Chapter 9

Difficult Issues in Creditors' Schemes – A Commentary

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Introduction

Creditors' schemes of arrangement have risen (like a phoenix) from the ashes.

The astute observer will protest that they never left us, but the impact of the Harmer report[1] and the introduction of the voluntary administration procedure in Part 5.3A of the *Corporations Act 2001* (the Act) cannot be underestimated. The relative clarity of the voluntary administration provisions (together with a well developed body of law and procedure) has cemented that form of external administration as the process of choice for determining the rights of creditors of insolvent or near insolvent companies.

Despite this, the creditors' scheme of arrangement has gained prominence in recent times. That is because the courts have adopted a flexible approach to creditors' schemes which suggests that they can be utilised in a manner not available in the more popular voluntary administration context.

In Chapter 8 Konrad de Kerloy provided an excellent précis of the key issues facing proponents of these schemes. This chapter provides some additional commentary on the use of creditors' schemes of arrangement, including some observations on the deeds of company arrangement (DOCA) versus creditors' scheme debate and some key practical considerations for advisers and other interested parties.

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1 Australian Law Reform Commission, Report No 45, *General Insolvency Enquiry*.