

Rescue Of Companies The Role Of Shareholders,
Creditors And The Administrator



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Rescue of Companies

The Role of Shareholders, Creditors and the Administrator

Series Editor

International Association of Young Lawyers
Association Internationale des Jeunes Avocats

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ABOUT AIJA

THE INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS (AIJA: *Association Internationale des Jeunes Avocats*) is a non-political organization founded in 1962 to encourage cooperation and mutual respect among young lawyers from all countries. With some 3,000 members, aged 45 and under and from more than 60 countries on every continent, AIJA is active on a variety of fronts.

An annual week-long meeting, held in late summer, brings together hundreds of AIJA members for the study of issues of interest to both veteran and novice international practitioners. Recent venues have included New Delhi, Barcelona, London, Amsterdam, Rio de Janeiro and Washington, DC; the 1996 annual meeting took place in Montreux, Switzerland. Throughout the year, seminars in cities from Mexico City to Hong Kong focus on the latest developments in specific fields.

AIJA also works actively in human rights and freedom of practice issues, taking a leading role, for example, in on-site representation of lawyers detained by local regimes for nothing more than a faithful representation of their clients. Social issues are on the agenda as well; recent sessions have addressed contemporary questions including sexual harassment and surrogate mothers.

Beyond its activities in continuing legal education and safeguarding lawyers' right to practise freely, AIJA takes as a primary goal the creation of a forum to allow young lawyers from around the world simply to come together and make friends across borders. To that end, AIJA events always include communal meals, receptions and other social opportunities so that participants can become well-acquainted on a personal as well as professional level.

Information about joining AIJA and about upcoming activities may be obtained from:

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A WORD FROM THE PUBLICATIONS COMMITTEE

Dear reader,

This is the sixth title in the AIJA library. It is the fruit of the two standing commissions (Insolvency Commission and Commission on Corporate Acquisitions and Joint Ventures) which are among the most active, creative and effective commissions of AIJA. More could be said about the achievements of these two commissions but the fact that the undersigned is wearing two hats, in particular one as the President of the Commission on Corporate Acquisitions and Joint Ventures, requires some self-restraint.

I very much thank the co-editors Joren de Wachter and Pekka Jaatinen for their exceptional contributions. Joren de Wachter acted as General Reporter with an outstanding ability to make an acute analysis of legal peculiarities, and Pekka Jaatinen, as President of the Insolvency Commission, impressed all of us with his vast experience on the transactional side of rescuing companies.

I am glad to see such great enthusiasm of AIJA members in getting involved in publications.

Düsseldorf, September 1997

Winfried F. Schmitz
President of AIJA's Publications Committee

PREFACE

This book is the result of a joint venture between the two standing commissions Commission on Corporate Acquisitions and Joint Ventures and the Insolvency Commission of the International Association of Young Lawyers (AIJA). It is based on the working session of the two commissions held during the annual congress of AIJA in Montreux in 1996. *Rescue of Companies* contains a general report summarizing the main differences, peculiarities and common principles of the various jurisdictions as well as the twenty-four national reports from twenty-three jurisdictions describing the law and practical experiences in these jurisdictions. Rescuing companies is becoming more and more an alternative to merely liquidating a company in financial difficulties on the basis of a bankruptcy procedure. The goal of rescuing a company is to preserve the healthy parts of a company in trouble and to put the company back on a sound track.

This book gives practical legal – non-binding – advice on rescues. Young practitioners are writing for practitioners. The resource material is in addition useful for further academic research into the subject, especially for comparative legal analyses. The book generally reflects legal developments up until January 1996.

With respect to the use of certain words such as “company”, “enterprise” and “corporation” we would like to emphasize that the different use from one report to another does not necessarily mean that they have different meanings. Likewise we did not enforce consistency in the use of the terms “reorganization plan” or “reorganization programme”. They are mostly used as synonyms.

The editors thank all the national reporters very much for their outstanding contributions.

Florence, September 1997

Winfried F. Schmitz
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