

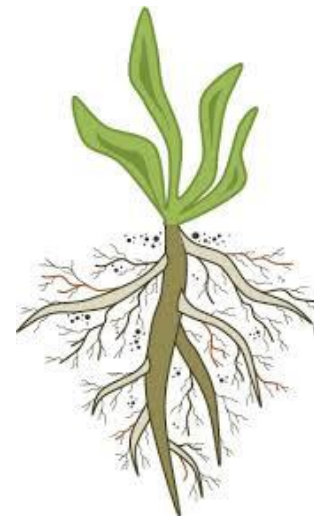
The application of corporate and individual insolvency law to partnerships and LLPs

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The current legislative regime

- The Insolvent Partnerships Order 1994 (IPO)
 - ‘very far from straightforward even for those familiar with insolvency law and practice’ (*Official Receiver v Hollens*)
 - ‘hideously complicated’ (David Milman)
 - so ‘far from accessible’ that it was ‘no wonder’ that the bankrupt partners in *Hollens* ‘were mystified by most of the proceedings’ (Geoffrey Morse)
- Limited Liability Partnerships Regulations 2001 (LLP Regs)

The root of the problem



- The IPO and the LLP Regs apply:
 - Insolvency Act 1986 (IA 1986)
 - PVAs / LLPVAs – based on CVAs
 - Administration – based on co. administration
 - Liquidation – based on co. liquidation
 - Partner (not LLP member) joint bankruptcy – based on individual bankruptcy
 - Company Directors Disqualification Act 1986 (CDDA)

Why is this a problem?

- Corporate/personal insolvency law is defective
- Partnerships and LLPs are very different to companies and individuals eg
 - Cf companies:
 - Single layer of decisionmaking
 - Partnerships are not separate legal entities (except in Scotland)
 - Partners are personally liable for the debts and obligations of the partnership
 - Cf individuals or companies:
 - Not an entity - based on a relationship

So why did the government do it?

To put it another way:

As Sir Humphrey Appleby advised the Minister in *Yes Minister*:

“If you must do this damn silly thing, don’t do it in this damn silly way”



Insolvency theories

- Corporate theories don't really work for partnerships/LLPs - eg
 - Creditors' wealth maximization
 - Stakeholder theories
- Multiple values theory?
- Individual theories don't work either
 - Under-theorised
 - Focused on consumers not entrepreneurs

Pervasive problems

- Complicated internal structure and incomplete:
 - Do not set out IA 1986 provisions which are applied without modification – so need to cross refer to IA 1986
 - LLP Regs don't even set out the modified provisions of IA 1986, only explain the modifications – so need to cross refer to IA 1986
- Subordinate but separate to IA 1986
- Corporate expressions
- Corporate decisionmaking

Problems with liquidation

- Not cost effective or efficient
- The incomprehensibility of the IPO generally – and specifically due to 4 winding procedures
 - By partners or creditors
 - With/without concurrent partner bankruptcy/liquidation
- Leave of court required for partner's petition without concurrent petitions if <8 partners
- Uncertainty about which forms

Problems with joint bankruptcy

- No rehabilitation
 - DROs not applied
- Not cost effective or efficient
- The incomprehensibility of the IPO
- Interaction with voluntary arrangements

Solutions

- Piecemeal reform of existing legislation
 - Standalone statutes for partnerships and LLPs
 - Separate chapters in IA 1986
 - Disapplying IA 1986 entirely?
 - Partner joint bankruptcy
 - Individual bankruptcy + IA 1986 consolidation of proceedings
 - Partnership liquidation
 - Informal winding up under the Partnership Act 1890 + IA 1986 consolidation of proceedings
 - Not LLPs – need creditor protection
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Conclusion

- IA 1986 (IPO)

cf

- Partnership Act 1890

- IA 1986 (LLP Regs)

<https://www.youtube.com/watch?v=FX20kcp7j5c>