“A study of global bankruptcy trends: examples from USA, UK, Australia, Ukraine, Malaysia and China”

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SECTION 1. Macroeconomic processes and regional economies management

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A study of global bankruptcy trends: examples from USA, UK, Australia, Ukraine, Malaysia and China

Abstract

Bankruptcy filings in the US have reached an all time high in recent years. But the European countries have not experienced as sharp a surge in bankruptcies as has the USA. These countries, therefore, have been slow and less aggressive on reforms than USA. On the whole there is evidence that more and more countries are reforming their bankruptcy laws, albeit at different rates and for difference reasons. It appears that as the global economy slows down, countries are looking for more efficient ways of controlling their economies internally. In USA Congress took drastic steps and enacted stringent bankruptcy laws which took effect on October 17th, 2005. But between 2002 and 2006, the countries under study reformed their bankruptcy laws to control spiraling bankruptcies within their borders. This research found that different countries experience different bankruptcy and insolvency rates. Accordingly, different countries have initiated different control measures and reforms. But the central idea shaping all types of reforms is the strategic intent of helping the countries' economies at business and non-business levels. Data were collected from government records of USA, UK, Australia, China, Malaysia and Ukraine. Some data were collected from Internet sources and newspapers from various countries. Unfortunately, it is very difficult to get data on some countries. But explanations of the new bankruptcy reforms, across the globe are abundantly documented.

Keywords: bankruptcy, insolvency, reforms, global, laws.
JEL Classification: G 33.

Introduction

One of the earliest recorded descriptions of the concept underlying bankruptcy is found in the Bible. In the book of Deuteronomy, Chapter 15, Verses 1-2, Mosses brings home God's law from the mountain with the burning bush to the Israelites and counsels them to forgive debts every seven years. Mosses counsel was "At the end of every seven years, thou shalt make a release. And this is the manner of the release: Every creditor that lendeth ought unto his neighbor shall release it: he shall not exact it of his neighbor, or of his brother, because it is the Lord's release" (legalhelpers.com). (Amazingly enough Mosses also describes a system of redemption, after bankruptcy, that is very similar to those in effect today (bankruptcyrep.com)).

Bankruptcy has been around for over four hundred years. The Romans have the first written history on the subject. The word "bankruptcy" is believed to originate from ancient Latin verbiage describing a "broken bench", *bancus*, the tradesman's counter, and *ruptus*, broken, denoting one whose place business was broken or gone. A tradesman in the square who could not pay creditors' claims literally had his bench broken which put him out of his misery (bankruptcyrep.com). Other sources say that the word bankruptcy "breaking the bench of the bankrupt" was still practiced in Italy between the 9th and 14th centuries. During that period whenever a man refused to pay his debts, those he owed would storm into his house or workplace and destroy his workbench. In Italian broken or rotten bench means "banca rota" (legalhelpers.com). Today, that set of words has combined to form bankruptcy.

In those days the Roman law provided for the sequestration (mission in bona) of a debtor's estate to be sold to satisfy a creditors' unpaid judgment (*venditio bonorum*). When proceedings of this type caused loss of civil rights, the law was amended to allow a debtor some privilege of voluntarily relinquishing assets to creditors by petitioning a magistrat*e (cessio bonorum)*. Essentially the Roman law set stage for balancing interests of the debtors and the creditors in the interest of the economic health of the nation. Behind this central idea was enactment of legislation to provide procedures for the adjustment of debts in order to avoid liquidation and for the rehabilitation of insolvent debtors. But past bankruptcy was coupled with the loss of civil rights and imposition of penalties upon fraudulent debtors. For that reason, the designation bankrupt came to be associated with dishonesty, casting a stigma on persons who were declared bankrupts.

The First "bankruptcy" laws were established in England during the 16th century. Generally bankruptcy was considered a criminal offense. Even today in England the bankruptcy laws are strict and debtors are not left with much for their own. Loss of job, divorce, unforeseen medical problems, or the

rocket launch of interest rates on credit cards or loans, will leave an English debtor in a bad spot (legalhelpers.com). Modern bankruptcy laws have been formed from modification of several historical strands (*britanica.com*). Arising from those nascent legal frameworks of the past, are the world's diverse bankruptcy systems practiced to today. Modern bankruptcy laws are centered around preventive composition, arrangements, or corporate reorganizations. Some legal systems distinguish between insolvency and bankruptcy and others don't even mention insolvency. In the latter systems, all problems relevant to failure to pay debt are dealt with under bankruptcy. One has to examine circumstances under which bankruptcy cases have been filed to capture the different categories of bankruptcies. In general, though, insolvency indicates the inability to meet debts. While, bankruptcy, on the other hand, results from a legal adjudication that the debtor has filed a petition or that creditors have filed a petition against the debtor. In the US, there have been several amendments to the bankruptcy code which is enshrined in the constitution under uniform laws. Enactment and amendments follow significant changes in the nations' economic conditions. So the bankruptcy systems are dynamic and their forms are changed to make the nation cope with economic circumstances on hand.

Continual amendments to the bankruptcy laws have led to a number of different bankruptcy legal systems which have evolved independently from the past. But a common thread runs through all of them. The legislations are meant to salvage an enterprise in financial difficulties and give it an opportunity to remain viable and maintain employment opportunities and protect members of the labor force. So, it can be said that different bankruptcy law systems are different approaches to accomplish the same purpose: that is to help the economy by protecting businesses and individuals from suffering or collapsing due to financial hardships.

Objectives of the study

The following are the objectives of this study:

1. to study trends in bankruptcy reform laws worldwide;
2. to understand how the new laws have significantly changed the bankruptcy filings trends in those countries where data are available

1. Methodology

Data for study were obtained from the US Bureau of Census, US Department of Commerce, US Department of Labor and the US Bankruptcy Courts records pertaining to USA in general. Reform information about other countries was obtained from those countries' government websites and various Internet search engines. So, basically, data and any other pertinent qualitative data were obtained directly from relevant government agencies of the countries studied, published sources and the Internet.

2. Review of literature

Many authors believe that bankruptcies are on the increase in the US because of American corporate greed (Lou Dobbs, 12/04). According to Dobbs of CNN News, greedy corporations are exporting American jobs overseas. Observers who hold views similar to Dobbs', claims that US corporations only care for profits and don't care for the welfare of their people. Most major corporations have established manufacturing plants in cheap labor countries like Mexico, China, Korea and Malaysia. For example, HP has outsourced its sales service functions to India. Indeed, today, it is difficult to find goods made in USA. Brazil, China and India have been some of the countries of choice when it comes to Banking, technological, financial services as well as manufacturing operations for US companies. But then bankruptcies are on the upward trend even in countries where US out sources operations. Furthermore, it should be noted that even communist or socialist countries like Ukraine, China and Russia are experiencing a surge in bankruptcies or insolvencies as they are called in European countries (China Law Blog, 10/2006; Biryukov, 2004).

Several other countries such as Australia, Malaysia, Ukraine, Russia and China have reformed their laws to make them more creditor friendly. The US bankruptcy law of 2005, clearly favors credit issuers and mortgage lenders. But the USA has done more than any other country in reforming and implementing Bankruptcy Laws. After this thorough overhaul of the US bankruptcy Code, the trend in filings sharply reversed course, from upward to downward trends. National bankruptcy trends are shown in Table 1 which depicts trends in filings by judicial circuit. In the US there are 11 Circuits of Appeal (shown) and the independent District of Columbia (not shown). The Table shows that there was an upward trend in national filings until 2005. After the New Bankruptcy Law was implemented, on October 17th, 2005, filing trends reversed course immediately, beginning with November 2005. Total annual filings have been much lower ever since. Table 2 shows total business and non-business bankruptcy filings from 1988 to 2007. So the table clearly exhibits data obtained before and after the Bankruptcy Law was reformed and reversal in filing trends is discernible. The table also shows that, although there was steady increase in bankruptcy filing in the years preceding implementation of the New Law, there was a sudden surge in filings in 2005. This surge is explained by examination of monthly filing statistics (not shown

here) which shows that most of the surge was recorded in September and the first two weeks of October 2005 as filers rushed to beat the October 17th, 2005 deadline.

Table 2 shows that, in general, filings had an upward trend for all the years up to 2005. After that, they went substantially down beginning with the year 2006 because the New Bankruptcy Law made it harder for some people to file. There were 597,965 non-business bankruptcies filed in the year ended December 31, 2006. That does not mean that 597,965 people filed bankruptcy since the statistics include joint filings, for example for husband and wife. In accordance with a study reported in September, 2001: *Young, Old, and in-Between: Who Files for Bankruptcy?* (Sullivan, Thorne and Warren), it was found that for personal bankruptcies, 31.9% of the filings for the year ended June 30, 2001 were joint filings by husband and wife. So, these authors suggest that to approximate the number of people filing bankruptcy we must increase the 597,965 filings reported above by 31.9% to get 789,000 people who filed bankruptcy in the year ended December 31, 2006.

Table 2 also shows that business and non-business filings exhibit similar increase in trends during those years. The data for businesses show that the filing pattern mirrors that of individual bankruptcies registered in those same years. This is a strong indication that the changes in the Bankruptcy code affected bankruptcy filing behaviors for business and none business alike. Actually, bankruptcy may not be all bad. This view is supported by Matur (January, 2007) who cited new research which found that one of the best ways to encourage people to start businesses is to have lenient bankruptcy laws.

Table 1. Bankruptcy filings in US by Circuit 2002-2006

						% change	% change
Circuit	2002	2003	2004	2005	2006	05/04	06/05
1	44,573	46,176	45,030	58,440	31,705	29.8	-84.3
2	85,867	89,948	93,099	127,495	68,079	36.9	-26.7
3	99,649	105,770	104,288	132,972	71,869	27.5	-85.0
4	141,004	144,177	133,536	156,745	82,789	17.4	-89.3
5	129,580	143,661	144,745	181,625	98,789	25.5	-84.8
6	224,908	247,766	243,300	331,321	189,236	36.2	-75.0
7	161,149	169,552	162,107	224,205	121,760	38.2	-84.1
8	101,586	109,471	107,021	147,387	77,705	37.7	-89.7
9	282,594	279,692	252,668	335,454	168,324	32.8	-99.3
10	94,462	103,671	103,914	143,122	71,090	37.7	-101.3
11	209,749	218,050	205,821	237,221	130,346	15.3	-82.2
US	1,577,651	1,660,245	1,597,462	2,078,415	1,112,542	30.1	-86.8

Source: The American bankruptcy Institute website.
Note: To calculate % changes, statistics for 2005 are compared to those of 2004; 2006 is compared with 2005.

Table 2. Total business and non-business bankruptcy filings and percentages of consumer filings to total filings, in the USA from 1988 to 2007

Year	Totals filings	Business filings	Non-business filings	Consumer filings as a percentage of total filings
	613,465	63,853	549,612	89.59%
1989	679,461	63,235	616,226	90.69%
1990	782,960	64,853	718,107	91.72%
1991	943,987	71,549	872,438	92.42%
1992	971,517	70,643	900,874	92.73%
1993	875,202	62,304	812,898	92.88%
1994	832,829	52,374	780,455	93.71%
1995	926,601	51,959	874,642	94.39%
1996	1,178,555	53,549	1,125,006	95.46%
1997	1,404,145	54,027	1,350,118	96.15%
1998	1,442,549	44,367	1,398,182	96.92%
1999	1,319,465	37,884	1,281,581	97.12%
2000	1,253,444	35,472	1,217,972	97.17%
2001	1,492,129	40,099	1,452,030	97.31%
2002	1,577,651	38,540	1,539,111	97.56%
2003	1,660,245	35,037	1,625,208	97.89%
2004	1,597,462	34,317	1,563,145	97.85%
2005	2,078,415	39,201	2,039,214	98.11%
2006	617,660	19,695	597,965	96.81%
2007	850,912	28,322	822,590	96.67%

Source: American Bankruptcy Institute and bankruptcyaction.com

3. The US Bankruptcy Reform Law of 2005

Effective October 17th 2005, Congress enacted a New Bankruptcy Laws meant to tighten filing loopholes in the old laws and reduction of the number of bogus bankruptcy filings across the nation. The United States Senate passed the bill on March 11, 2005 and the president signed it into law on April 20th, 2005 (Bankruptcyaction.com). The actual mechanism and the detailed implementation process are represented by Figure 1. This law has been described as the new harsher bankruptcy law. Following its enactment, a number of scholars have attempted to forecast the effect the these harsher laws are going to have on the filing process and the quality of life of those who file or would file. One of the issues that has generated concern is whether it will stifle filing to the extent that some small businesses and individuals in financial stress will just give up because of failing to meet the higher bar the stringent guidelines of the new law established as minimum criteria they have to meet before they can file for bankruptcy protection (Fig. 1). Of particular concern is the fact that the residual amount, of $6,000 saved over five years, on which the cut off point is based is considered to be too small. The dollar amount is based on the assumption that $ 100 in disposable income saved per month will give an individual $ 6,000 over a five-year period. This concept,

however, is considered financially unrealistic by most scholars of bankruptcy and insolvency.

The guidelines in the flow chart below (Fig. 1) require that a prospective filer to undergo financial counseling within six months prior to filing. The problem is that some counseling sessions have to be scheduled and follow-up schedules may be needed. During that period, the creditors may be harassing bankrupt parties. Also new to the filing system is that any filing is reviewed on the basis of a filer's disposable income compared to the average disposable income of the filer's state. Even as little as $ 100 in excess of disposable income per month may lead to a five year payment schedule, being required of a filer (Bankrate.com, January, 2006). This new law could be the government's attempt to slow down bankruptcies and stabilize the economy.

Filing procedures under the New Bankruptcy Code
(effective October 17, 2005)

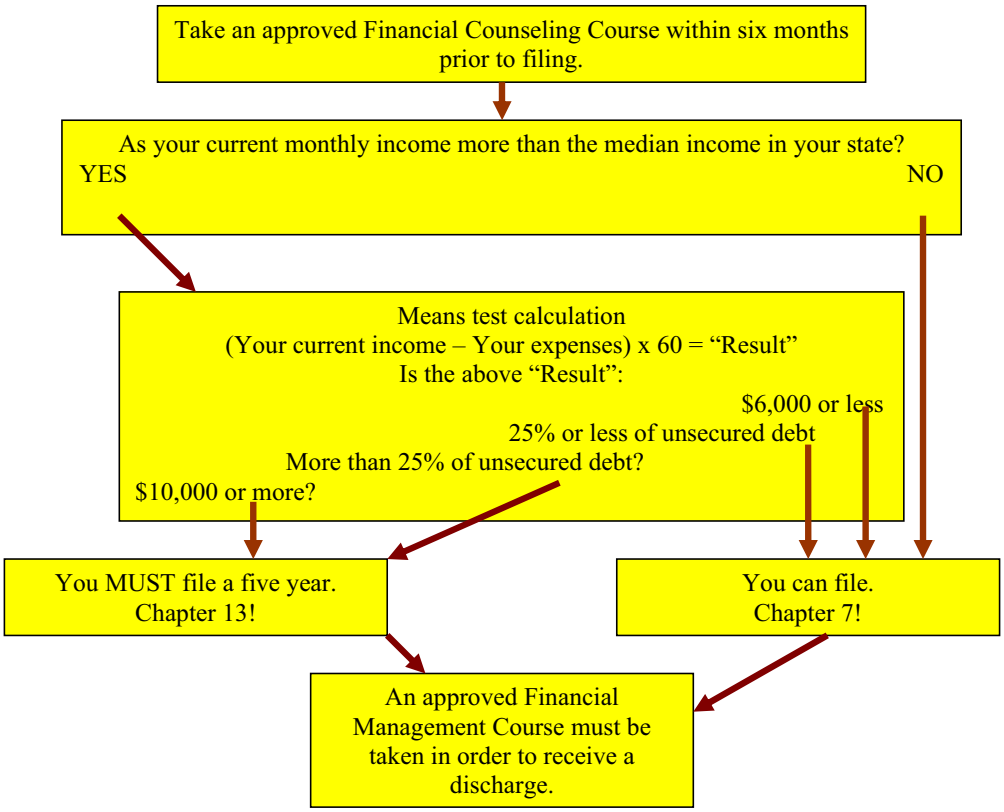

Fig. 1. New US bankruptcy law flow chart, 2006

Source: The New Bankruptcy Reform Act of 2005. This flow chart was prepared by BankruptcyAction.com.

4. Major chapters under US Bankruptcy Code

Chapter 7. Outright bankruptcy. This Chapter allows outright bankruptcy or total bankruptcy as it is sometimes called. The bankrupt person has to qualify by meeting the stringent guidelines laid down by Congress and amended from time to time. This option adversely affects the filer's credit and can remain on record for about ten years. The Chapters 11 and 13 described below remain on record for seven years.

Chapter 11. The reorganization Chapter. Under this chapter, an organized concern or enterprise seeks relief from harassment by creditors while reorganizing itself and attempting to turn its situation around and be viable again. Usually, this chapter is not for individuals.

Chapter 13. Debt scheduling Chapter for individuals with income. If an individual has verifiable income and has some capability to make reduced but steady payments, the filer would be allowed to set up a court approved and supervized schedule of reduced but steady streams of payments based on the individual's means to pay. Usually this type of arrangement covers a five-year period and is somewhat similar to the European's and the Australian Individual Voluntary Arrangement (IVA) system.

Chapter 15. Ancillary and other cross-border cases. This is a new Chapter that has been added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) which also became effective on October 17th, 2005. which is the same day when the entire New Bankruptcy Law came into force. Chapter 15 makes it

possible for US courts to handle cases even beyond the geographical boundaries of USA. To pursue a debtor on both sides of international borders, US courts have to work with courts in those countries in which a bankrupt party has operations. The chapter works through cooperate effort with United nations. No one country can, therefore, unilaterally enforce Chapter 15 provision or its equivalent in other countries.

5. Trends in global bankruptcy reforms

Increase in bankruptcy filings is not limited to US. Although the US has engineered comprehensive (and some say) radical reform. As the US pondered bankruptcy reforms during the 2000-2004 period, some European, Asian and other countries were also actively reviewing their respective filing trends which, in most cases, were increasing sharply. Most European countries implemented some reforms. Even China, Russia, Ukraine and other countries which were known to be pro-workers and against capitalism, reformed their bankruptcy laws to favor businesses. But their reforms were slow and limited in comparison to US's sweeping changes in favor of credit issuers, mortgage lenders and other personal loan providers. Inclination of the US Congress to favor big businesses was inspired by heavy, relentless and expensive lobby mounted by those financial institutions.

6. Bankruptcy reforms in England and Wales

Table 3 shows trends in bankruptcy filings for the years 1997 to 2005. A steady increase is evident for that time period. Bankruptcy statistics are organized in two categories:

- company liquidation which is comprised of compulsory and creditor or voluntary based, and
- individuals filings which fall under either bankruptcies or Individual Voluntary Arrangements (IVAs).

Bankruptcy or insolvency filings in Scotland, and Northern Ireland are organized, just like those of England and Wales, except that, they are rarely seasonally adjusted. There are two main personal insolvency regimes in the UK: one for England and Wales and another for Scotland. In England and Wales the majority of personal insolvencies are "bankruptcies". The remainder are Individual Voluntary Arrangements or IVAs, which are arrangements between the debtor and his or her creditors for the payment of the debts on different terms: for example, by installments, or over a period of time. These two forms of insolvency have close equivalents in Scotland, where bankruptcies are known as sequestrations and the equivalent of IVAs are called Protected Trust Deeds, or PTDs. In bankruptcy, an indebted individual sees his debts forgiven in return for surrendering his assets (and sometimes a limited proportion of his income). He is allowed however to retain so-called "exempt" assets such as tools-of-trade and basic necessities and the generosity of this exemption level has received much attention in the USA where it varies among states, potentially affecting bankruptcy filing rates. Bankruptcy is handled by a trustee in bankruptcy who must be either the official receiver (a civil servant) or a licensed insolvency practitioner. Following the introduction of the Enterprise Act of 2002's bankruptcy provisions, a bankruptcy in England & Wales will now normally last no longer than 12 months and may be less, if the Official Receiver files in Court a certificate that his investigations are complete. However, in cases where the bankrupt is considered particularly culpable for his or her insolvency, the bankruptcy can last for up to 15 years, although such orders are rare. In the Table below, it can be seen that bankruptcies and IVAs were on upward trend for the years 1997 to 2005.

Table3. England and Wales bankruptcy and insolvencies from 1997 to 2005

Type	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Bankruptcy orders	21,827	24,621	29,889	29,997	30,555	32,837	36,581	41,225	57,674	73,589
IVAs	4,549	4,902	7,195	7,978	6,298	6,295	7,583	10,752	20,293	
Total	24,441	24,549	28,806	29,528	29,775	30,587	35,604	46,650	67,580	

Sources: http://www.arbiummoney.com/bankruptcy/bankruptcyservices/downloads/bankruptcy_stats.pdf, http://www.dtistats.net/sd/insolv200505/table2.htm

7. Effects of country culture on bankruptcy perception

It appears also, that the propensity to file is influenced by the economic culture of each country. In the US citizens are less likely to exercise restraint if it becomes apparent that they are financially hard up. Varona (July, 2007) reported that the concept of consumer bankruptcy and "fresh start" is new in Europe. Demark spearheaded it in 1984. In France and Malaysia, the law focuses on the consumer's indebtedness rather than on his or her insolvency. Most European countries and the US use the newly reformed Chapter 15 (or its equivalent) provisions of the new cross boarder law, which addresses across boarder insolvency to revolve international bankruptcy situations. Spain is viewed as different from other European countries. Varona (9/07) says that there is no consumer bankruptcy provisions in

Spain's insolvency laws which was enacted in 2003, although the European Union is highly rated for its consumer protection against credit market. Varona said that the Spanish are reluctant to file while that is not the case in the US.

In fact, Kilborn said that many scholars (arguably) referred to Americans as shameless when it comes to filing for bankruptcy. This author found examples in Japan and other countries which show that US is not alone when it comes to greed although those other countries are still behind the US in the index of individual's or a business' propensity to file for bankruptcy. The index used was simply the filings/1000 households. In the US, this index has reached a ratio of 5/1000 while it reached 3.4 in Japan at the most. It is thought that many Americans file for bankruptcy even when they could put off filing. According to Kilborn (9/07), as soon as European states adopted laws that offer relief to insolvent individuals, another group arose. This is the group of individuals who are so broke that they cannot pay even a filing fee. They are known as "Nina debtors". They have no income, and assets for creditors to take.

7.1. Bankruptcy reform in Malaysia. The Malaysian Bankruptcy Act of 1967 was amended in the year 2003 and came into force on 1 October, 2003 (International Association of Insolvency Regulators, IAIR, of Malaysia, 2007). The following are the essential changes the law brought.

Changes brought about by the new amendment include:

- a change in the title of the Official Assignee Malaysia to the Director-General of Insolvency Malaysia (DGI);
- Inclusion of a definition of "social guarantor";
- a requirement for a petitioning creditor to prove to the Court that he or she had exhausted all avenues to recover debts owed to him or her by the debtor before he or she can commence any bankruptcy action against a debtor;
- an increase in the minimum debt which enables a person to be declared bankrupt from RM 10,000 to RM 30,000;
- enabling the DGI to give the creditor/s a notice of his or her intention to issue a certificate of discharge to a bankrupt without having to give any reason;
- stopping the calculation of the rate of interest on the date of the receiving order granted by the court in cases where the interest is not reserved or agreed upon;
- conferring powers of a Commissioner of Police to the DGI and the powers of a police officer on the investigation officers to facilitate investigation, prosecution and enforcement;
- an increase from RM 100 to RM 1000 as the minimum amount that cannot be borrowed by an undischarged bankrupt without informing the person who gives the credit or loan that he or she is an undischarged bankrupt.

According to Global House Price Crash (May, 2005), Malaysia has two levels of bankruptcies: personal insolvencies and corporate insolvencies.

Personal insolvency procedures in Malaysia. The personal insolvency procedures that apply in Malaysia are contained in the Bankruptcy Act of 1967. A debtor can become bankrupt through either a debtor's petition or a creditor's petition. There is a summary administration available for small bankruptcies. Debtor can also avail themselves of a composition or a scheme as an alternative to bankruptcy. The DGI administers all personal insolvency administrations.

Corporate insolvency procedures. The following insolvency procedures are available under the Companies Act of 1965:

- Pt 7. Arrangements and reconstructions;
- Pt 8. Receivers and managers;
- Pt 10. Winding-up.

Winding-up can be a court procedure or a voluntary procedures (under the control of members for a solvent company or under the control of creditors for an insolvent company). Private practitioners can be appointed by, in windings-up, for instance, the Official Receiver can act as a liquidator and is a default liquidator if no other liquidator is acting.

Role played by Government. The Official Assignee (a government official) is responsible for administering all personal insolvency procedures. The Official Receiver (also a government official) can act as a liquidator of companies being wound-up and is appointed by default if no other liquidator is acting. The Official Receiver also supervises the activities of private sector liquidators appointed by the court.

Role played by private sector practitioners. Private sector practitioners are not appointed to personal insolvencies. But private sector practitioners may take on corporate insolvency appointments although the Official Receiver may also act as a liquidator.

Role played by the Court. The general powers of the Court in Bankruptcy are included in S91 of the Bankruptcy Act of 1967. The Court has a general oversight role in relation to corporate insolvency procedures, especially where the court has appointed a liquidator. In windings-up generally, the court has power to remove a liquidator and appoint another (S266) and review a liquidator's remuneration (S267). In spite of the reforms, still the number of Malaysians declaring personal bankruptcy surged 47

percent between 2001 and 2004 to figures more than double those seen during the Asian financial crisis of 1997 (Indriani, May 1, 2005). The Deputy Finance Minister Ng Yen Yen (Global House Price Crash Forum) also said that bankruptcy cases rose to 16,251 cases in 2004 from 11,065 in 2001. Even though the debt threshold for bankruptcy was increased from 10,000 ringgit to 30,000 in 2003, the finance ministry data still showed a rise in cases. Ng said: "We are not even enduring bad times now. This is not good and it (the trend) must be stopped", She added that, even during the Asian financial crisis in 1997, there were only 7,396 bankruptcy cases. Statistics showed that 11 percent of the people became bankrupt because of non-payment of credit card debt while 8 percent of the bankrupts were between the ages of 20 and 30. "This is serious because by right, no person under 35-years should be a bankrupt", the minister stated. Ng said the government was turning to education and improving awareness on how to contain overspending to prevent a further rise in financial failures. Research showed a direct link between credit card use and the bankruptcy rate among those aged between 20 and 30, according to T. Indrani, deputy secretary general of the Federation of Malaysian Consumers Associations (Global House Price Crash Forum, Kuala Lumpur, Malaysia, May 1, 2005).

7.2. Ukrainian and Russian bankruptcy reform laws reviewed. The first Ukrainian law in recent history to regulate the property problems of financially distressed enterprises, the Bankruptcy Law, was adopted in 1992 (Biryakov, 2000). Enactment of the law was made necessary by an increase in insolvencies nationwide. Although the new law of 1999 contains a number of provisions that are broadly similar to those in the old law, as a whole it is constructed on completely different foundations. Indeed, any similarities between the new and old laws are attributable merely to the fact that both are the product of a settled legal tradition which, in turn, is based on principles common to all continental legal systems. Much current international thinking was incorporated into the conceptual aspects of the new law. For example, the principle that legislation should protect not only creditors' interests, but also those of debtors, is reflected in the preamble to the law. The law also emphasizes that it is, first and foremost, directed at restoring the solvency of the debtor, and that only after measures to that end have failed will the debtor be declared bankrupt for the purposes of complete or partial satisfaction of the claims of the creditors.

The new law expands the range of persons that can be recognized as 'bankrupt'. It now includes consumer cooperatives, and charitable and other funds. Bankruptcy proceedings can also be initiated against individuals, but only those who are registered as entrepreneurs. An 'entrepreneur' is anyone recognized as such by the Law of Ukraine on Entrepreneurship of 1991. After 'special state registration', such persons can conduct businesses at their own expense and discretion without needing to set up a legal entity. The new bankruptcy law also sets out a number of exceptions to the general rules on who can be declared bankrupt. 'State-owned enterprises with special status' (*kazenni pidpryemstva*) are one such group. This term was in fact introduced into Ukrainian legislation in 1998 with the adoption of supplements to the 1991 Law of Ukraine on Enterprises. It should be noted, though, that the concept of 'state-owned enterprise with special status' is imprecisely defined in the legislation.

On the question of creditors, the new law does not offer any radically new provisions. 'Creditors' must have monetary claims against the debtor, which can include obligations to the treasury and wage arrears, in order to qualify to file a petition with the Arbitration Court. .As for 'non-resident creditors' (ie businesses registered in other jurisdictions), these are considered creditors under the new law, unless otherwise stipulated by international treaties to which Ukraine is a party. In the Bankruptcy Law of 1992 this category of creditors was not actually mentioned. The new law also defines those persons who are entitled to participate in a bankruptcy, and who have procedural rights which are more precisely defined than in the old law.

7.3. Chinese bankruptcy reform, 2007: law on enterprise bankruptcy – China. This law was adopted at the 18th Meeting of the Standing Committee of the Sixth National People's Congress and promulgated by Order No. 45 of the President of the People's Republic of China on December 2, 1986, for trial implementation three full months after the Law on Industrial enterprises with Ownership by the Whole People came into effect (InterNet Bankruptcy Library, IBL). On June 1, 2007, China's new Enterprise Bankruptcy Law took effect. Years in the drafting, it represents a major change from the prior law. If implemented consistently throughout China, the new law may give foreign creditors more protection than they have received in the past (Eisenbach, 2007; The Asia Times). Covering twelve chapters and 136 articles, the new law is designed to create a framework for business insolvencies in China. Among the key features are a court-appointed administrator, a creditors' meeting and creditors' committee, voluntary and creditor-initiated bankruptcy proceedings, and reorganization, liquidator, and settlement mechanisms.

For China's program of economic reform, which saw the country opening its doors to the outside world, its newly passed bankruptcy law has twofold significance: to boost its credit market as it gives

full access to foreign lenders, and to deal a final blow to the "iron rice bowl" employment system at its State-Owned Enterprises (SOEs) (Scott Zhou, 2007; Eisenbach, June 11, 2007). Following its commitment to accession to the World Trade Organization (WTO), China fully opened its banking sector at the end 2007 to foreign lenders, who will then compete with their Chinese rivals on an equal footing. This will no doubt boost the development of China's credit market. But such development requires a legal basis, and that is where the new bankruptcy law comes into play. The law, which became effective on June 1, 2007, gives creditors' claims top priority when the debtors undertake the process of liquidation, which is more in line with the international practice. This would certainly give foreign banks some legal assurance when issuing loans, particularly to SOEs. In contrast, under the old regulation governing the bankruptcy of SOEs, workers' interests would be given top priority. In other words, when an SOE went under, its assets, even those pledged for loans, would be used to pay workers' salaries and other benefits first, while the creditors can only get what would be left. Such protectiveness of workers' interests reflects Beijing's deep concern with possible social unrest caused by laying off SOE workers. But under such circumstances, it would be very unlikely that foreign lenders would be willing to grant loans, even with guarantees. Now that the new law favors creditors, foreign lenders have little to fear. In this sense, the law should also help boost China's market-economy status, which is still not recognized by its major trade partners such as the United States and the European Union. "The successful enactment of the law significantly improved China's profile in the WTO, since the law will eliminate some concerns of foreign investors by establishing a legal framework and market environment with credibility, efficiency, assurance and expectation", said Eisenbach). Executives of domestic lenders, particularly the four big state-owned banks – the Industrial and Commercial Bank of China, Bank of China, China Construction Bank and the Agricultural Bank of China – will also applaud the new law. The banks have had to dispatch "policy loans" on government orders to SOEs, and they suffer badly when their debtors become bankrupt. The four banks bear a crushing burden of bad loans that threatens the stability of the institutions and China's financial system. The government has injected huge amounts of capital to help them lower their non-performing-loan (NPL) ratio ahead of opening the sector to foreign competitors. With government help, Chinese banks' NPL ratio shrank by 4.2 percentage points by the end of 2005 to 8.6%, according to the China Banking Regulatory Commission. One of the major purposes of the current bankruptcy law, which was enacted in 1986, is to rescue and improve the management of SOEs, not to let them go out of business. How to readjust debtor-creditor relations in the process of liquidation was not on the decision-makers' agenda. Therefore, bank creditors can often only recover from the "bankrupt" SOEs 3-10% of the book value of their loan (Scott Zhou, 2006). Xie Ping, general manager of the Central Huijin Investment Co, the central government's investment arm, which holds majority stakes in three of the big four banks, has long criticized the lack of a real bankruptcy law to protect creditors. "A good bankruptcy law can establish effective market constraints, push enterprises to improve governance, and stick to the principle of paying off obligations, as well as protecting the creditors' and debtors' rights". Nowadays in China, most of the collateral creditors are banks (Eisenbach). Because the banks' claims are given a low priority, they became excessively cautious in lending, resulting in a credit crunch on mid-sized and small enterprises. From this viewpoint, the new bankruptcy law is expected to help boost China's credit market. In this sense, it will also likely help to foster the social value of respecting credit, which is lacking in traditional Chinese culture. The new law will apply to all sorts of companies, including listed and non-listed companies, domestic and foreign companies, privately run or state-owned, as well as financial institutions. The law epitomizes the gradual nature of China's market-oriented economic reform, which has largely centered on figuring out a viable way to close down insolvent SOEs. In theory, the current bankruptcy law also acknowledges that claims in liquidation should be given priority. In practice, however, the priority has in effect been subordinated by the so-called "policy bankruptcy", or bankruptcy ordered and administered by the government, which trumps the protection of creditors. The State Council stipulated in 1994 that even land owned by an SOE pledged for loans can be used to pay off laid-off workers. Since 1994, under the "policy bankruptcy", all assets of the bankrupt SOEs, including guarantees and collaterals, have been literally used up to pay laid-off workers. Sometimes the government subsidizes the bankruptcy if the assets are not enough to cover such obligations. Along the way, the government has been arranging the market exit of exhausted mining companies and big and middle-sized SOEs under "severe difficulties". So far, two-thirds of such SOEs have been closed down and 7.19 million workers laid off and "settled" by governments at various levels.

At present, courts must get permits from the government before triggering the bankruptcy process. The new law ushers in the professional "bankruptcy manager" system in line with international business practice. The government's role has been dimin-

ished. Some analysts liken the reorganization practice to that under Chapter 11 of United States Bankruptcy Code. Nevertheless, the new law is still a compromise between implementing an international standard and concern over social unrest. Therefore, an additional 2,116 SOEs already lining up for "policy bankruptcy" will be allowed to enjoy the "Last Supper" until 2008, exempted from the new law. The State Council has this year set aside 33.8 billion yuan to help these SOEs settle with their laid-off workers, which could number up to 3.51 million. Under some "special circumstances", the priority will be given to workers' obligations. The "caveat" addresses the interests of marginalized people during the transition to a free-market economy.

7.4. The Australian bankruptcy reform amendments and summary statistics. According to Wilson (personal letter, June 5th, 2008) bankruptcy data in Australia are recorded by categories. The Insolvency and Trustee Service Australia (ITSA) regulates personal insolvencies. But corporate insolvencies are administered by the Australian Security and Investment Communication (ASIC). Also, Australia, like England and Wales, statistics records are kept as bankruptcies, insolvencies, or arrangements. Bankruptcies are similar to US's Chapter 7 and arrangements are comparable to Chapters 11 and 13 filings under the US Bankruptcy Code.

7.4.1. Superannuation and bankruptcy. The Bankruptcy Legislation Amendment (Superannuation Contributions) Act of 2007 (the Act) received Royal Assent on 15 April, 2007. The amendments allow bankruptcy trustees to recover superannuation contributions made prior to bankruptcy with the intention to defeat creditors. The rules for recovering superannuation are based closely on section 121 of the Bankruptcy Act of 1966. These amendments have commenced and are applicable to contributions made on or after 28 July, 2006. The amendments will also allow an Official Receiver to issue a Notice to freeze a contributor's interest in a superannuation fund or a Notice pursuant to section 139ZQ to recover void contributions in the same way as other void transactions where the Official Receiver has reasonable grounds to believe the contributions are void. These amendments commenced on 16 October 2007.

7.4.2. Debt agreement amendments. The Bankruptcy Legislation Amendment (Debt Agreements) Act of 2007 obtained Royal Assent on 10 April 2007. This Act amended the Bankruptcy Act of 1966 to:

- provide for enhanced regulation of debt agreement administrators;
- specify the duties of a debt agreement administrator;
- encourage creditors to make voting decisions in respect on debt agreements based on the debtor's capacity to pay;
- provide more effective means of dealing with default by the debtors subject to debt agreements; and
- simplify, streamline and clarify a range of provisions to improve the operation of the debt agreement regime.

NB. Annual figures for all bankruptcies (business or personal) are published in the Annual Report on the Operation of the Bankruptcy Act of 1966 for each financial year, released by the office of the Inspector-General in Bankruptcy, Insolvency and Trustee Service, Australia.

Table 4. Proportion of business and non-business personal insolvencies (Australia, 1997-2007)

		Bus related		Non-bus related		
	Bank. type	N	%	N	%	Total
1997-98	Bankrupt	4,854	19.9	19,554	80.1	24,408
1998-99	Bankrupt	4,962	18.8	21,414	81.2	26,376
1999-00	Bankrupt	3,899	16.7	19,399	83.3	23,298
2000-01	Bankrupt	4,574	19.1	19,313	80.9	23,887
2001-02	Bankrupt	4,212	17.5	19,875	82.5	24,087
2002-03	Bankrupt	4,103	18.1	18,534	81.9	22,637
	Debt agreements	479	10.5	4,071	89.5	4,550
	Part X	182	44.9	223	55.1	405
2003-04	Bankrupt	4,149	20.2	16,347	79.8	20,496
	Debt Agreements	356	6.5	5,131	93.5	5,487
	Part X	168	55.6	134	44.4	302
2004-95	Bankrupt	4,300	21	16,201	79	20,501
	Debt agreements	268	57	4,470	94.3	4,738
	Part X	110	53.1	97	46.9	207
2005-06	Bankrupt	4,241	19	18,058	81	22,299
	Debt agreements	239	4.9	4609	95.1	4,848
	Part X	82	45.1	100	54.9	182
2006-07	Bankrupt	4,935	19.6	20,303	80.4	25,238
	Debt agreements	333	5.1	6,183	94.9	6,516
	Part X	116	53.5	101	46.5	217

Table 5. Australian corporate insolvency appointments (total by state financial years 1999-2007). Various Australian States and territory

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	Total
1999	2947	2017	1484	410	594	72	39	115	7678
2000	13300	8866	4728	1499	2253	215	252	567	31680

Table 5 (cont.). Australian corporate insolvency appointments (total by state financial years 1999-2007). Various Australian States and territory

2001	25775	17129	9178	2904	4344	422	479	1093	61324
2002	4131	2579	1768	477	907	129	52	177	10220
2003	4213	2674	1766	475	817	52	53	141	10191
2004	50741	33717	18036	5719	8576	832	948	2150	120719
2005	101482	67434	36072	11438	17152	1664	1896	4300	241438
2006	202799	134730	72074	22847	34249	3322	3788	8591	482400
2007	32994	21849	11753	3751	5699	568	605	1398	78617

Note: Key to states: NSW – New South Wales; WA – Western Australia; VIC – Victoria; NT– Northern Territory; QLD – Queensland; TAS – Tasmania; SA – South Wales; ACT – Australia capital Territory*; (* – not one of 6 States).

7.4.3. Explanation of the filing system for the Australian Insolvency Law. In 2003-2004 filings are examined separately according to applicable administrative provisions of the Insolvency Act of 1966. Table 4 compares total bankruptcy filings for business and non-business related filings. Their change patterns do not show any specific trend. Lastly we note that, in Table 5, total filings for all states and the territory of Australia Capital Territory don't exhibit clear trend over time. For some reason, the data pattern is erratic. For example, we note that total filings were quite low for the period between 1999 and 2000, then shot up in 2001 before going back down during 2002 and 2003 years. Then, for whatever reason, total filings skyrocketed for the years 2004 to 2006 before plummeting 83.3% from 482,400 to 78,617 there after. In spite of no alarming bankruptcy and insolvency trends, Australia still enacted a fairly comprehensive reform law and created a special office of Inspector General of Insolvencies.

Conclusion

Information gathered in composing this paper, shows that there are indeed different types of bankruptcy systems worldwide. But, regardless of the differences, the laws are aimed at mitigating the effects of bankruptcy or insolvency. A nation has interest in keeping its economy viable. Uncontrolled bankruptcies can deprive a nation's economy of the vitality needed to be and remain productive. Bankruptcy can affect the government's revenue because of the revenue lost from the bankrupt enterprises and people. During the last two decades bankruptcies have been on the rise worldwide. Those trends have inspired initiation of different legal amendments or changes. USA has gone further than any country in initiating reforms that are seen by many as draconian in their disregard for working poor and lavishing savings to big businesses.

Australia and Malaysia have even gone as far as creating the position of Inspector General of insolvencies with police power. That action shows that those countries take insolvency or bankruptcy seriously. Malaysia went one step further and raised the floor of the amount of debt that must be reached before being allowed to file for bankruptcy. It used to be that one could file for bankruptcy when debt reached RM 10,000 (US $3,080). That floor has been raised to RM 30,000 (US $9,230). Now, scholars are asking what happens when or if an insolvent or bankrupt individual owes less that RM 30,000 and (in all honesty) cannot repay. Would the bankrupt be put in jail for being poor? Some countries jail bankrupts for failing to pay their debts. Whether that is fair or not, is irrelevant because that is the current legal system under which such cases are adjudicated. In most Western countries being a bankrupt is not a criminal offence and no jail sentence is imposed. But if bankrupts are judged to have committed crimes, such as employing fraudulent tactics, as specified under the various bankruptcy codes, they can be fined and or jailed. This is especially true in the USA today.

Ukraine also has amended its bankruptcy law to be in line with continental legal system and global thinking. Unlike the old law, the new one extends bankruptcy protection to creditors as well as debtor's interests. Yet, the Ukrainian law allows bankruptcy proceedings to be initiated against individuals only if the individuals are classified as entrepreneurs under the 1991 law. The new law also makes clear that the solvency of the debtor is of paramount importance. The Chinese new law, too, focuses more on helping displaced workers without compromising the interests of the enterprise system. In this sense, it is clear that reforms are aimed at helping the economy by balancing the effects of bankruptcy aspect on workers and businesses. Also, the study found that virtually all bankruptcy systems are still evolving, but at different rates. The driving force behind this continuing amendments to the bankruptcy laws is the desire for these countries to have viable economies. Each country's political culture dictates the nature of evolution of its legal system. That realization explains why, although the strategic intent is to ameliorate the bankruptcy laws, by appropriate amendments, the approaches are different.

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