

G22 WORKING GROUP ON INTERNATIONAL FINANCIAL CRISES: KEY FEATURES OF INSOLVENCY REGIMES

In its October 1998 report, the G22 Working Group on International Financial Crises identified eight key features and principles considered important for an effective insolvency framework. In the following table, the Australian corporate insolvency framework is compared against each of those key features and principles.

Key Feature	Comments
<p>1. Maximise value of assets</p>	<p>Australia has a facility for reorganisation as well as liquidation. The two reorganisation mechanisms Australia uses are schemes of arrangement (a court supervised process) and a relatively new scheme known as voluntary administration.</p> <p>With respect to <i>new financing</i>, the G22 Working Group principle calls for priority in an eventual liquidation to be provided to creditors who advance funds during the liquidation period. Australia's voluntary administration scheme is not consistent with that principle.</p> <p>A 'blanket' statutory priority for post-administration creditors is undesirable in some contexts because:</p> <ul style="list-style-type: none"> ▪ all unsecured creditors should, in principle, be treated equally, with the categories of priorities kept to a minimum; ▪ pre-administration creditors may be less likely to support an arrangement if their debts rank behind post-administration creditors; and ▪ post-administration creditors may tend to over-extend credit to the company, to the detriment of pre-administration creditors. <p>The Australian Government referred the issue to a private sector advisory committee whose final report (of June 1998) recommended against a statutory priority in the case of voluntary administration, except where the administrator is personally liable for the debts incurred to post-administration creditors. However, pre-administration creditors should be permitted to bestow any other form of priority on post-administration creditors if they wish that to be part of the arrangement.</p> <p>Australia considers that although the G22 principle regarding new financing is likely to be suitable in the context of reorganisation proceedings conducted under close supervision of an authority such as a court, it is not necessarily suitable to apply across the board to all forms of reorganisations and all proceedings conducted in those forms.</p>

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2. Strike a careful balance between liquidation and reorganisation	Australia has a variety of mechanisms for dealing with insolvency, including liquidation and reorganisations through the voluntary administration procedure. It is considered that an appropriate balance has been struck between near-term debt collection and maintenance of the debtor as a going concern.
3. Provide for equitable treatment of similarly situated creditors, including similarly situated foreign and domestic creditors	Australia's insolvency framework does not discriminate between similarly situated creditors (domestic or foreign), except in respect of some penalty and revenue claims by foreign governments.
4. Provide for timely, efficient and impartial resolution of insolvencies	Australia's insolvency system contains statutory deadlines on a number of procedural matters. The voluntary administration scheme, which has little court involvement, was developed with speed and efficiency as a major consideration. Many liquidations could nevertheless be resolved more quickly once commenced.
5. Prevent premature dismemberment of the debtors' assets by creditors	Australia's system is consistent with this principle, through statutory stays and moratoriums which balance the rights of secured creditors.
6. Provide for a procedure that is transparent and contains incentives for gathering and dispensing information	Reports by the administrator to the court (where applicable), the regulator and creditors about the position of the corporation are a statutory requirement, as are directors' reports to the administrator. In a voluntary administration, the administrator is required to provide creditors with a report setting out the position of the company and an opinion on the options (immediate liquidation or compromise/arrangement).

Making Transparency Transparent: An Australian Assessment

Key Feature	Comments
7. Recognise existing creditor rights/respect priority of claims with a predictable and pre-established process	Australia's system recognises the rights of secured creditors except in very limited circumstances (such as employee priority over the holder of a floating charge in a liquidation). Creditors actively participate in the process through creditors' meetings.
8. Establish a framework for cross-border insolvency	The Australian Government has indicated its support for the United Nations Commission on International Trade Law (UNCITRAL) model law on cross-border insolvency. It is expected the necessary consultative and parliamentary processes required to adopt the model provisions in law will commence later this year.