

A Study of Global Bankruptcy Trends: Examples from USA, UK, Australia, China and other countries

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Abstract

Bankruptcy filings in the US have reached an all time high in recent years. But the European countries have been slow and less aggressive than USA. On the whole there is evidence more and more countries are reforming their bankruptcy laws, albeit at different rates and difference reasons. It appears that as the global economy slows down, countries are looking out for more efficient ways of controlling the economies internally. The USA Congress has taken drastic steps and enacted stringent bankruptcy Laws which took effect on October 17th, 2005. But between 2002 and 2006, many other countries reformed their bankruptcy laws to control spiraling bankruptcies within their borders. This paper examines some bankruptcy reforms, in USA, Canada, UK, Australia, Malaysia and the Ukraine. Unfortunately, it is very difficult to get data on some countries. But explanation of new bankruptcy reforms are abundant.

Introduction

The information used for this paper was partially taken from an ongoing research the author is conducting at the university's 1890 Research and Extension unit, with a grant from the United States Department of Agriculture (USDA). Different insolvency categories are studied at state, nation and global levels and in the last 15 years or so, the world has seen a surge in insolvencies. Consequently, in response to this upward trend in filings, several countries have undertaken bankruptcy reform measures to counteract or slow down the rate of bankruptcy filings of different types. There are many types of bankruptcy filings, depending on the severity of financial stress the bankrupt party might be in. But regardless of type, bankruptcies are a drain on the economies of the nations and the people.

Objectives of the Study

The following are the objectives of this study

1. To study trends in bankruptcy reform laws worldwide.
2. To study the effects the new laws have significantly changed the bankruptcy filings

trends in those countries where data is available

Methodology

Data for study was obtained from the U.S. 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' Websites and various Internet search engines. So, basically, data and any other pertinent qualitative data were obtained from sources of the countries studied.

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 not 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 representative 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 the 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, the Ukraine, Russia and China have reformed their laws to make them more creditor friendly. The US bankruptcy law of 2005, clears favors credit issued 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 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 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, trends filings reversed 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. New Generation Research, Inc. and bankruptcyData.com have compiled a list of the largest 10 public company bankruptcies in the past few years. Tables 3, 4, 5 and 6 show such companies for the years 2004 to 2007. The companies are different. But every year mean bankruptcy filings have about the same in terms of the pre-petition assets of those companies. In that sense we can see that in 2004, 10 companies had mean assets of \$3,049 bill, that mean shot up to \$12,379 bill in 2005 (a major surge), went down sharply to \$1,785 bill in 2006 and in 2007, that mean came to just \$6,688 bill. These data for the companies 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. Indeed, Table 2 helps support this assessment. But Matur (January, 2007) cited new research 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

Circuit	2002	2003	2004	2005	2006	% change 05/04	% change 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.

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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
1988	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

Table 3. Largest Public Company Bankruptcy Filings - 2004

Company	Description	Assets
Yukos Oil Company	Oil Prod & Distribution	\$12,276
US Airways Group, Inc. (2004)	Holding Co for Passenger Airlines	8,349
RCN Corporation	Delivers Bundled Comm Svices	2,346
Atlas Air Worldwide Holds, Inc.	Air Cargo Outsourcer	2,085
Trump Hotels & Casino Rests, Inc.	Operates Hotels and Casinos	2,031
Pegasus Satellite Comm, Inc.	Provides Satellite Television	1,814
Metro Mortg & Securities Co., Inc.	Insurance	1,787
Interstate Bakeries Corporation	Wholesale Baker & Distributor	1,646
Oxford Automotive, Inc. (2004)	Designs Engin Metal Components	889
ATA Holdings Corp.	Provides Passenger & Chart Air S'vice	870
	Mean Assets (mills)	3,049

* Listed in descending order by Pre-Petition Assets (Assets in \$mil)

Source: BankruptcyData.com New Generation Research, Inc. Boston, MA (617) 573-9550

Table 4. Largest Public Company Bankruptcy Filings - 2005

Company	Description	Assets
Refco Inc.	Brokerage Services	\$33,333
Calpine Corporation	Integrated Power Company	27,216
Delta Air Lines, Inc.	Passenger Airline	21,801
Delphi Corporation	Automotive Systems Manufacturing	16,593
Northwest Airlines Corporation	Passenger Airline	14,042
Collins & Aikman Corporation	Manufact of Interior Auto Components	3,191
Tower Automotive, Inc.	Structural Comp. Design for Autom	2,846
Winn-Dixie Stores, Inc.	Operates Grocery Stores	2,619
ASARCO LLC	Copper Mining	1,108
American Bus Financial Serv, Inc.	Provides Mortgage Loan Services	1,043
	Mean Assets (mills)	12,379

* Listed in descending order by Pre-Petition Assets (Assets in \$mil)
 Source: BankruptcyData.com New Generation Research, Inc. Boston, MA

Table 5. Largest Public Company Bankruptcy Filings - 2006 (Mills)

Company	Description	Assets
Dana Corporation	Automotive Parts Supplier	\$9,047
Sea Containers Ltd.	Passenger & Freight Transportation	2,736
Dura Automotive Systems, Inc.	Automotive Parts Manufacturer	2,075
Satelites Mexicanos, S.A. de C.V.	Satellite Services	925
Pliant Corporation	Manufactures Films & Flex Packaging	777
OCA Inc.	Provides Services to Orthod & Dental	660
Silicon Graphics, Inc.	Electronic Computer Manufacturing	452
Integrated Elect Services, Inc.	Provides Electrical Contracting Services	416
Granite Broadcast Corp	Television Broadcasting Company	406
Global Power Equip Grp Inc.	Manufactures Equipnt for Power Plants	381
	Mean Assets (mills)	1,785

* Listed in descending order by Pre-Petition Assets (Assets in \$mil)
http://bankruptcydata.com/Research/Largest_2005.pdf
 Source: BankruptcyData.com New Generation Research, Inc. Boston, MA (617) 573-9550

Table 6. Largest Public Company Bankruptcy Filings – 2007 (Mills)

Company	Description	Assets
New Century Financial Corporation	Real Estate Investment Trust	\$26,147
American Home Mortg Invest. Corp.	Real Estate Investment Services	18,829
HomeBanc Corp.	Real Estate Investment Trusts	6,823
Delta Financial Corporation	Mortgage Broker	6,589
NetBank, Inc.	Financial Holding Company	4,772
Movie Gallery, Inc.	Video Tape Rental Recreat Activities	1,385
Remy International, Inc.	Manufacturer & Remanuf of Auto Pts	871
Pope & Talbot, Inc.	Forest Products Company	662
InSight Health Services Holdg Corp.	Medical Laboratories	408
Bally Total Fitness Holding Corp	Membership Sports & Recreat Clubs	397
	Mean Assets (mills)	6,688

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 business 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 on which the cut off point is based is considered too small. 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 the a filer's family income compared to the average income of the filer's state. Even as little as \$100 in excess of disposable income may lead to a five year payment schedule, being required of a filer (Bankrate.com, January, 2006). This new law could be a government's attempt to slow down bankruptcies and stabilize the economy.

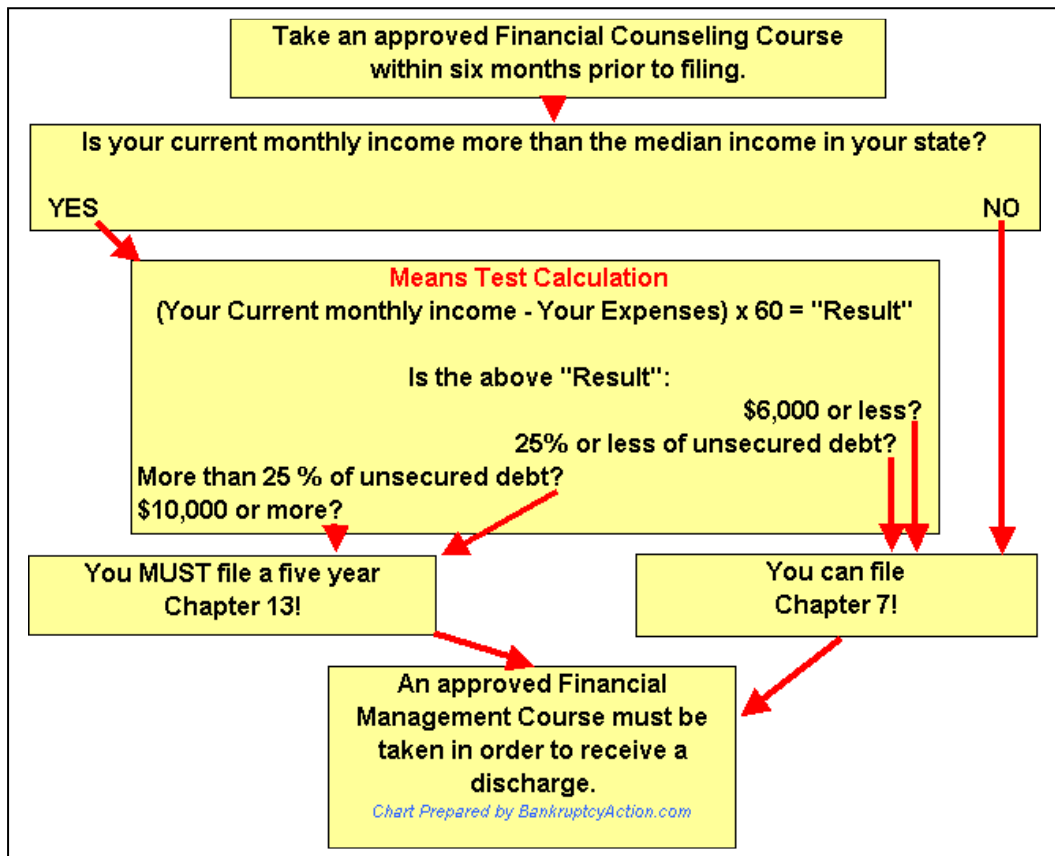


Fig 1. Filing Procedures under the New Bankruptcy Code (Effective October 17, 2005) Source: The New Bankruptcy Reform Act of 2005. This Flow Chart was prepared by BankruptcyAction.com

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. 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, he or she would be allowed to set up a court approved schedule of reduced but steady payments based on the individual's means to pay. Usually this type of arrangement covers a five - year period. And somewhat similar to the European's and the Australian Individual Voluntary Arrangement (IVA)

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 this country. 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 cooperative effort with United Nations. No one country can, therefore, enforce Chapter 15 provision or its equivalent in other countries.

Trends in Global bankruptcy Reforms

Increase in bankruptcy filings is not limited to U. S. Although the US has engineered comprehensive (and some say radical) reform. In the year (2005) the US implemented a drastically reformed the Bankruptcy Law. During the same 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, the 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. Table 7 shows trends in bankruptcy filings for the years 1997 to 2005. A steady increase is evident for that time period. Table 8 shows filing patterns for England and Wales from the 4th quarter of 2005 to the end of 2006. There are substantial increases in IVAs for the five quarters, although the company liquidations exhibit mixed results.

Bankruptcy Reforms in England and Wales

Bankruptcies in England and Wales show a steady increase per quarter for the years 2005 and 2006. Statistics for 2007 had not been made available at the time of this writing. Bankruptcy statistics are organized in two categories::

- 1) Company Liquidation which is comprised of compulsory and creditor or voluntary based, and
- 2) 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 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 2002's bankruptcy provisions in April 2004, an England & Wales bankruptcy 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, Bankruptcies and IVAs are on upward trend for the years 1997 to 2005

Table 7. 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>

Individual Insolvencies In England and Wales

In Table 8, we see that there were 29,804 individual insolvencies in England and Wales in the fourth quarter of 2006 on a seasonally adjusted basis. This was an increase of 7.1% on the previous quarter and an increase of 44.1% on the same period a year ago. This was made up of 17,063 bankruptcies, an increase of 9.6% on the previous quarter and an increase of 24.8% on the

corresponding quarter of the previous year, and 12,741 Individual Voluntary Arrangements (IVAs), an increase of 3.9% on the previous quarter and an increase of 81.9% on the corresponding quarter of the previous year.

Table 8. Number of Insolvencies in England and Wales (seasonally adjusted) for the Years 2005 and 2006

							Percentage change	
		2005	2006	2006	2006	2006	Q4 2006 on:	
		Q4	Q1r	Q2r	Q3r	Q4p	Q3 2006	Q4 2005
Company Liquidations		3,198	3,452	3,252	3,239	3,194	-1.4	-0.1
Of which:	Compulsory	1,287	1,441	1,221	1,345	1,411	4.9	9.7
	Creditors Voluntary	1,911	2,011	2,031	1,894	1,783	-5.9	-6.7
Individuals		20,679	23,531	26,125	27,828	29,804	7.1	44.1
Of which:	Bankruptcies	13,675	15,321	15,002	15,569	17,063	9.6	24.8
	IVAs	7,004	8,209	11,122	12,259	12,741	3.9	81.9

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 as recently as 1984. In France 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 provision of the new 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. But 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 many scholars (arguably) referred to Americans as shameless when it comes to filing for bankruptcy. But he found example in Japan and other countries which show that US is not alone when it comes to greed although those other countries are still behind 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 it has gone as far as 5/1000 while it reached 3.4 in Japan at the most. It thought that many Americans file for bankruptcy even when they could put off filing. Quite to the contrary, old and new laws of bankruptcy favor businesses. 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.

Bankruptcy Reform in Malaysia

The Malaysian Bankruptcy Act 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';

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- 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 'social guarantor'.
- An increase in the minimum debt which enables a person to be declared bankrupt from RM10,000 to RM30,000;
- 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 RM100 to RM1000 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), there are 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 1967. A debtor can become bankrupt through either a debtor's petition or a creditor's petition. There is a summary administration available for

Role played by the Courts

The general powers of the Court in Bankruptcy are included in s91 of the Bankruptcy Act 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)

small bankruptcies. A debtor can also avail himself/herself of a composition or a scheme as an alternative to bankruptcy. The Official Assignee administers all personal insolvency administrations.

Corporate Insolvency Procedures

The following insolvency procedures are available under the Companies Act 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 procedure (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 (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.

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 bankruptcy cases rose to 16,251 cases in 2004 from 11,065 in 2001. Even though the debt

threshold for bankruptcy was increased from 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 said. Ng said that, even enduring 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, she said. "This is serious because by right, no person under 35-years should be a bankrupt," the minister said. 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, said T. Indriani, deputy secretary general of the Federation of Malaysian Consumers Associations (Global House Price Crash Forum Kuala Lumpur, Malaysia), May 1, 2005).

Ukrainian and Russian Bankruptcy Reform Laws Reviewed

The first Ukraine 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 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

10,000 ringgit to 30,000 in 2003, the finance 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 pidpnyemstva) 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, and the presence of provisions on this in the new law can be attributed to the working group. 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. Such persons, leaving aside the main 'parties'.

The Russian bankruptcy law, in spite of some changes recently made, is viewed as biased . Mogiliansky, Sonin and Zhuravskaya, 2006) studied the nature of judicial bias in bankruptcy proceedings following the enactment of the 1998 bankruptcy law in Russia. They realized two main findings are as follows. First, regional political characteristics affected judicial decisions about the numbers and types of bankruptcy proceedings initiated after the law took effect. Controlling for indicators of firms' insolvency and the quality of the regional judiciary, re-organization procedures were significantly more frequent in regions with politically popular governors and governors who had hostile relations with the federal center. Poor

judicial quality was also associated with higher incidence of re-organizations. Second, the quality of the regional judiciary affected performance of firms under the re-organization procedure: in regions with low quality judges, firms that were contrast, in regions with high quality judges, firms in re-organization outperformed firms not in bankruptcy proceedings. This effect of judicial quality on the performance of re-organized firms was stronger when governors were politically popular. These findings are consistent with the view that politically strong governors subverted enforcement of the 1998 bankruptcy law. Under those circumstances, the authors concluded, bankruptcy reforms will benefit the economy as well it might have otherwise. Indeed bankruptcy statistics are viewed as unrealistic.

Chinese and Vietnamese 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 comes into effect (InterNet Bankruptcy Library, IBL). But the law was put in effect on. 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 more information on the new law, you may find this. For China's program of economic reform, which sees 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.)

re-organized according to the 1998 law had significantly lower growth in sales, labor productivity, and product variety compared to firms not subject to bankruptcy proceedings. In

Following its commitment to accession to the World Trade Organization (WTO), China will fully open its banking sector at the end of this year to foreign lenders, which 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, to be effective from 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 current regulation governing the bankruptcy of SOEs, workers' interests would be given top priority. In other words, when an SOE goes under, its assets, even those pledged for loans, are to 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 is very unlikely that foreign lenders would be willing to grant loans, even with guarantees.

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 could significantly improve 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 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.

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 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

competitors. With government help, Chinese banks' NPL ratio shrank by 4.2 percentage points

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. In coastal regions, most SOEs that need to go out of business have made such deals.

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. 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. 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 Chapter 13 filings under the US Bankruptcy Code.

Superannuation and Bankruptcy

The Bankruptcy Legislation Amendment (Superannuation Contributions) Act 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 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.

Debt Agreement Amendments

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

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

The tables that follow summarize Australian statistics for selected Financial Years. Table 9

shows data for the financial Year 2004, using 2003 statistics (in italics) for comparison. These tables are limited to personal administrations under the Bankruptcy Act (and not corporate insolvency). The ITSA There were 4055 (19.78%) business related bankruptcies and 16441 (80.22%) non-business bankruptcies in the financial year 2003/2004. Table 10 shows filings for personal bankruptcies (excluding business related ones). But ITSA report show that there were 4128 (19%) business related bankruptcies and 18,172 (81%) non-business bankruptcies in the Financial Year 2004/2005. A business related bankruptcy is defined as one in which an individual's bankruptcy related to his or her proprietary interest in a business. For 2006 also, the Table 11 shows figures for personal administrations under the Bankruptcy Act and exclude corporate figures which ITSA provides. According to ITSA report, there were 4,253 (20.74%) business related bankruptcies and 16,254 (79.26%) non-business Bankruptcies in the Financial Year 2005-2006. Table 12 shows only personal administrations just as Tables 9 – 11 show for different years. But the ITSA report shows that there were 4,821 (19.1%) business related bankruptcies and 20,421(80.9%) non-business bankruptcies in the Financial Year 2006-2007

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

Table 9. Australia Bankruptcy Statistics for the Financial Year ending June 30, 2004

	BANKRUPTCIES (Parts IV and XI)			Debt Agreem (Part IX)			Personal Insolvency Agreements (Part X)		
	2003/ 2004	2002/ 2003	% Change	2003/ 2004	2002/ 2003	% Change	2003/ 2004	2002/ 2003	% Change
NSW	5971	6280	-4.92%	1401	985	42.23%	39	47	-17.02%
ACT	602	663	-9.20%	44	32	37.50%	17	8	112.50%
VIC	4238	4437	-4.49%	1322	1013	30.50%	40	74	-45.95%
QLD	4814	5796	-16.94%	1878	1863	0.81%	96	167	-42.51%
SA	2125	2179	-2.48%	258	192	34.38%	15	7	114.29%
NT	92	107	-14.02%	66	21	214.29%	1	0	0.00%
WA	1955	2187	-10.61%	400	328	21.95%	49	100	-51.00%
TAS	699	988	-29.25%	113	116	-2.59%	4	2	100.00%
Total	20496	22637	-9.46%	5482	4550	20.48%	261	405	-35.56%

Total administrations under Bankruptcy Act

2002-03 27,592 change
2003-04 26,239 -4.90%

Note. Total is for all actions (bankruptcies + Debt + Personal Insolvencies.

Example: for 2003-2004 Financial year: 20,496 + 5,482 + 261 = 26,239

Table 10. Australian Bankruptcy Statistics for the Financial Year ending June 30, 2005

	BANKRUPTCIES (Parts IV and XI)			Debt Agreements (Part IX) (Part X)				
	2004/ 2005	2003/ 2004	% Change	2004/ 2005	2003/ 2004	% Change	2004/ 2005	2003/ 2004
NSW	6251	5971	4.69%	1178	1403	-16.04%	34	54
ACT	794	603	31.67%	31	44	-29.55%	3	17
VIC	4492	4237	6.02%	1071	1323	-19.05%	61	40
QLD	4694	4814	-2.49%	1705	1878	-9.21%	49	112
SA	2081	2125	-2.07%	220	259	-15.06%	10	16
NT	86	92	-6.52%	59	66	-10.61%	1	1
WA	1545	1955	-20.97%	351	400	-12.25%	45	58
TAS	564	699	-19.31%	124	114	8.77%	3	4
Total	20507	20496	0.05%	4739	5487	-13.63%	206	302

		Change
	26,285	-3.17%
	25,452	

Table 11. Australian Bankruptcy Statistics for the Financial Year ending June 30, 2006

	BANKRUPTCIES			Debt			Personal Insolvency		
	(Parts IV and XI)			Agreements			Agreements		
	2005/	2004/	%	2005/	2004	%	2005/	2004/	%
	2006	2005	Change	2006	2005	Change	2006	2005	Change
NSW	7492	6248	19.91%	1383	1190	16.22%	39	35	11.43%
ACT	258	794	-67.51%	51	30	70.00%	4	3	33.33%
VIC	5023	4490	11.87%	1115	1070	4.21%	45	62	-27.42%
QLD	5374	4693	14.51%	1555	1702	-8.64%	38	49	-22.45%
SA	2048	2081	-1.59%	220	220	0.00%	13	9	44.44%
NT	117	86	36.05%	59	57	3.51%	0	1	-100.00%
WA	1415	1545	-8.41%	317	344	-7.85%	34	46	-26.09%
TAS	573	564	1.60%	166	125	32.80%	0	2	-100.00%
Total	22300	20501	8.78%	4866	4738	2.70%	173	207	-16.43%
Total administrations under Bankruptcy Act									
						Change			
	2004-05					25,446		7.44%	
	2005-06					27,339			

Bankruptcies (Parts IV and XI)				Debt Agreements (Part IX)			Personal Insolvency Agreements (Part X)				Total insolvency activity	
	06/07	05/06	% Cha	06/ 07	05/06	% Cha	06/ 07	05/ 06	% Cha.	06/ 07	05/06	% Cha
NSW	9248	7495	23.39	1966	1388	41.64	46	41	12.20	11260	8924	26.18
ACT	227	260	- 12.69	80	51	56.86	11	4	175.0 0	318	315	0.95
VIC	5700	5014	13.68	1781	1113	60.02	67	46	45.65	7548	6173	22.27
QLD	5751	5378	6.94	1773	1553	14.17	53	40	32.50	7577	6971	8.69
SA	2155	2053	4.97	314	220	42.73	8	14	- 42.86	2477	2287	8.31
NT	119	117	1.71	59	57	3.51	1	0	0.00	179	174	2.87
WA	1392	1412	-1.42	406	317	28.08	21	36	- 41.67	1819	1765	3.06
TAS	650	570	14.04	136	149	-8.72	0	1	0.00	786	720	9.17
Total	25242	22299	13.20	6515	4848	34.39	207	182	13.74	31964	27329	16.96

Table 12. Australian Bankruptcy Statistics for the Financial Year ending June 30, 2007

Note: % cha= % Change of 2007 statistics over those of 2006

Table 13. Proportion of Business and non-Business Personal Insolvencies
(Australia 1997-2007)

	Bank. Type	Bus Related		Non-Bus Related		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
2004-05	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	4,609	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 14. Australian Corporate Insolvency Appointments
(Total by State Financial Years 1999 – 2007)

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

Key to States

- NSW New South Wales
- VIC Victoria
- QLD Queensland
- SA South Wales
- WA Western Australia
- NT Northern Territory
- ACT Australia capital Territory* (not one of 6 States)
- TAS Tasmania

Explanation of the Filing System for the Australian Insolvency Law

Filings are examined separately according to applicable administrative provisions of the Insolvency Act 1966. Tables 9, 10, 11, and 12 show personal insolvencies for the financial years 200-2003, 2003-2004, 2004-2005 and 2005-2006 respectively. Changes in insolvencies for successive years are calculated based on total of each year’s bankruptcies, debt and personal insolvencies. For example, to calculate the filing change for years 2002-2003 and 2003-2004 we add up totals for 2003-2004 and get a grand total of 26,239. Then we similarly obtain the grand

total for 2002-2003 of 27,592. Finally we divide 26,739 by 27,592 and get 95.1% of, signifying a drop in filings to the tune of 4.9% In 2003-2004. Table 13 compares total bankruptcy filings for business and non-business related filings. Their relation don’t much. Lastly, we note that total filings for all states and the territory of Australia Capital Territory don’t seem to fall in any predicable fashion. Although the totals were quite low for 199 and 2000, then shot up in 2001 before going back down for 2002 and 2003. Then, for whatever reason, total filings skyrocketed for the years 2004 to 2006 before plummeting 83.3% from 482,400 to 78,617.

A Study of Global Bankruptcy Trends:
Examples from USA, UK, Australia, China and other countries

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