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Administration and CVA in corporate insolvency law: pursuing the optimum outcome

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*I.C.C.L.R. 180 Abstract

In this article, the strengths and the problems of both administration and CVA *will be revealed. Consequently, solutions to their problems will be suggested with the aim of promoting a better result for all stakeholders.*

Introduction

There has been an ongoing obsession with identifying the elements that a corporate rescue procedure should possess in order to generate the most desirable outcome for all stakeholders. Essentially, corporate rescue includes the saving of the company or business, employment protection, and ensuring that the effect on creditors is the most favourable and that better returns will be delivered to them. There was an attempt by the Cork Committee in 1982 to promote a rescue culture; therefore, administration and the Company Voluntary Arrangement (CVA) as per the Insolvency Act 1986 (IA 1986) were created.[1] However, the expectations of the Cork Committee were not met, since administration and CVA were hardly used. There was an effort by the legislator to address this issue in the Enterprise Act 2002 (EA 2002), which abolished Administrative Receivership (AR) and introduced a streamlined administration. The changes post-EA 2002 positively affected the new administration procedure in terms of usage. However, there are occasions when companies have limited chances of survival but decide to use administration and/or CVA. This might signify that these procedures regularly operate as disguised liquidations and this is probably happening because these rescue mechanisms produce better returns for creditors than when the company uses liquidation.[2]

Administrations are currently preferred to CVAs, which generates an interest in discovering the strengths and weaknesses of each procedure in order to determine which aspects of both procedures might need to be revised, and how. According ***I.C.C.L.R. 181** to the statistics that were held by the Insolvency Service in 2017, there were 292 CVAs whereas the number of administrations reached 1,289.[3] The aspects of administration that will provide a further element in this article are whether there is an intended or unintended outcome of misusing the administration moratorium, whether the perception of pre-packs harms the reputation of administration and why financing an economically distressed company is essential during rescue. At the same time, CVAs are rarely considered by companies with economic problems, which requires an investigation of the reasoning behind this treatment. There will be an analysis on how CVAs operate and the reasons why high street and large companies choose it. Also, ways of circumventing the CVA impediments will be illustrated. The future of the British insolvency regime is currently uncertain but what needs to be done is to ensure that it provides effectiveness and trustworthiness. Essentially, both administration and CVA contain some flaws that will be identified and recommendations will be offered on how these issues can be addressed.

The success of Company Voluntary Arrangements as a rescue procedure

CVA is a mechanism that can rescue or restructure the company through a compromise or an arrangement between the company and its creditors. This arrangement could include, inter alia, debt returns in instalments that could last for years. The Cork Committee designed CVAs after Individual Voluntary Arrangements (IVAs), which is the analogous mechanism that is used for individuals in personal insolvencies. Interestingly, in personal insolvencies, IVAs receive considerable attention, whereas in corporate insolvencies the CVA is a process that is less used. Owing to the unpopularity of the procedure, a CVA with a moratorium was introduced in 2000. Notwithstanding, this new CVA procedure turned out to be even more unattractive than the classic CVA procedure. Therefore, one could argue that CVA with a moratorium is a burden on the legislation since it is barely used.[4] Although administration is the dominant procedure, statistics indicate that there is some use of CVAs and that could imply that, even though this mechanism is flawed, it has some strengths. The disclosure of how the CVA problems can be resolved requires significant attention.

It seems that what was targeted by the Cork Committee was not achieved in CVAs since, on most occasions when the company exits the CVA, it enters into liquidation. However, it has been argued by recent empirical research that the CVA is a flexible mechanism that produces effective results, particularly for creditors.[5] Yet, the procedure can only be successful if, first, the company enters the CVA before it becomes terminally ill; secondly, if there is sufficient planning of the CVA; and, thirdly, if there is a healthy co-operation between directors, creditors and insolvency practitioners (IPs). If the aforementioned components are fulfilled, the result would be a successful CVA but, on many occasions, it is difficult to ***I.C.C.L.R. 182** accomplish this. Therefore, some of the issues that arise from CVAs will be highlighted further, with some recommendations for ameliorating the procedure.

A common reason that rescue procedures fail to save a company is because the director waits until it is too late to seek assistance. Even though the director is incentivised to avoid this owing to the wrongful trading rules, this occurs either because directors are reluctant to admit, or because they fail to understand, that the company is in financial turmoil.[6] In contrast to administration, CVAs have a debtor-in-possession (DIP) feature whereas, in administration, the person who is in charge is the administrator.[7] A beneficial aspect of this feature is that CVAs have lower expenses than administrations. However, high expenses are still considered extensive for smaller companies because usually there is not enough cash flow that could assist them to use a CVA.[8] Another advantage of the director being in charge is that he/she has the incentive to save the company. At the same time, the director is the person who is more familiar to the company and this can develop as a benefit for the company. Nevertheless, on many occasions, the company is in economic distress owing to the deficiency of effective management by the director of the company.[9] Essentially, this characteristic could become a disadvantage when the director lacks the expertise of handling issues that relate to insolvency. Also, when the director is too attached to the company, this might be a drawback since he/she might hesitate to take some important decisions for the company. The knowledge of IPs focuses more on administrations and liquidations and these procedures are also more remunerative for them than CVAs; therefore, they tend to promote CVAs a lot less.[10]

Additionally, on the downside of CVAs, it seems that they generate a costly and complex procedure mostly because they last for years. Consequently, if the period of a CVA was limited, that could alleviate problems that relate to high expenses and complexity. Additionally, creditors often hesitate to accept CVAs owing to their suspicion that this procedure merely occurs in order to write off some of the debt of the company, which correlates to a phoenix operation. In this sense, their suspicion is created owing to its DIP feature. An additional difficulty is detected when the company cannot finance the procedure and will have to seek funding. When it comes to CVAs, it is very difficult to obtain funding because of the fact that banks are concerned about "throwing good money after bad".[11] Also, secured creditors are usually willing to provide this funding in insolvency that displaces management-like administration. As recorded by Frisby, only 10% of ***I.C.C.L.R. 183** companies that completed a CVA continue trading,[12] which shows that it is difficult to achieve a successful CVA.

One would expect that, since CVAs are modelled after IVAs, their results would be similar. Nonetheless, IVAs were promoted massively by advertisements which therefore had a major influence on their success; in the same way, CVAs could be positively affected by promotion through mass media, which could increase its usage.[13] On the one hand, the motive for promoting IVAs is the profits, which might not be the case for CVAs, since in corporate insolvency the IPs focus mainly on administrations owing to the high fees that they receive. On the other hand, one could argue that, if CVAs became popular, IPs would receive money from the increased work since they would charge for the hours they devoted to the CVA. Is it feasible for CVAs to mimic the positive capacities of IVAs? In IVAs, there is more incentive to save the individual but the same does not happen in CVAs since the incentive is not as high for rescuing a company.[14] This will always be a crucial difference and the most significant reason for the superiority of IVAs in personal insolvency which a CVA could never mirror.

Even though CVAs are statistically on the wane at the moment, they are preferred by large companies. A major number of high street large retailers and restaurants such as New Look, Carpetright, Kingfisher, Prezzo, Byron Burger and Moss Bros that are in financial difficulty choose to enter a CVA.[15] This could be a useful tool for large companies which are capable of financing such a procedure and they also avoid the deterioration of their reputation by being excluded from publicity. Essentially, this mechanism is extensively used to restructure large retail chains that are in general trying to reduce overheads. Specifically, they achieve this by closing stores and cutting down on rental obligations to landlords without negotiating separately with them, thus easing the process.[16] This has led to landlords who are supporting CVAs being used as a tool for abuse by companies.[17] Some of them have gone even further and argued that the companies might not be struggling and that the sole aim of using a CVA was to reduce the rents that were properly bargained for. The opinion of retailers, though, is that the rents are excessively high if they are compared with the economic crisis that is currently happening on the British high street. It is sensible to argue that both the landlords and retailers choose to exploit what they are allowed to do, and at the same time what is more convenient for them. Therefore, what might be required to solve the issue is a negotiation between landlords and retailers that would lead to a balance of their interests. ***I.C.C.L.R. 184***

The development of administration post-Enterprise Act 2002

Following the rejuvenation of administration by the EA 2002, various problems were addressed and the procedure became more popular. Specifically, statistics before 2003 indicate that administration was barely used but that practically changed after the EA 2002 came into effect. The EA 2002 made the purpose of administration more transparent by introducing a list of hierarchical objectives. Also, the appointment of the out-of-court administrator aimed to reduce the expenses and make the procedure simpler. An administrator can still be appointed through the court but the most popular option is the out-of-court appointment by the company or directors. The reform restricted the appointment of administrative receivers by forbidding the appointments for most charges after 15 September 2003. The qualified floating charge holder's right to appoint an administrative receiver was abolished; thus, for political reasons, they can also appoint an administrator. The capital market/project finance exceptions were also a change that affected administration. The main question here is whether these amendments were auspicious for the company stakeholders.

Before the enforcement of the EA 2002, administrators' appointments did not go beyond 300.[18] Nevertheless, by 2008, administrations had reached 4,822 but, in each of the past three years, administrations have been below 2,000.[19] Yet, this does not necessarily designate economic stability but instead it could indicate the existence of zombie companies or that the procedure is expensive, or that companies might prefer to use informal procedures, which are prominent at the moment.[20] There was much criticism about the extensive costs of administration, but there has recently been an attempt to address this matter. Consequently, the issue of high expenses was tackled by Insolvency (England and Wales) Rules 2016 (SI 2016/1024) r.18.16(4), which had the purpose of improving the transparency of IPs fees as a result of various criticisms.[21]

It is important to evaluate the significance of the addition of the three hierarchical objectives of the legislation. If the first objective is achieved, it will amount to the survival of the company and the continuance of its business or part of it as a going concern. According to Katz and Mumford, only 10% of administrations target this objective and it is even more rarely achieved.[22] The goal of this objective is difficult to reach when directors are reluctant to admit that the company is in economic distress, which makes it too late for the company to be rescued.[23] Substantially, one of the reasons that directors are hesitating to use an insolvency procedure is that they are afraid that they will jeopardise the reputation and goodwill of the company. The alteration of the nomenclature of the framework that governs administration from "insolvency" to "administration" could change the perception ***I.C.C.L.R. 185*** of administration. Even though this could be a step forward, the fact that administration directly links to insolvency cannot occur instantly, hence the outcome is precarious.

The second objective is an outcome of the ousted AR since the aim is to achieve a better result for the creditors than in liquidation. It is only pursued if it is impossible to attain the first objective and it is capable of saving the business of the company. When a company undertakes a pre-packaged administration (pre-pack) arrangement before entering administration, this is the objective that is usually followed. Companies can only trade when the company, or part of it, is a going concern, hence, when targeting this objective, the company does not necessarily have to trade but could just facilitate the realisation of assets. This happens because of the moratorium and the breadth of the administrator's powers, which are, inter alia, to make distributions to creditors and to oversee owed and charged property.[24]

When the first two options are exhausted, the final option for the company is to realise the assets of the company for secured and preferential creditors. This means that the survival of the company is not feasible but the interests of the top ranked creditors must be preserved. The third objective is actually a more efficient liquidation since the property is sold at a maximised price. Also, after qualified floating charge holders were disenfranchised of their right to appoint an administrative receiver, the addition of this objective to the legislation acted as a compensation for the abolition of AR.[25]

How does the potential abuse of the administration moratorium impact on administration?

The moratorium is a key feature that is essential to any successful corporate regime. It precludes the company from any hostile actions by the company creditors and is triggered once notice of the administrator's appointment is submitted. Subsequently, the moratorium promotes rescue by giving the ability to the administrator to produce a rescue plan and pursue value maximisation. However, it also carries some weaknesses and therefore it could be described as a form of utilitarianism since it could be a drawback for unsecured creditors but could promote the wider interest of other stakeholders. Moreover, if it is not regulated carefully, its beneficial aspects might be overshadowed by its negative reputation. Specifically, there have been arguments that the administration moratorium is being abused, which requires a discussion of the effect of the potential misuse.

On some occasions, directors strategically file notices of appointing an administrator for using administration and not for actually entering administration. Particularly, the moratorium is commonly abused by unscrupulous directors through filing notices of intention to appoint an administrator continuously, which has the aim of obtaining a long-term moratorium for the company. In essence, this gives rise to ethical issues since the administration moratorium is not used for the proper reasons. There have been some indications in the past of abusive behaviour by the ***I.C.C.L.R. 186** directors of the companies in *Re Cornercare* [26] and *Re Business Dream*.[27] Nevertheless, the courts did not deal with this problem, even though there was an attempt to shed light on this abusive treatment.

Even though this issue was previously neglected by the courts, it was elaborated further by the Court of Appeal in the *JCAM* case,[28] in which it was stated that the improper use of the moratorium should cease, hence, the notice of appointment of the administrator was removed since it was wrongly granted. This case scrutinised this matter and concluded that attempts should be made through various means in order to eliminate moratorium abuse. In other words, following the *JCAM* case, various recommendations have been put on the table regarding how to mitigate the unlawful exploitation of the administration moratorium.

Initially, directors should bear in mind that, in the case of a court hearing for determining whether an abuse takes place, the cost would be extracted from the assets of the company and thus this could actually disadvantage the company instead of benefitting it. Furthermore, the directors often fail to understand the consequences of the publicity that comes with the moratorium. To amend the CVA with a moratorium in a way that the eligibility criteria will not be so strict is a recommendation that was also influenced by the *JCAM* case. A further solution is to extend the notice of appointment to more than 10 days in order to give more time to the company to evaluate whether entry into administration will be to its advantage. If this is not carefully monitored it could lead to an extensive abuse and therefore it should only take place provided that the Insolvency Code of Ethics is revised.[29]

A proposal by the 2016 consultation that never went through was the addition of a preliminary moratorium to the system.[30] Nevertheless, the *JCAM* case revived the discussion on whether there should be an administration as a standalone procedure. If flexibility is given to the extension of the moratorium as a gateway procedure, the interests of creditors could be endangered and the goodwill of the company could be damaged. This procedure will generate high costs and thus it will be difficult for small or medium-sized companies to utilise it. As stated by R3, if the preliminary moratorium is extended, this could lead to complexities, costs and value drainage.[31] The abuse of the administration moratorium could be decreased but other problems could emerge from the addition of a moratorium as a gateway procedure. Essentially, by adding a new mechanism to legislation with a high prospect of failure, the accountability of the British insolvency regime could be reduced.[32] As mentioned by Milman and Akintola in the response to the 2016 consultation, the moratorium as a standalone procedure "could become a desperate lifeboat for zombie companies".[33] Consequently, rather than adding a more ***I.C.C.L.R. 187** complicated and expensive procedure to the system, it could be more advantageous to ameliorate the existing administration moratorium.

What is the effect of pre-packaged administration on the stakeholders of the company?

Pre-pack is an arrangement prior to the appointment of the administrator concerning the sale of viable assets to a new company. Also, these arrangements are not legislated but approved by the judiciary[34] and regulated by Statement of Insolvency Practice 16 (SIP 16). There have been negative criticisms mainly by the Government, the media, judiciary, commentators and creditors,[35] which is quite unusual since approximately only 25% of administrations are pre-packs.[36] A major advantage of pre-packs is that, owing to the rapid sale of the business, the company will not need funding. Even though pre-packs could aid with the business rescue of the viable assets of the company, this rarely happens.

It is usually in the best interests of fixed charge holders to have a pre-pack arrangement since they rank at the top of the distribution list.[37] Nonetheless, if there are still funds available after the fixed charge holders have been repaid, other stakeholders will receive an amount, but that is quite untypical. The issue of pre-pack expenses has regularly preoccupied the courts but now, according to Insolvency Rules 2016 r.3.52, costs prior to administration are considered as administration expenses.

According to Frisby's empirical research, in normal business sales only 65% of the companies retained their employees whereas, during a pre-pack sale, 92% of the companies transferred all of their employees to the new company.[38] The new purchasers of the company would not want to take on more staff than they deem necessary; however, the prospect of job preservation is more possible while in pre-pack owing to the effect of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (TUPE). Effectively, this means that this will be uncertain after Brexit. Nonetheless, sale and job preservation can occur without the involvement of pre-pack under a trading administration according to IA 1986 Sch.B1 para.3(1)(b). Realistically, the new company will crumble without taking on and paying at least some of its employees. Sometimes, TUPE is seen by IPs as frustrating a sale and rescue, particularly where the new company does not want existing staff. This would probably be the case where new company is owned by an unconnected party. Another advantage of pre-packs is that, owing to the quick sale of the company, publicity is avoided and thus the value of the company is maximised since the goodwill and intellectual property of the company ***I.C.C.L.R. 188** is protected. Since publicity can easily harm the name of the company that is in an insolvency process, pre-packs can aid companies that rely upon their reputation.[39]

Nonetheless, pre-packs might not be fruitful for unsecured creditors where there are high expenses and a fixed charge holder with a large claim. For instance, unsecured creditors on average have better chances during business sales than in a pre-pack sale[40] but, for secured creditors, the returns during a pre-pack will be better than in liquidation.[41] It occasionally becomes an onerous task for a company to use an insolvency procedure owing to the high costs. In essence, smaller companies that cannot bear the costs of other procedures could use pre-packs since, because of the quick sale, the expenses are much lower than in other processes.

The negative reputation mainly emanates from the concern of creditors that the company is undertaking phoenix operations. According to statistics conducted by the pre-pack pool, 57% of pre-pack sales are made to connected parties; hence, the concerns of creditors are legitimate.[42] Essentially, the reputation of pre-packs deteriorated because of a deficit of transparency and accountability. Unsecured creditors are usually dissatisfied by a pre-pack sale because the property is usually sold at a lower price and thus the most probable outcome is that they will not receive any return since they rank last in terms of distribution.

Negative criticisms towards pre-packs influenced the formation of the six recommendations by the Graham Report.[43] These recommendations were: the pre-pack pool; the viability review; that the SIP should be redrafted in a way that includes the Graham Report recommendations; the six good principles of marketing should be included; valuations should be conducted by a valuer with professional indemnity insurance; and recognised professional bodies should monitor SIP 16 instead of the Insolvency Service.

As recommended by the Graham Report, the Statement of Insolvency Practitioners is now monitored by recognised insolvency bodies instead of the Insolvency Service. Marketing and business sale have become more transparent through the addition of the six marketing principles[44] and valuations conducted by an independent and insured valuer to SIP 16.[45] Also, the pre-pack pool and the viability review are provided for scrutinising the pre-pack on an optional basis. The annual report on the pre-pack pool in 2016 recorded that 28% of eligible cases were going to the pre-pack for examination but, in 2017, there was a major drop to 11%.[46] Ostensibly, owing to the optional nature of these recommendations, there is no real motivation for taking the pre-pack up and the fact that this option is rarely enforced was not unexpected.[47] This might imply that the pre-pack pool will transmit accountability and will operate properly only if it becomes compulsory. ***I.C.C.L.R. 189**

Empirical studies have shown that the company will survive in the long term if it is purchased by a new owner rather than a connected party.[48] The criticisms against pre-packs mainly occur because of the sale of the new company to a connected party, which gave rise to the Small Business, Enterprise and Employment Act 2015 s.129, which concerns connected parties and which indicates the following:

"The Secretary of State may by regulations make provision for—(a) prohibiting, or (b) imposing requirements or conditions in relation to, the disposal, hiring out or sale of property of a company by the administrator to a connected person in circumstances specified in the regulations."

This statutory reform clearly signifies the danger that connected pre-pack sales contain, by implying that this form of pre-pack that is excessively abused should not be self-regulated.[49]

The cruciality of rescue funding

During administration, a company can only operate when there is funding available. If the company cannot be financed in any way, then the only viable option for the company is liquidation, owing to the unbearable costs. Administration can only take place when there is cash flow in the company, therefore, alternative means of financing the mechanism need to be sought. Even if the option of saving the company is not feasible, administration provides better returns for creditors than liquidation and hence financing the company is essential.[50] Substantially, the procedure of administration can only be successful if the company secures rescue finance, which means that this is a key action that needs to be undertaken by the administrator.

The distribution priority list according to *Re Lehman Brothers International (Europe) (In Administration)* [51] is as follows: secured creditors with a fixed charge; insolvency procedures expenses; preferential creditors; prescribed part for unsecured creditors; secured creditors with a floating charge; unsecured provable debts; statutory interest; non-provable liabilities; and shareholders. Funding is usually provided by existing major creditors, which is usually a bank, or factoring and invoice discounting agreements, or new creditors. A new financier, however, might be reluctant to provide funding owing to the uncertainty of repayment since super-priority is not given by the legislation. Chapter 11 in the US successfully uses super-priority, which is why it was recommended in the 2016 consultation that led to various criticisms and discussions about the problems that might emerge. In particular, 73% of the commentators opposed this recommendation by stating that, if there is a possibility of survival, the company would be able to fund its operations without additional finance.[52] Arguably, if super-priority is legislated, ***I.C.C.L.R. 190** administrators will not be keen on using administration since the odds of receiving their remuneration will be less. Moreover, current secured creditors believe that their rights will be suppressed if a super-priority is given to new creditors. However, this problem could be addressed by giving a "right of first refusal" to existing creditors.[53]

The preference of administration and its effectiveness

The reasoning behind the dominance of administration is significant for uncovering the way in which an insolvency rescue procedure can succeed. Consequently, creditors are commonly in favour of administration because the management of the company is not in charge whereas the CVA is a DIP procedure. This happens because, while the directors are in charge, the creditors are suspecting that there might be a phoenix sale. Additionally, administrations can last for a year with a possibility of extension whereas CVAs can last for many years, which can act as a negative factor since the failure of the company might just be extended. Nonetheless, one could argue that the time given for administrations is insufficient in order to draw up a successful plan for the company. The remuneration of IPs is a lot higher in administrations,[54] also because they are more experienced in handling administrations in lieu of CVAs. Consequently, this has a negative impact on CVAs since they tend to promote administrations more than CVAs. One of the exit routes of administration is the CVA and therefore the company can use administration, and if that is not successful it can still enter a CVA.[55] Administration was rejuvenated in a way that dealt with many of the flaws of the old administration but CVAs remain largely the same since they were enacted, which has played a major role in their unpopularity.

One of the purposes of new administration was achieved since the flaws were reduced; however, there are still several drawbacks to the procedure. Although the administration moratorium has various benefits and gives a breathing space to the company, a publicity announcement[56] comes along with the moratorium, which could mean a reduction of the company asset value. The purpose of the Cork Committee was to promote a rescue culture and, thus, administration turned out to be a disappointment owing to the limited number of companies that managed to achieve a pure rescue. A negative aspect of administration is that, because of the high expenses, this procedure is only viable if funding is available. Even though it rarely occurs, it seems that the plan of the administrator is capable of saving the company or its business if sufficient funds are available.

Even if the rescue of the company is impossible, it is still preferred by creditors because it ensures that they receive better returns than in liquidation.[57] Even the qualified floating charge holders, which protested against the eradication of AR, are now at ease with the streamlined administration. As stated by Corfield: ***I.C.C.L.R. 191**

"Administrations do work, but then in reality so did administrative receiverships. However, on balance, the administration process wins it for all-round business rescue ethic, secured asset realisation, preservation of employment and maximising the return to creditors … At this point, administration is about as good as it gets." [58]

Conclusion

Arguably, there is no ideal mechanism that will be a solution for the financial problems of a company but, if some elements exist, this could lead to a better outcome for the company and its stakeholders. According to the above discussions, CVAs suffer from economic, social and moral problems. However, there have been arguments that, if there is co-operation between the main parties of the company and early action is taken by directors, CVAs could become advantageous to most stakeholders. Moreover, various changes have been suggested, such as imitating the approach of IVAs, reducing the length of CVAs and increasing the IPs fees in CVAs. Several problems might arise from these recommendations, though, and the fact that administration is the leading rescue procedure cannot be easily overcome. Nevertheless, it seems though that CVA is a good enough procedure for large companies but this also indicates that it cannot be exploited easily by small and medium-sized companies.

Even though there are more prospects for the business to be rescued through a pre-pack, its perception is negative and this is mainly happening because of the suspicion of creditors about phoenix operations. There was an attempt by the Graham Report recommendations to make pre-packs more transparent but some of the issues still exist. Essentially, the controversial criticisms about the business sale to connected parties during pre-packs are substantially suggesting that pre-packs should be legislated.

Companies are not usually rescued during administration but, on most occasions, it ensures a better outcome for the stakeholders than liquidation. With some alterations, administration can become even more attractive and produce better results and less criticism. For example, actions to eliminate the administration moratorium misuse should be undertaken and, as concluded previously, the best possible solution is to improve the current administration moratorium instead of introducing more complicated mechanisms that could lead to more implications in the future. Companies cannot survive without rescue and, thus, the way to obtaining rescue finance should be eased. A way of doing this could be to promote super-priority but before introducing this it must be ensured that the rights of existing creditors are not oppressed.

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