Chapter 8

Difficult Issues in Creditors' Schemes

*Konrad de Kerloy**

Introduction

A creditors' scheme of arrangement is an arrangement between a company and some or all of its creditors which modifies those creditors' rights. Although insolvency or even financial distress is not a formal prerequisite to such a scheme, creditors' schemes are used in those contexts.

Creditors' schemes originated in the 19th century as an alternative to liquidation.[1] Although undergoing some legislative reform along the way, by the end of the 20th century the procedure for a creditors' scheme was thought to be complex, cumbersome, costly, slow and ill-suited to the average private company experiencing financial difficulty.[2] To address these deficiencies, in 1993 the voluntary administration procedure was introduced as a cheaper, faster and more flexible alternative.[3] The scheme of arrangement procedure was left untouched. As could be expected, the use of creditors' schemes has diminished greatly since these reforms were introduced.[4]

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1 A concise history of the procedure's origins is contained in R Langley, 'The future role of creditors' schemes of arrangement in Australia after the rise of voluntary administrations' (2009) 27 *Company and Securities Law Journal* 70 at 72.

2 Australian Law Reform Commission, *General Insolvency Inquiry*, Report No 45, AGPS, Canberra, 1988 ('Harmer report') at 46 and 53.

3 The *Corporate Law Reform Act 1992* introduced Part 5.3A into the *Corporations Act 2001*.

4 See generally C Anderson and D Morrison, 'Voluntary Administrations and Their Effect on the Use of Schemes of Arrangement' (1994) 2 *Insolvency Law Journal* 195 and R Langley, 'The future role of creditors' schemes of arrangement in Australia after the rise of voluntary administrations' (2009) 27 *Company and Securities Law Journal* 70.

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