

## International Bankruptcy Procedures

Bankruptcy procedures differ substantially from one country to the next. Djankov, Hart, McLiesh, and Shleifer have estimated the efficiency of different procedures by presenting insolvency practitioners from 88 countries with an identical case of a hotel that was about to default on its debt, but whose going-concern value nevertheless exceeded its value if sold piecemeal.<sup>1</sup> The practitioners were asked to describe how the hotel's debt would be enforced in their countries.

The procedures fell into three main categories – foreclosure, liquidation, and reorganization. Foreclosure is aimed at recovering money owed to secured creditors, but does not protect unsecured creditors, who must rely on separate insolvency proceedings to recover the amounts owed them. It can be an entirely out-of-court procedure, in which a receiver oversees the sale of assets (either piecemeal or as a going concern). In other countries, a court oversees foreclosure, although it is typically less involved than in bankruptcy.

Liquidation is the procedure of winding up a company under court supervision. In principle, it may lead to a sale of the company as a going concern, and does not necessarily result in the piecemeal sale of its assets.

Reorganization is a court-supervised procedure aimed at rehabilitating companies in financial distress. Chapter 11 in the United States is an example of such a procedure. Reorganization protects the company while it attempts to rehabilitate itself; once reorganization begins, creditors generally may not enforce their claims against the company. The current management of the company may or may not retain control of the company during reorganization.

The following table shows, for a sub-sample of 23 countries, the procedure that the practitioners thought likely to be adopted for the hotel default. Regardless of the procedure, the socially optimal outcome of maintaining the business as a going concern was the most probable outcome in most of the countries shown in the table. The exceptions were Argentina, China, France, Indonesia, Italy, Russia, South Africa, and Switzerland.

The second column of the table shows the time before the business is finally disposed of piecemeal or disposed of as a going concern. Of the full sample of 88 countries, Ireland was regarded to have

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<sup>1</sup> Djankov, Simeon, Hart, Oliver D., McLiesh, Caralee and Shleifer, Andrei, Debt Enforcement Around the World (December 20, 2006). ECGI - Finance Working Paper No. 147/2007. Available at SSRN: <http://ssrn.com/abstract=953000> or <http://dx.doi.org/10.2139/ssrn.953000>. The paper also considers in less depth a similar case where the business is more valuable if sold piecemeal.

the most rapid proceedings with an estimated time for the hotel bankruptcy of 5 months. At the other extreme, resolution of the hotel default in Ecuador was estimated to take 8 years.

The third column of the table shows the cost of proceedings as a proportion of the hotel's assets at time of default. For some countries such as the Netherlands and Singapore, cost was estimated as just 1% of assets. The comparable figure for Ukraine was 42% of assets.

The final column of the table shows the practitioners' estimate of the proportion of the hotel's value that is lost in the proceedings. In some countries, such as Japan, Singapore, and the Netherlands, only about 5% of the value of the hotel is likely to be lost. At the other extreme, more than 90% of the value is lost in Turkey and Angola.

<b>Country</b>	<b>Procedure</b>	<b>Time (Years) <sup>1</sup></b>	<b>Cost % <sup>2</sup></b>	<b>Efficiency % <sup>3</sup></b>
<b>Argentina</b>	<b>Reorganization</b>	2.75	12%	35.8
<b>Australia</b>	<b>Foreclosure</b>	0.58	8	87.8
<b>Belgium</b>	<b>Reorganization</b>	0.92	4	90.8
<b>Brazil</b>	<b>Liquidation</b>	3.67	12	13.4
<b>Canada</b>	<b>Reorganization</b>	0.75	4	93.2
<b>China</b>	<b>Foreclosure</b>	1.79	22	43.6
<b>France</b>	<b>Reorganization</b>	1.89	9	54.1
<b>Germany</b>	<b>Liquidation</b>	0.92	8	57.0
<b>Indonesia</b>	<b>Reorganization</b>	5.50	18	25.1
<b>Italy</b>	<b>Reorganization</b>	1.17	22	45.3
<b>Japan</b>	<b>Reorganization</b>	0.58	4	95.5
<b>Korea</b>	<b>Reorganization</b>	1.50	4	88.1
<b>Mexico</b>	<b>Reorganization</b>	1.83	18	72.6
<b>Netherlands</b>	<b>Liquidation</b>	1.42	1	94.9
<b>Russia</b>	<b>Liquidation</b>	3.67	9	39.0
<b>Singapore</b>	<b>Foreclosure</b>	0.58	1	96.1
<b>South Africa</b>	<b>Liquidation</b>	1.92	18	39.8
<b>Spain</b>	<b>Reorganization</b>	1.00	15	82.0
<b>Sweden</b>	<b>Liquidation</b>	1.00	9	86.0
<b>Switzerland</b>	<b>Reorganization</b>	3.00	4	60.4
<b>UK</b>	<b>Foreclosure</b>	0.50	6	92.3
<b>USA</b>	<b>Reorganization</b>	2.00	7	85.8

<b>Venezuela</b>	<b>Liquidation</b>	3.96	38	13.1
<b>Average for 88 countries</b>		2.66	13.70%	56.31%

<sup>1</sup> Time covers the period from the time of default until the business is either kept as a going concern or sold piecemeal. It includes all delays from probable disputed claims and appeals.

<sup>2</sup> Cost to complete the insolvency proceeding as a percentage of the estate at time of entry into bankruptcy.

<sup>3</sup> Defined as the discounted value of the terminal value of the firm after bankruptcy costs.