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Winding Up of a Company: Comparative Analysis of UK, USA and EU

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Abstract:

Companies across the globe are often started and, at the end of their operations, undergo a legal process identified as winding up. The legal process of starting a business or company differs greatly from the ending or winding-up process. Some common practices identified with closing a business entail compulsory winding up and voluntary winding up based on their jurisdictions. An investigation of some of the nations to be applied in the study include the European Union, the United States, and the United Kingdom of Great Britain. The research will also examine the efficacies associated with the legal processes in these three jurisdictions. The study will explore the legal provisions associated with the Insolvency & Bankruptcy Code and the Companies Act practiced in the European Union. An emphasis on the challenges companies faces when in the winding-up process or insolvency will be highlighted. It will offer an opportunity to navigate the intricacies of insolvency laws alongside their historical evolution. The underlying provisions and principles governing the operations of winding up a company in these three nations will be discussed to offer valuable information for the study. Lastly, the article will tabulate the variations and similarities in the three regimes.

Keywords: winding up a company, liquidation, list of Bankruptcy Acts EU, company dissolution, termination, receivership

Introduction

Different laws and regulations dictate the provisions for companies when it comes to closing businesses or winding up. A search of the term “winding up a company” led to many results on the Google search engine. The first result was from the Investopedia website but could not be applied in the study given the lack of meeting the criteria for a scholarly and quality source. However, the second website was that of ACCA Global. The website contains information and materials from professionals in the accounting profession, making it credible. The article written by a Corporate and Business Law team member highlights the two ways a company may wound up. ACCA Global (2022) states these include compulsory and voluntary winding up. The solvency nature of a company may determine if the winding up is voluntary or compulsory. An insolvent company will likely face voluntary winding up, while a solvent company may wind up compulsorily. However, the laws that guide companies worldwide on insolvency change over time. There is a need to deeply examine the provisions in different jurisdictions to understand how companies are allowed to wind up their operations. According to ACCA Global (2022), winding up in a solvent venture tend to happen when it has achieved its set-up purpose or any other reason that could include a declining business with no prospect but has no relation with being insolvent. According to Thomson Reuters Practical Law (2022), the search also provided insight into the winding-up process in the UK. The website is a professional website for lawyers in the United Kingdom. It has offered a discussion on the liquidation process and the role of a liquidator. The winding-up process includes liquidation. Thomson Reuters Practical Law (2022) identifies a liquidator is appointed when the company is solvent or insolvent, by court order, or at the end of a period of voluntary administration.

Insolvency legislation cuts across all countries and regions, making it global. The integration and interdependence of the world and the vicarious nature of the economy lead to business loss and subsequent shutdown. The lessons on bankruptcy and insolvency laws can be taught within different jurisdictions and reinforce positive policies in the EU, the UK, and the United States. Domestic insolvency laws should be pegged on industry best practices applied in different jurisdictions (Radelet & Sachs, 1999). The phrase “winding up” entails liquidating assets and settling liabilities. The company’s existence ends as assets are realized to promote shareholders’ value and pay debts. A search for the term “liquidator” on Google Scholar brings to the attention the meaning of the “trustees of a bankrupt (and the liquidator of a company) as having the duty to maximize the funds for creditors” (Aitken, 1995). The company and all its affairs are taken from the director, and the appointed liquidator is tasked with realizing assets and settling obligations to the shareholders and creditors of the venture. However, the insolvency laws identified across different jurisdictions or nations have been associated with several corporate failures (Guzman, 2000). A select number of legal frameworks with the selected three jurisdictions will offer an understanding of preventable instances leading to economic distress

in various firms in the nations. The aim is to ensure the rescue or rehabilitation of such businesses or companies from insolvency.

An illustration is the UK Insolvency Act of 1986, which had to suit the corporate needs of the Enterprise Act in 2002, and the passing of the 2020 Corporate Insolvency and Governance Act. When it comes to insolvency and winding up a business, the laws in the United Kingdom should be predictable and transparent to ensure a comprehensive evaluation of the consequences when failure emerges, according to Westbrook (2010).

In the case of the US, bankruptcy law emerged in the nineteenth century. The first bankruptcy law in 1800 involved involuntary bankruptcy, while the same law was repealed in 1803 following complaints of corruption and excessive expenses. Several Acts and Bankruptcy Laws have been amended, while some were repealed until the 1898 Bankruptcy Act came into force. It was the first modern Bankruptcy law in the country, also identified as the Nelson Act of 1898. The 1978 Bankruptcy Reform Act has been in effect for quite a while despite the continued evolution of the laws in the US (Tabb, 1995). However, the insolvency law in the US jurisdiction alleviates the un-regulation of debtor-creditor relations.

In the instance of the EU, examining the effect of the Covid-19 pandemic has led to the desire for its jurisdiction to harmonize its insolvency laws. The UK adopted the Enterprise Act 2002, and other EU member nations such as Spain, Slovakia, Ireland, France, and Finland updated their frameworks according to Ghio et al. (2021). The search term “list of bankruptcy acts EU” helped generate the source by Riigikogu (2022). In the article, the provision of the Bankruptcy Act in the EU is detailed following its passing in 2003.

Conceptual Framework

Insolvency laws mainly target companies that are struggling to meet their operating expenses. These ventures find it a challenge to manage their debts and liabilities. The result of such a challenge is closing the business, winding up, or liquidating as the legal entity is declared bankrupt. However, winding up could also involve closing the business following the end of operations after attaining its goals or objectives (Adeyeye, 2020). The assets of the winding up business are realized, and proceeds are utilized in promoting the interests and needs of the shareholders and members of the company. The process highlights a halt in a company’s activities, settling debts, funds distribution, and liability discharge. These responsibilities seek to ensure all company members, including creditors, get settled for their dues. However, the legal process in case of insolvency includes a court authority giving a directive, according to McCormack (2012). Depending on the jurisdiction, the articles of a company help provide members with their dues. Most large companies seek the old corporate rescue regime, which differs from small companies that seek the dissolution and liquidation process when winding up. These ventures find it a challenge to manage their liabilities and debts. However, a look at the

jurisdiction in Malaysia narrates a different tale where ventures in the small and medium enterprises (SMEs) have been offered Corporate Rescue Mechanisms (Lokman et al., 2021). Financially distressed companies and businesses received relief or rescue for their business and escaped liquidation. Inherent risks affect businesses' operations, leading to winding up across all sectors, such as property and investment services, insurance, construction and finance, trade and retail, and wholesale.

The definition of the term "winding up" focuses on similar views regarding the end of a company's legal existence. The commencement of the legal process is identified as winding up, while the end phase is the dissolution. The search results of the term "company dissolution" on Google Scholar led to an article by Stoican (2020). According to Stoican (2020), dissolution entails the termination of normal company activities while its legal personality remains until liquidation. Therefore, an evaluation of the terms "winding up," "dissolution," and "liquidation" are all related. An evaluation of the legal provisions of the three terms and corresponding activities when ceasing operations of the company either voluntarily or by compulsory means is vital for the research. The three countries, the UK, the US, and the EU, will help understand the evolution of legal frameworks across time. In most instances, the court is charged with the mandate to initiate a dissolution, while winding up can begin without judicial intervention. The role of the courts when it comes to dissolution is to examine the liquidity of the venture upon request from the company itself, its employees, shareholders, or any stakeholders declaring the company bankrupt (Bachmann et al., 2013). Other authors, such as Wood (2014), identify the term insolvency as corresponding to the phrase "financial distress." Every company faces the challenge of insolvency regardless of size, nature of dealings, and company holdings. These fears or threats require the business to commit its financial commitments to its shareholders. The inability to pay off debtors and creditors or the loans taken is the onset of all troubles for any business that ends up in dissolution. Most stakeholders find the term "winding up" ambiguous as the understandings and definitions of the term change with different jurisdictions. When examining some of the past definitions of the term winding up, Goode (2011) identifies that the liquidation process has a liquidator that ensures the distribution of dividends, coverage of liquidation expenses, and consideration of the company's assets. However, Fletcher (1986) identifies liquidation as a formal and legal process leading to an orderly or organized dissolution.

The company as a legal entity only gets dissolved upon the end of winding up. It continues as its operations are cleared and all beneficiaries settled. The appointed liquidator is tasked with the liquidation process and has control of its affairs when placed under insolvency by a court order (Opara, Okere & Opara, 2014). Under the current condition, the company has no power to sue, be sued, or keep its property. All the functions and roles it used to perform as a legal entity are disabled. The liquidation process has to come to an end for the role of the liquidator to be fulfilled. Therefore, the company's value cannot be transferred to a trustee upon being declared insolvent or bankrupt, according to Altman

and Hotchkiss (2010). The government of a legal entity or jurisdiction has control of the business. None of the shareholders, successors, or heirs of the business can control the functions of the company. Some EU nations have identified the liquidation process to precede its winding up. According to the Slovakia 2005 Party Law, it is a requirement among their insolvency laws that the dissolution of a party precedes winding up with or without liquidation (Party Law in Modern Europe 2022). The compulsory winding-up process in the European Union will be outlined in detail in the subsequent topic. According to ACCA Global (2022), the application of a compulsory winding-up process requires the provisions of the reasons for engaging in the 2018 IRDA (Insolvency Restructuring and Dissolution Act). The winding-up process by the court is voluntary or compulsory in the three jurisdictions practiced in the EU, the UK, and the United States. These jurisdictions dictate the various applications, responsibilities and rights of parties involved in the winding-up process.

A comparative analysis of the three countries from a company perspective is vital in ensuring professionals adopt relevant laws and legal provisions in winding up a business. A look at the term "termination" help understand the perspective of the Czech Republic and its laws in understanding the winding up of a company. According to Czech Trade (2021), dissolution entails a smooth transition when there is no liquidation to a legal successor. However, liquidation will entail a decision to terminate the activities of a business that renders a legal entity insolvent. The website also informs on the instances of voluntary resolution where a business corporation leads to the termination of activities. Examining the search key terms highlights a similarity in the words and phrases. Winding up is a process that begins with liquidation and ends with the company's termination following an erases of the business on the registrar of companies. The case in the European Union has illustrated that liquidation comes first during the legal process, and liquidation follows. The last process, "termination," also depends on the nature of winding up that may be either voluntary or compulsory following a court order (Parkinson, 2018). The United States has its 1978's Bankruptcy Reform Act (BRA) that offers businesses and professionals the legal process of winding up a business; the United Kingdom has its Corporate Insolvency and Governance Act of 2020, while the European Union gets its guidance from the Bankruptcy Act enacted in 2003.

Winding Up in the European Union

Chapter 3: Trustees in Bankruptcy

Chapter 3 § 54 of the Bankruptcy act European Union offers provisions on the role of the trustees (Wouters & Raykin, 2012).). According to the Act, the trustees mandate to perform functions designated through legislation that include acting as a reorganization adviser or liquidator and conducting bankruptcy proceedings as designated by the court. The trustee is charged with entering into transactions on behalf of the bankruptcy estate. However, other principle rights and obligations of the trustees as per the EU Bankruptcy Act 2003 include ascertaining causes of insolvency, determining

the claims of the creditors, organizing the sale, formation, and satisfaction of creditors and their claims, and administering the bankruptcy estate.

Subchapter 4: Duties of the Court

The Act § 84 provides guidelines on the right and powers of the courts. It has the power to supervise the lawfulness of the proceedings relating to bankruptcy and engage in any other duties as established within the law. The competence and qualification of the judicial clerks are provided within Chapter three § 841 of the Act.

Chapter 4: Rights and Obligations of Debtor

The Bankruptcy Act Chapter 4 § 84 provides information on the obligations and rights of a debtor. According to the provisions, the debtor has to provide the court, the insolvency division, the Bankruptcy Division, the trustees, and the interim trustee with information regarding bankruptcy proceedings. The trustee should receive the balance sheet, obligations, as well as an assets' inventory as of the date of insolvency declaration from the debtor (Bauer & Hospodka, 2019). The debtor should participate in the court proceedings on insolvency as per Act § 87 within the EU jurisdictions. It is also a legal obligation to engage and be personally present in all court hearing sessions on the bankruptcy matter as required. Chapter 4: § 89 highlights the instances of arrest, compelled attendance, and imposition of fine on the debtor. Some circumstances under which the debtor is fined include when the debtor hinders the bankruptcy proceedings (Hunter & Shannon, 2020). These include instances of materially violating obligation as stipulated within the Act, violating the prohibition on bankruptcy estate disposal, a departure from residence, failure to take the oath, provide information, or even failure to participate in the proceedings.

Chapter 7: § 130. Dissolution and liquidation of legal person

The legal process of winding up in the European Union is guided by the Bankruptcy Act 2003. According to Riigikogu (2022), Chapter 7 § 130 of the Bankruptcy Act EU identifies the grounds for dissolution and liquidation of a legal person. The provisions underline some contexts that enable a legal person to be wound up or liquidated. Among the provisions include the decisions of creditors in a general meeting to terminate the business activities of the legal person. The trustee must submit the decision to a court of law. A decision has to be made within 15 days of receipt of such requests, and approval by the court means the legal person is dissolved (Bayern, 2016). A legal person within the context of the study entails a company or a business. The trustee must conduct the liquidation in the case of a dissolved legal person during bankruptcy proceedings as per the provisions of Chapter 7, § 130.3 of the Bankruptcy Act. The law protects the legal persons in certain circumstances, as highlighted within § 130.6, where there is a compromise and the bankruptcy is terminated. Second, when the termination is within the basis outlined in § 159 of the Bankruptcy Act. Lastly, the legal provisions will

be exempt from liquidation when similar grounds for termination as provided in § 160 of the Act where the debtor is temporarily insolvent.

Insolvency and Bankruptcy Provisions in Poland

As an EU nation, Poland is winding up a company guided by two legislations. These include the Bankruptcy Law of the Act of February 28, 2003, and the Restructuring Law of May 15, 2015. According to European Justice (2019), the Restructuring Law provisions help govern restructuring proceedings for legal persons at risk of insolvency. Bankruptcy proceedings aim to ensure the satisfaction of claims brought forth by creditors. The Polish Civil Code Article 431 defines an “entrepreneur” as a legal or natural person or organizational unit whose legal capacity is vested by legislation (Adamus, 2012). The entrepreneur can receive bankruptcy proceedings following applications filed by personal creditors or the debtor. Insolvency proceedings effect can be identified in Articles 83118- of the Act.

Effect of Insolvency or Winding up Proceedings

The events following the declaration of bankruptcy entail an appointment of a compulsory administrator as per the provisions of Article 174(1) (4) and (5) within the Polish Code of Civil Procedure. Similarly, the compulsory administrator or the receiver takes part in the court proceedings as stipulated within the legislation in Article 174(3). The court also has the right to resume any suspended proceedings upon the designation of the compulsory administrator against the claimant if it is the bankrupt party as per the guidance of Article 180(1) (5) (European Justice, 2019).

Changes Brought Forth

Individual states have made changes within the bankruptcy Act of 2003. The Netherlands has been able to make changes since January 1, 2019, according to EMCC (2021). The Act has been modernized with general changes, including central registers replacing locally held registers. It follows that there is an insolvency register for businesses in the Netherlands. The major provisions of the law and the various types of bankruptcy procedures as stipulated in the Act have remained the same despite modernization. There has been a modernization of the time limit for creditors to log in or register their claims. The regulations provided within the Act govern a select number of nations that include Spain, Austria, Denmark, Italy, Germany, Portugal, Finland, Sweden, Czech Estonian, Latvian, Lithuania, Hungary, Malta, Poland, Slovakia, Slovenia, Bulgaria, Romania and Croatia except the UK after Brexit.

Article 31 of the EEC (Council Regulation)

Trocan (2014) identified the use of Article 31 of the EEC regulations in providing reasons for winding up a business. These include;

1. A decision from its members demanding a wind-up of the operations of the group or business

2. A group may also engage in winding up a business when the members' decision following the period elapse of the contract. The fixed contract period has elapsed, and it has become the discretion of the group to wind up the group as provided within the contract according to EUR-Lex. (2022). It is important for the group to be wound up when the purpose of the group has been accomplished, and there is no opportunity for further pursuit.
3. The group wound up can be sought when there is no success of the terms written in Article 4 (2) of the EEC. It provides the members of the group with the capacity to order the winding up of the legal person among the remaining group members.
4. Article 31 (4) identifies the role of the manager or managers pertaining to steps identified in Articles (7) (8) as necessary when the group is wound up following the decision of its members.

The legislation guiding the winding up of a business or venture in the European Union is found in the Bankruptcy Act 2003. However, several nations have tailored the Act alongside other provisions, such as the Restructuring Law in Poland, to help in the termination of a legal person following insolvency or voluntary winding up. Similarly, Article 31 of the Council Regulation (EEC) No 213785/ of July 1985 helped form the background of recent or modern winding-up under the EU legislative statutes.

Winding Up in the United States of America

Filing for bankruptcy allows a person to discharge some or all of their debts and establish a payment plan for the remainder. The filing process for bankruptcy typically begins with the debtor submitting a petition to the relevant bankruptcy court (White, 2018). A petition can be submitted by an ordinary person, by both partners in a married couple, or by a corporate entity or other legal entity. Under the guidelines outlined in the Bankruptcy Code, the administration of all bankruptcy cases takes place in the judiciary. In evaluating the legal requirements when winding up in the United States, the first modern bankruptcy law was the 1898's Nelson Act, which was later amended to the 1978's BRA (Komai & Richardson, 2011). A major recent change in the legal provisions of bankruptcy laws in the US was done in 2005 under the BACPA (Bankruptcy Abuse Prevention and Consumer Protection Act). A total of six chapters help shed light on the provisions of the Code. These include chapters 7,9,11,12,13, and 15, which help serve the welfare of individuals, lenders, shareholders, and the business needs as a legal person.

BACPA Provisions on Liquidation

Chapter 7 of the BACPA encompasses the entire winding up and liquidation process, including the bankruptcy court's trustee appointment or custodian to handle the insolvent entity's assets and

liabilities. The trustee is accountable for liquidating the possessions and allocating the incomes to the debt holders in the priority order of their claims. Both individuals and businesses can claim insolvency (de Wejis, 2018). The most controversial change to American bankruptcy law is the result of the BACPA. This change prevented consumer borrowers from initiating bankruptcy. According to Gine and Love (2010), the approach employed targeted protection of creditors and, in particular, credit card corporations. The amendment highly favored credit companies from losses emerging when consumers went bankrupt.

Reorganization of Municipalities

BACPA of 2005 Chapter 9 focuses on the aspect of the reorganization of Municipalities. The legal guidelines of the provisions in the chapter inform on the process towards the liquidation of a company based on the outstanding amounts or debt faced by the debtor. The definition of a municipality is outlined within the US. The Bankruptcy Code of 2005 includes any public agency whose activities and responsibilities are within the federal government's administration (Kimhi, 2010). The state's governing body, or a state agent or other state-entrusted authority, must give the city their full endorsement before moving forward. Before the passage of this section, the only option accessible to municipalities in this predicament was for their creditors to go door-to-door to persuade the municipality to increase its tax rate. After implementing a constitutional provision to the Bankruptcy Code, expanding the framework to municipal governments became feasible. Chapter 9 focuses on the adjustments of debts to the municipalities with a focus on three major subchapters (Chaudhury, Levitin & Schleicher, 2019). These include general provisions, administration, and the plan per the Bankruptcy Code of 2005. State power and control, alongside the powers of the court and the limitation of jurisdiction, are integrated with sections 903 and 904 of Chapter 9 of the Code (Moringiello, 2014). Subchapter II highlights issues of municipal leases, a list of creditors, avoiding powers, petitions and proceedings, and dismissal of the winding up process in the United States. Lastly, subchapter II of the same Code chapter focuses on the plan. These include aspects of filing, modification, confirmation, and continuing jurisdiction until the close of the case. These provisions help highlight the role and administrative functions of the municipalities toward ensuring a smooth winding-up process.

Reorganization, Realization and Application of The Debtor's Assets

No unique process is outlined under the newly consolidated chapter 11 for businesses with shareholders or creditors holding equity securities or public debt. Instead, aspects such as the criteria that will be applied to the procurement of approvals of a restructuring proposal are left up to the court to decide on a particular scenario basis (Brubaker & Tabb, 2010). It is done to preserve as much flexibility as possible. Suppose the total of the debtor's unsecured, liquidated, and fixed obligations (excluding debts for products, taxes, services, or obligations to an insider) exceeds \$5 million. In that

case, an examiner must be assigned to ensure that a detailed search of the borrower is carried out to determine whether or not the debtor has been the victim of fraud or misconduct by its current management.

Management needs to sufficiently serve shareholders' requirements in the vast majority of instances. On the other hand, the House amendment section 1109 empowers both the SEC as well as any person in interest who is an arrangement trustee, a shareholder, a creditor, or any commission chosen to represent equity existing shareholders or creditors to advance and physical be present and be heard on any matter in litigation that is being handled under chapter 11 (Butler, 2010). The bankruptcy court will be able to weigh the merits of each side of an issue and determine what is in the general public's best interest as a result of this. This method is in stark contrast to the one utilized under chapter X of the current law. It is common practice for the public interest to be judged only under the conditions of how it affects the interests of public holders of a company's securities. Chapter 7 governs the liquidation procedure, while Chapters 11, 12, and 13 deal with the realization and application of the debtor's possessions (Jacoby & Janger, 2017). It is standard practice to allow the account owner to keep a sizeable portion of the advantages accumulated by the account to settle his debts and other obligations. Chapter 11 applies to all types of enterprises, including sole proprietorships, corporations, and partnerships. Chapter 12 is designed to protect the livelihoods of farmers, ranchers, and sailors. The highest possible benefits are ensured by raising the rate caps and interest rates in this section.

Restructuring

Chapter 11 is the primary caretaker of a company on the verge of insolvency. As per the procedure, the defaulting administration or the sole borrower is allowed to keep the company's assets and continue managing its business without interference from the court. Furthermore, the occurrence of a bankruptcy event is not required to initiate the filing procedure; rather, merely anticipating insolvency shall suffice (Altman & Hotchkiss, 2010). Within 120 days, the entire content of realization and restoration is established so that business can resume as usual. You can take such a structure in one of two directions. The **Unanimous consent procedure (UCP)** is where two-thirds of the total unpaid claim and more than 50 percent of lenders must endorse the proposed framework before it can be implemented. Secondly is the **Cram-down procedure**. In this procedure, the judge is tasked with drafting a settlement that considers the needs of all the creditors (Dubrow, 2016). Creditors must be treated fairly and fairly treated. It is because, unlike UCP, the process takes a long time and costs a lot of money. Once started, everyone must stick to this rule.

Changes to Brought Forth

Thus, insolvency processes in the United States are not without their share of pros and cons. There are several difficulties associated with the comprehensive approach of the courts, the equal treatment

of creditors, the prompt start of bankruptcy procedures, the rights of managers and shareholders, and so on. Despite the law's imposing and significant appearance on paper, it has proven to be quite different in practice. Some of the changes brought forth over the years include the 2005 changes from 1986 and the 1994 Bankruptcy Code. The new code BACPA of 2005 substituted an item for chapter 12 and supplemented one for chapter 15. These include changes and repeals on Pub. L. 109-8, title VIII, §801(b), title X, §1007(d), April 20, 2005, 119 Stat. 145, 188.

Winding Up in the UK

A search of the phrase "winding up in the United Kingdom" brought various results, including feedback from the government of the UK website. According to Gov.UK (2012), an individual is allowed to make a 'winding up petition or any other creditors to close down a company. The aim is to ensure that the company assets are realized towards settling any legal disputes within the jurisdiction.

Winding up Duration

The process in the United Kingdom takes around 23- months, where the first phase of entering liquidation ends, followed by a year where assets are liquidated, and the completion of the process is achieved.

Compulsory Liquidation

According to Gov.UK (2012), conditions must be met for an individual to close or wind up a company, also known as compulsory liquidation for failure to pay its debts. These include the ability of an individual to prove the business cannot pay them and the amount owed is over £750 (Gov.UK, 2012). The law offers clear guidelines on the objectives of English Corporate laws. Goode (2011) identifies that the aim is to address concerns on control and priority. The Insolvency Act 1986 in the United Kingdom outlines some major concerns about administration objectives. The three include company safety, securing better outcomes for creditors, and realization of property for the benefit of creditors.

Insolvency Act Evolution

The Insolvency Act 1986 has evolved to serve the United Kingdom. An evaluation of the Cork Report will highlight the evolution of English Insolvency Law. The Cork Report offered corporate guidelines for businesses experiencing financial distress. A summary of the framework offered in the Cork Report on English Insolvency law is highlighted below;

- a. The liberation of wealth is tied to the credit facility, thus, it's important to think about both. Thus, the corporate insolvency structure can handle the resulting problems. As a result, it is not enough to simply protect the interests of the creditors; insolvency has a ripple effect throughout society, and that society's welfare must also be protected.

- b. The law should be able to take care of the closure of unsuitable firms while also protecting successful and socially beneficial ones.
- c. A corporation that believes it may soon have to dissolve must do so without delay.
- d. Taking into account the interests of all debt holders, secured and unsecured.
- e. All debts must be paid in a timely manner, and all assets must be recognized and realized without delay.
- f. After all debts have been settled, any remaining funds should be distributed fairly and equitably among the members of the debtor's organization.

These recommendations sparked a reform of the UK's insolvency law system, culminating in the 2002 Enterprise Act and establishing a new, more streamlined framework for company insolvencies.

UK Insolvency Options

When a corporation faces insolvency in England, it has two options: reorganization, in which the firm's entire management structure is overhauled and new executives are hired, or amalgamation, in which another company absorbs the soon-to-be insolvent business into itself. It is also possible that one of these options will help the business start making money again. Both can be accomplished if consultations are held and the operations are managed well. When looking at the United Kingdom's corporate insolvency law from the perspective of the cited statutes and theories, it becomes clear that the legislation has protected the rights of creditors and is, by its very nature, a socially democratic one, although with distinctions. Creditors' rights have always been a basic principle of law (Gilson, 2010). Management receivership was a legal process with a well-defined legal framework before the Insolvency Act of 1986. From a legal and jargon standpoint, a receiver is "an independent contractor acting in his own function who is charged with the duty of safeguarding the interests of his appointer." He is entrusted with various duties, including the commitment to the company, which serves as his principal, to prevent any actions that can damage the business's image (Mugarura, 2016). Significantly, if the receiver performs his responsibilities following the steps outlined therein, many additional concerns can be effectively handled in addition to safeguarding the rights of the lenders.

Winding up Administration

The process for a corporation undergoing administration is detailed in Schedule B1 of the Insolvency Act 1986. The procedure was amended by the recent legislation of the Enterprise Act 2002. It was initially implemented due to the Cork Report's emphasis on the importance of integrity, responsibility, and collective effort, and most importantly, the promotion of a rescue culture throughout

the corporate community (Nigam & Boughanmi, 2017). The administration of winding up of a UK business is identified to save the company from suffering from bankruptcy. It aims to prevent instances of becoming liquidated. A select number of approaches in the Insolvency Act where the administration takes charge include a court order, a petition by a creditor, or a petition or notice filed by the company in court. The administrator's appointment ensures responsibility for all company management roles (Adenyuma, 2021). The administrator's aims include realizing assets, optimizing the value of creditors, and maintaining the business' reputation: Chapter 11, Title 11 of the Code. The Enterprise Code 2002 ensured that administration is the main procedure for placing the company under receivership or winding-up process (Anderson & Morrison, 2015). Some of the administrator's duties include rescuing the company, as provided in paragraph 3. Schedule B1, paragraph 3 of the Enterprise Code 2002, identifies the sole purpose of administration is to serve the interests of the creditors. However, there are additional powers assigned to the administrator after designing a restructuring proposal that is outlined under Schedule B1, paragraph 59.

UK Voluntary Arrangements

The next step is for the company to offer its creditors a plan to restructure its debts without affecting the interests of any of its lenders, whether they are secured or preferred. According to Djankov (2009), for it to be accepted, there must be a vote of 75 percent in favor. Creditors will need the court's approval of this proposal's policies and terms before it can go into effect to ensure that all applicable laws and regulations are adhered to within the United Kingdom's jurisdiction.

Receivership Legislation Requirements

The powers of implementation made accessible to the creditors through a receivership are not part of a cumulative arrangement. The person appointed as the receiver has the primary responsibility of ensuring that the business is properly liquidated and that the proceeds of the possession or company assets are divided fairly and evenly among the creditors in descending order of priority (Gotberg, 2014). The company's director is obliged to be part of the process and cooperate with the official receiver when the company is insolvent. The company director's responsibilities include submitting the completed questionnaire and handling all company accounts, paperwork, and records, according to the Gov. UK Receivership (2014). The official receiver must offer the details regarding company liabilities and assets. Lastly, the debtor should provide information regarding all trading records of assets helped by other parties belonging to the company under receivership.

Comparison Table

Jurisdiction	European Union (EU)	UK	USA
Law	Enterprise Act 2002	Insolvency Act 1986	Bankruptcy Code
Concerned Authority	Court	Court	Court
Individuals responsible for initiating the process	The process can be initiated by an individual creditor or an employee owed.	A member of management has the choice of lodging a petition with the court for liquidation, although the Board often starts the process.	The trustee will first prioritize the needs of their creditors. The business may make this argument.
Process commencement	A default of minimum Euro 750	Debt Cannot Be Repaid: Shareholder Resolution.	Limits on both unsecured and secured loans below \$750,000
Duration /Time	23- months for the start while up to 2 years for complete termination	12 months	18 months
Control	Appointed Administration takes charge of all company operations and functions	Creditors' Liquidator in Court-Ordered Compulsory Liquidation.	While the court monitors, defaulting management or the debtor is in charge.

Conclusion

Various laws and regulations govern the provisions for businesses when they close or wind up. A company's solvency may determine whether the winding up is voluntary or mandatory. An insolvent company is more likely to be wound up voluntarily, whereas a solvent company may be forced to wind up. Insolvency legislation spans all countries and regions, making it truly global in scope. The world's integration and interdependence, as well as the vicarious nature of the economy, lead to business losses and subsequent closure. For example, the UK Insolvency Act of 1986 had to be amended to meet the corporate needs of the Enterprise Act of 2002, and the Corporate Insolvency and Governance Act of 2020 was passed in 2020. When it comes to insolvency and winding up a business in the United Kingdom, the laws should be predictable and transparent to ensure a comprehensive evaluation of the consequences of failure.

In the United States of America, bankruptcy law first appeared in the nineteenth century. The first bankruptcy law, enacted in 1800, provided for involuntary bankruptcy, but it was repealed in 1803 in response to complaints of corruption and excessive expenses. Several Acts and Bankruptcy Laws have been amended since then, while others have been repealed until the 1898 Bankruptcy Act was enacted. The country's first modern bankruptcy law was the Nelson Act of 1898. Despite the ongoing evolution of US laws, the 1978's BRA has been in effect for quite some time. However, insolvency law in the United States has jurisdiction to alleviate the un-regulation of debtor-creditor relations.

In the analysis of the EU, the impact of the Covid-19 pandemic has resulted in a desire for its jurisdiction to harmonize its insolvency laws. According to Ghio et al., the UK adopted the Enterprise Act in 2002, and other member states of the European Union, such as Spain, Slovakia, Ireland, France, and Finland, updated their frameworks (2021). The search term "list of bankruptcy acts EU" aided in the generation of the Riigikogu source (2022). Following its passage in 2003, the Bankruptcy Act in the EU is detailed in the article. Insolvency laws primarily target businesses that are struggling to meet their operating costs. When it comes to the end of a company's legal existence, the term "winding up" definition focuses on similar perspectives. The beginning of the legal process is called winding up, while the end phase is called dissolution.

In the United Kingdom, a corporation facing insolvency has two options: reorganization, in which the entire management structure is overhauled and new executives are hired, or amalgamation, in which another company absorbs the soon-to-be insolvent business into itself. The Bankruptcy Act 2003 contains the legislation that governs the liquidation of a business or venture in the European Union. However, several nations have tailored the Act in conjunction with other provisions, such as the Restructuring Law in Poland, to aid in the termination of a legal person due to insolvency or voluntary winding up. All bankruptcy cases are administered in the judiciary, according to the guidelines outlined in the US Code.

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