effectively deal with the enormity of the debt restructuring problem.[75] Its introduction is also evidence that foreign investors are not using the Bankruptcy Law and prefer organised negotiation to reliance on their statutory rights. This is arguably due in part to their lack of trust with respect to Indonesian courts.[76] Moreover, the Initiative is the manifestation of a government policy decision to assist debtors to avoid bankruptcy litigation.

The Jakarta Initiative is a list of legally non-binding procedures which it is hoped will allow creditors and debtors to negotiate towards an out-of-court plan for restructuring company debt.[77] The procedures include principles covering the organisation of negotiations and representation of companies by advisors.[78] Once a plan has been agreed upon, debtors can then register with the Indonesian Debt Restructuring Agency ('INDRA') in order to receive hard currency loans.[79] The World Bank is an enthusiastic and financial supporter of the Jakarta Initiative. It has described the procedures as a positive development for creditors and debtors alike:

> Using The Jakarta Initiative procedures, creditors prevent litigation, avoid the risks and costs of formal bankruptcy proceedings, and maximise the value of their business enterprise. Debtors, as a result of the restructuring process, emerge stronger and more competitive, maximising value for the company and its shareholders.[80]

Although at first glance it may seem like a positive option for debtors, the government obviously anticipates opposition to debt restructuring plans. Indeed, the Initiative may appear to be voluntary, but participation is not really open to negotiation. If a debtor does not cooperate with the Initiative's framework, the public prosecutor may initiate bankruptcy proceedings against them 'for reasons of public interest'.[81] In this way, the Initiative reinforces the importance of the bankruptcy reforms, but the very fact that it has been introduced by the government in order to resolve debt problems and assist debtors in avoiding court proceedings suggests that the potency of 'black letter' law reform has arguably been largely undermined.

In the immediate future, the consequences for Indonesia if the IMF's bankruptcy law reform does not succeed may not be so dramatic if the Jakarta

[75] Currently, the private sector in Indonesia holds around US$64 billion in overseas debt: 'Jakarta Upbeat on Corporate Debt Restructuring Prospects', *Jakarta Post* (Jakarta, Indonesia), 31 October 1998, <http://www.indoexchange.com/jakarta-initiative/eng/pr/pr04013.htm>.

[76] Zen Umar Purba, above n 6, 17.

[77] 'World Bank Upbeat on Corporate Upturn', *Jakarta Post* (Jakarta, Indonesia), 31 October 1998, <http://www.indoexchange.com/jakarta-initiative/eng/pr/pr04014.htm>.

[78] Government of Indonesia, 'About the Jakarta Initiative' (4 December 1998) <http://www.indoexchange.com/jakarta-initiative/eng/about/about.htm> (copy on file with author).

[79] 'Jakarta Upbeat on Corporate Debt Restructuring Prospects', above n 75.

[80] World Bank, 'The Jakarta Initiative' (2 November 1998) <http://www.indoexchange.com /jakarta-initiative/> (copy on file with author).

[81] Government of Indonesia, 'About the Jakarta Initiative — Question and Answer' (7 December 1998) <http://www.indoexchange.com/jakarta-initiative/eng/qa/qa.htm> (copy on file with author).

Initiative facilitates corporate debt restructuring.[82] The government continues to follow the course suggested by the IMF, for example providing training for judges,[83] but as in the case of the previous Dutch Bankruptcy Law in Indonesia, if the new provisions are not utilised and accepted as a legitimate means of resolving bankruptcy disputes, they will fall into disrepute. Accordingly, in the long term, this leaves Indonesia without viable judicial procedures to rehabilitate or wind up financially distressed companies. With these problems in mind, another team has been established in order to completely redraft the law on bankruptcy in Indonesia, but there is still no consensus on how to improve the operation of the Commercial Court which is fundamental to the success of any new reforms.[84]

The failure of law reform in Indonesia may also lead to a loss of faith in the IMF and its policy of 'black letter' law reform as mechanisms for helping solve international financial crises. Describing the IMF's reaction to international criticism of its handling of the Indonesian crisis, Lindsey notes that the IMF

> is now determined to use its influence over the flow of capital into the Indonesian economy to force the new government into strict and rapid compliance, as much for the IMF's own sake as for Indonesia's. This is understandable from the IMF's perspective. But it almost guarantees the failure of effective reform on the ground because the timetable is often unreasonably tight.[85]

Lindsey is particularly critical of the IMF's insistence on the hasty introduction of the new Commercial Court, whose judges, he argues, are woefully under prepared, which has 'damaged' lender confidence rather than 'improved' it.[86] He calls on the IMF to use its influence to encourage 'real structural change to the judicial system, before turning to laws that depend on that system for their implementation.'[87]

Acknowledging criticism of its handling of Asia's financial crises, the IMF's preliminary assessment of its program in Indonesia admits it has lessons to learn.[88] The authors note that '[i]n retrospect ... legal and institutional changes should have been given higher priority in the early phase of the programs as they were a precondition for restructuring to proceed'.[89] This and other observations made in the Preliminary Assessment may indicate that the IMF's approach to the ongoing financial problems of the Indonesian economy is changing. However, the fact that the report merely indicates that law reform should have been given

[82] Unfortunately, this does not appear to be the case at the moment, with the IMF reporting that the progress of corporate debt restructuring is slow. See Lane et al, above n 22, 119–20.

[83] The importance of training judges was highlighted in the Supplementary Memorandum of Economic and Financial Policies as attached to Ginandjar Kartasasmita (Co-ordinating Minister for Economy, Finance and Industry), 'Indonesian Letter of Intent', 13 November 1998, <http://www.imf.org/external/np/loi/1113a98.htm> Pt 4, [26] (copy on file with author).

[84] Zen Umar Purba, above n 6, 17.

[85] Lindsey, 'The IMF and Insolvency Law Reform in Indonesia', above n 10, 123.

[86] Ibid 120.

[87] Ibid 123.

[88] See Lane et al, above n 22. Notably, the IMF still stands by its decision to force change despite imposing 'severe time constraints': especially 110–11.

[89] Ibid 107.

'higher priority' and the lack of analysis of the difficulties of introducing new laws into a political, economic and social context with more basic structural problems, suggests that there still seems to be a fundamental misunderstanding of the problem at hand.

V THE QUEST FOR 'MODERN' LAWS IN INDONESIA: THE PROOF OF THE PUDDING IS IN THE EATING

Indonesia's experience highlights the difficulties of introducing Western model laws into other countries. In the context of commercial law reform in Vietnam, Hiscock points out the incongruity that lies ahead in the quest to 'modernise' the legal infrastructure in many Asian countries.[90] On the one hand, legislation itself appears to be an inappropriate tool for change because it performs an 'infrastructural' rather than a 'catalytic' role. But on the other hand

> legislation as window-dressing is another thing. There is throughout Asia a recurring experience of the process of law-making — not in order to have a system to support commerce and regulate what is actually done in commerce — but to satisfy the demands of foreign investors, financiers, and governments. ... What typically happens in such a situation is that there is little change to the fundamentals of the system, but new laws are placed in it, rather like currants in a pudding. There may be a realisation that what is needed is a whole new pudding, but that takes longer to achieve.[91]

Hiscock's comments are equally applicable to the reform of the Bankruptcy Law in Indonesia.

To use Hiscock's analogy, the Bankruptcy Law reforms in Indonesia are currants being placed into the pudding of the Indonesian legal system.[92] There is recognition that a new pudding is needed, hence the introduction of the New Bankruptcy Law and the creation of the Commercial Court, but these changes will take time to have any impact and are arguably outside the scope of 'black letter' law provisions. As a result the new Bankruptcy Law will have little immediate impact on the day-to-day settlement of corporate debt in Indonesia. Even as window-dressing to impress foreign investors, financiers, and governments, to use Hiscock's other analogy, it appears that the reforms instigated by the IMF have not been enough to coax the Indonesian economy out of the rut in which it has found itself. Most foreign investors, financiers and governments are unlikely to be fooled by the window-dressing of 'black letter' law reform. More and more they are acknowledging that regardless of how many legislative 'currants' are added, the proof of the pudding is in the eating.

The economic health of Indonesia is intimately tied with its political health. With the resignation of Suharto and the instalment of President Habibie, it seems that the international investment community is playing a 'wait-and-see' game

[90] Hiscock, above n 17, 36. Hiscock describes her chapter as a 'personal memoir' of commercial law reform in the Socialist Republic of Vietnam: at 31–2.

[91] Ibid 36–7.

[92] One reviewer of this article suggested that, '[t]he pudding is still cooking but it looks like the recipe was all wrong!'

with the Indonesian economy.[93] Their reluctance to return to Indonesia is in part due to a genuine disbelief that 'black letter' law reform will instantly create an infrastructure for the operation of a market-orientated economy in Indonesia. In particular, until judicial competency is improved and corruption eradicated, no law reform is likely to be successful.[94] The IMF has alternatively expressed dissatisfaction with the progress of reforms and has revised its reform program on the basis that it was too unrealistic.[95] But there may be no turning back for Indonesia. Globalisation and the attending pressures of international organisations such as the IMF, multinational corporations and foreign governments and investors suggest that, in order to once again reach the giddy heights of economic growth achieved by Indonesia prior to 1997, the Indonesian government must deliver on promises of legal modernity, including reforming the nation's Bankruptcy Law.[96]

[93] John Schauble, 'After the Sound and the Fury, the Quiet and the Reflection', *The Sunday Age* (Melbourne), 24 May 1998, 13.

[94] Zen Umar Purba, above n 6, 17.

[95] Jeremy Pelofsky and Daniel Moss, 'IMF Puts Brake on Extra Aid', *The Australian* (Sydney), 22 May 1998, 2; 'Call to Resume Economic Aid', *The Sunday Age* (Melbourne), 24 May 1998, 13; and 'Indonesia: IMF Relents on Reform Deadline', *The Sunday Age* (Melbourne), 31 May 1998, 14.

[96] Taylor, '"Asian" Contracts: An Indonesian Case Study', above n 26, 168.