

An international investigation into the failure of the “rescue culture”.

Insolvency: More than just numbers?

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ABSTRACT

The authors are engaged in a large, international, comparative project looking at the failure of the rescue culture around the globe. The project (*International Project on the Stigma of Insolvency (IPSI)*) has gained significant traction since we presented preliminary findings at the Wharton-Harvard conference in September 2023.

We have recently collected, and are currently analysing, significant and extensive data on the uptake of rescue procedures in 17 jurisdictions (Australia; Canada; China; France; Germany; India; Ireland; Italy; Lithuania; Netherlands; New Zealand; Nigeria; Singapore; South Africa; Switzerland; United Kingdom; United States) and have gathered some explanations for this from no less than 27 scholars and practitioners.

The paper put forward for this second Harvard-Wharton Insolvency and Restructuring conference explores the persistent issue of the under-utilisation of rescue procedures when compared to liquidation, despite longstanding policy efforts to promote a rescue culture.

The authors will comment on their extensive international and comparative literature review exercise of selected jurisdictions, reviewing legislative and policy documents, as well as academic writings, designed to unearth non-economic obstacles to the uptake of rescue procedures.

The study seeks to uncover the socio-legal factors influencing this trend, departing from traditional neoclassical economic analyses which focus predominantly on rational, economic incentives. Empirical data collected through international surveys indicate that while stigma is acknowledged in academic discourse, its real-world impact may be less significant than previously thought. Initial results suggest that higher levels of stigma do not necessarily correlate with a lower uptake of rescue procedure and vice versa.

Ultimately, the paper seeks to explain the initial data gathered and draw conclusions as to the pertinent factors affecting the uptake of rescue procedures in the 21 jurisdictions surveyed while testing two hypotheses gleaned from the results of the study, namely:

1. Since the literature extensively reports that stigma presents a challenge to the uptake of rescue procedures, there should exist a sense of stigma amongst the stakeholders most likely to file for a rescue procedure (i.e. corporate directors) which prevents them from seeking help;
2. If, as the literature extensively reports, stigma presents a challenge to the uptake of rescue procedures, there should be a correlation between the levels of stigma and the uptake of rescue procedures. In particular, in jurisdictions where stigma is reported as being an important obstacle, the uptake of rescue procedures should be lower and in jurisdictions where stigma is reported as being a moderate, if not insignificant obstacle, the uptake of rescue procedures should be higher.

Discrepancies and similarities in returned figures will also be discussed, alongside limitations of current data and future plans for the gathering of a more robust dataset.