

**EARTHQUAKE, CORPORATE INSOLVENCY AND HARDSHIP:
THE ROLE OF THE COMPROMISE REGIME**

Introduction

The earthquakes experienced in Christchurch have not only devastated the architecture and infrastructure of the city, they have also had an equally devastating effect on commerce and the companies which carry it out, reducing many to the brink of insolvency.

For the long term well-being of the city, and the country for that matter, it is necessary that some form of insolvency management that minimises the damage is employed. To achieve this aim the compromise regime should be considered as an option.

The compromise regime

The compromise regime is a formal regime established by the Companies Act 1993. Its primary purpose is to rehabilitate companies that have fallen on hard times. Whilst it was not formulated with wide-spread catastrophe in mind, it is well suited for the purpose of rehabilitating companies on mass.

Though it is not without legal complication, it is legal 'lite' in comparison with alternatives. Essentially the compromise regime is a way of undertaking a debt rescheduling across the whole range of a company's creditors.

Usually directors of companies are reluctant to engage the compromise regime because it carries with it the need for a modicum of publicity. Many directors consider such publicity about imminent financial failure would be the kiss of death. They prefer to try to achieve the same effect by a series of bilateral negotiations rather than the more public multilateral negotiation compromise entails. For a variety of reasons such an approach is inefficient and less complete and therefore risky.

However, the unique circumstances of the earthquake mean that most people will already know that financial difficulty has been imposed from without, even if it was there prior to the quakes. The problem of publicity is less likely to be terminal as many people are in the same predicament.

The following link is to a series of documents that explain the compromise regime, the matters needing consideration when using it, and a series of template documents that will be needed when implementing it.

<http://www.robertwalker.co.nz/files/docs/management%20of%20company%20insolvency%20-%20compromise%20regimefinal.pdf>

<http://www.robertwalker.co.nz/files/docs/part%20xiv%20of%20the%20companies%20act%201993%20v2.pdf>

<http://www.robertwalker.co.nz/files/docs/appendices-%20standard%20documentation%20for%20implementation%20of%20a%20compromise.pdf>

The documentation is not set up specifically to deal with mass financial difficulty. However, the central elements are easier to demonstrate in the aftermath of the quakes. Those elements are the need to explain the cause of difficulty (to all creditors) and resulting hardship (to Inland Revenue for example).

As is explained in the documents compromise entails, essentially, renegotiation of contracts. It is 'free form' in the sense that the renewed contracts can be any form of debt relief (extending the settlement date, reducing the amount owed and so on). It even allows for the conversion of debt to equity. As will be seen there are significant advantages in substituting debt for equity. If it were implemented in this way, the wider consequence would be that Christchurch companies would end up owning shares in each other. Were it not for the earthquake this would seem peculiar. But in the extraordinary circumstances that prevail now, it makes sense to provide a legally sound 'fresh start' for the whole city.