



INSOL International

Storms of the Recent Past and Managing Future Challenges - Survey Report

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Storms of the recent past and managing future challenges

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Storms of the recent past and managing future challenges

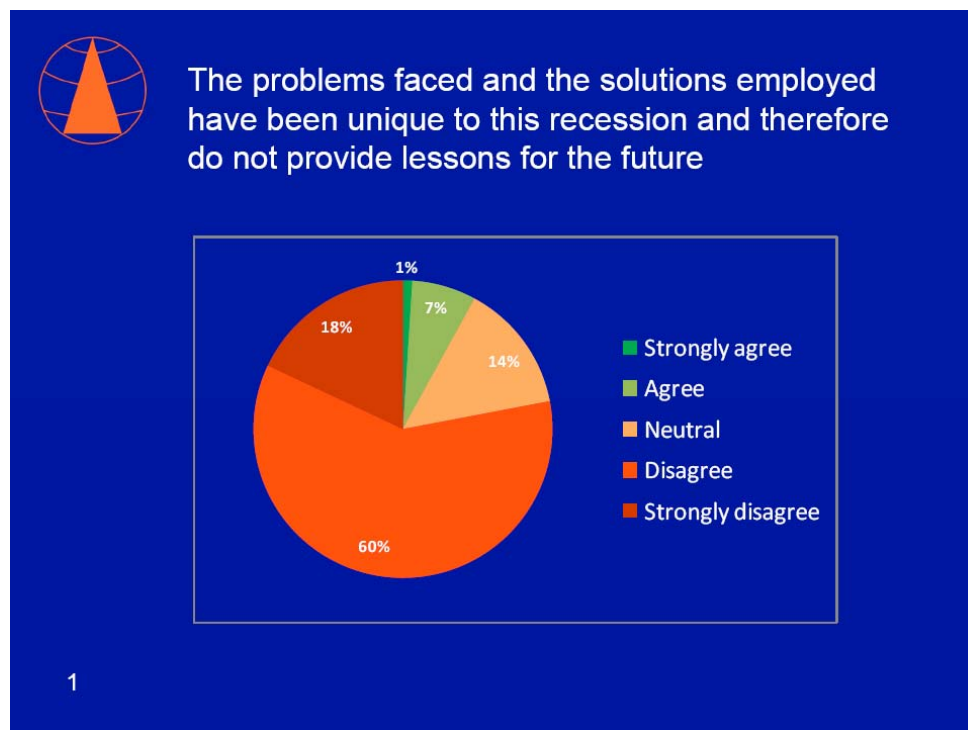
At the INSOL Dubai conference in February of this year, a plenary session was held at the end of the conference, with a panel consisting of Alan Bloom of Ernst & Young, Howard Seife of Chadbourne & Parke, Steven Miller of Mayer Brown and Rob Abendroth of Allen & Overy.

As support for the session, INSOL delegates were asked to complete a brief survey prior to the conference dealing with how they have found the market during the past two / three years and therefore what this means for restructuring going forward. The questionnaire that was sent out is attached as an annexure at the end of the report.

Of the almost 100 senior practitioners who participated in the survey, approximately half were lawyers, a quarter were accountants and the remaining quarter were a combination of financial advisers, regulators, academics and lenders.

The geographical spread of the participants was excellent, with participants from 18 different countries – Australia, Belgium, Bermuda, BVI, Cayman Islands, Channel Islands, Denmark, Germany, Greece, India, Mauritius, Netherlands, Nigeria, Romania, South Africa, Ukraine, UK and USA.

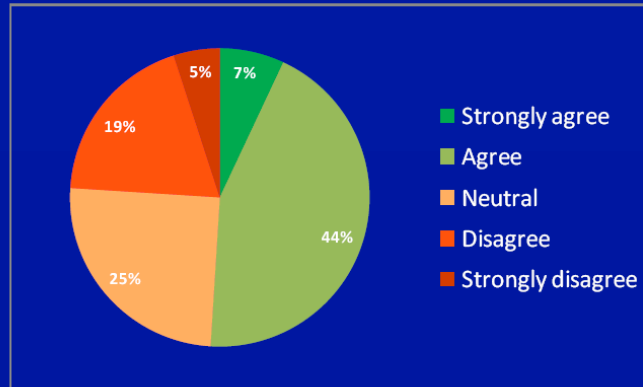
I have set out below the questions that the delegates responded to, a summary of their responses and some commentary from the panel.



Most of our respondents do not feel that the problems of the last recession have been in any way unique, nor the solutions that have been applied. As a consequence, the respondents do not believe that there are any particular lessons to be learnt for the future. Perhaps it reflects the cynicism of the professions but the general consensus seems to be that “we have seen it all before”.



I believe that in this recession the boards of companies have responded more quickly than in the past in taking advice to deal with their difficulties



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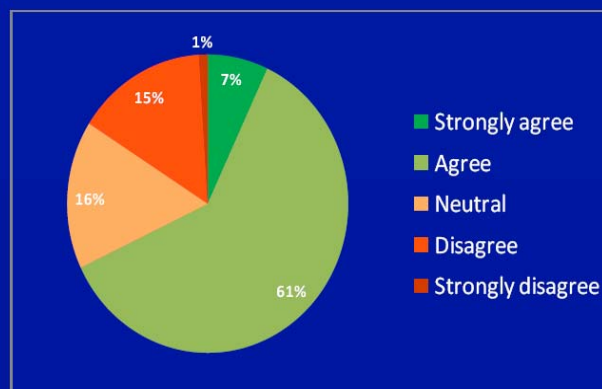
The respondents caught the panel by surprise. The panel were of the view that even in this deepest recession for over 70 years, boards of companies have been slow to respond to financial difficulties and take advice.

The respondents actually felt differently. At least 70% felt that boards have responded more quickly than in the past in taking advice in relation to their financial difficulties.

This is a very encouraging sign as professionals around the world over would say that the earlier that boards react to financial difficulties and take external professional advice, the greater the range of options available to the company and the greater the likelihood of success in implementing a constructive solution.



Financial stakeholders distinguish between rescuing valuable businesses and supporting those that do not deserve it

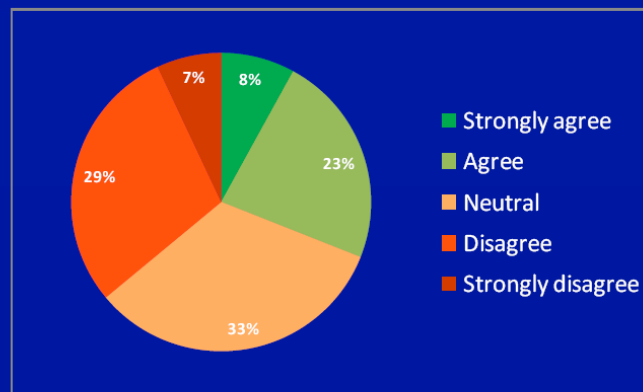


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It is encouraging to see that financial stakeholders draw a distinction in their minds between the businesses that they support and those that they do not. There has been a strong sense that a number of businesses have been “propped up” for political / quasi-political reasons in the past two years but the survey would bear out that financial stakeholders do draw a distinction between those worthy of support and those whose support should be withdrawn. There is a feeling that as we emerge from recession, especially if there continues to be some constraint on credit, financial stakeholders will continue to be more discerning as to which businesses they are prepared to support and there will be a need for a strong and identifiable business plan in order to win the confidence of funders.



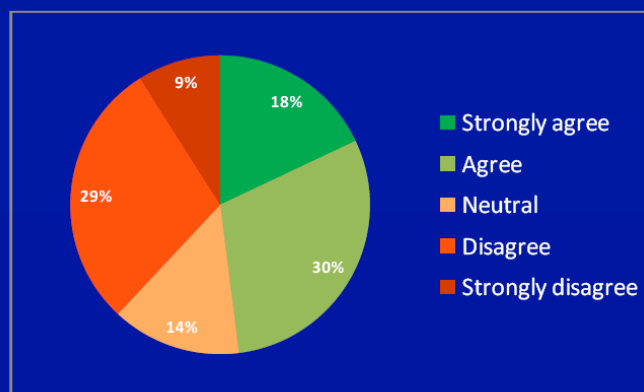
In my country the insolvency profession is seen as a positive force for restructuring/ rehabilitation



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In my country insolvency practitioners are seen primarily as liquidators



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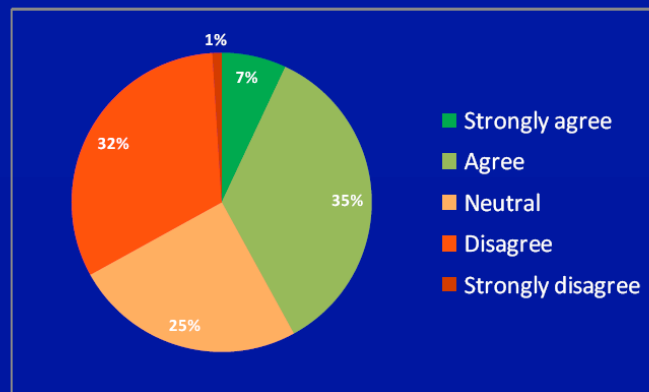
This was quite an encouraging sign. Over 50% of the respondents felt that the insolvency professional is seen as a positive force for restructuring and rehabilitation. Indeed, only 15% disagreed or strongly disagreed. This says a lot for the way in which the profession has presented itself in the past few years and of course it continues the very good rehabilitative work that has been undertaken by practitioners during the past two/three years.

Clearly there are still some who see the insolvency profession primarily as liquidators and this is hardly surprising, given the broad range of activity undertaken by practitioners. It is still the case that a considerable part of our professional toolkit is the realisation of assets and agreement of claims.



I have experienced the following issues during this recession:

- Difficulty in getting creditor acceptance of fee levels

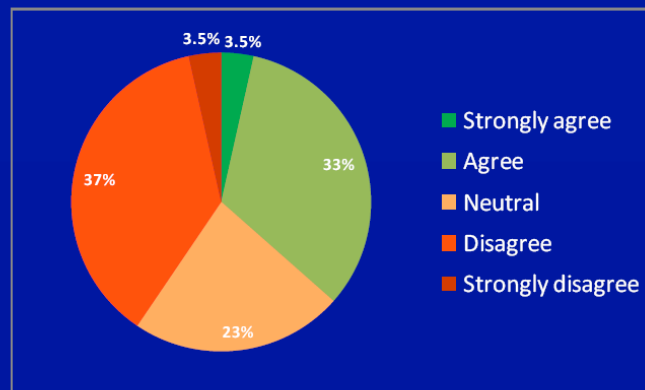


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I have experienced the following issues during this recession:

- Difficulty in getting acceptance that we have added value to a situation

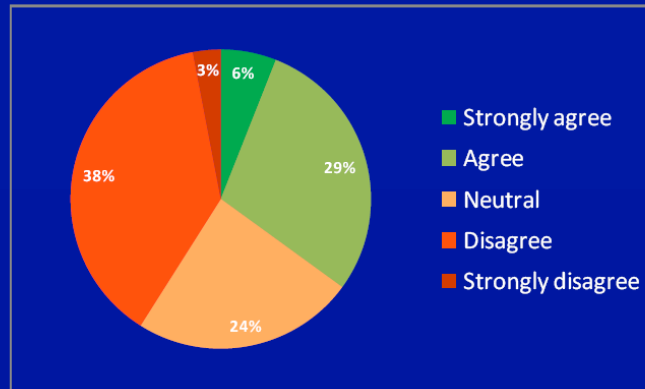


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I have experienced the following issues during this recession:

- Inadequate resource for the available workload



8

We asked the respondents about some of the issues that they have faced in dealing with their assignments during the past couple of years. They relate to fee levels, value added and resource. 60% of respondents have had difficulty in getting creditor acceptance of fees, and almost exactly the same percentage have had difficulty in getting acceptance that they have added value to a situation. In fact less than 10% have not experienced either of these two issues.

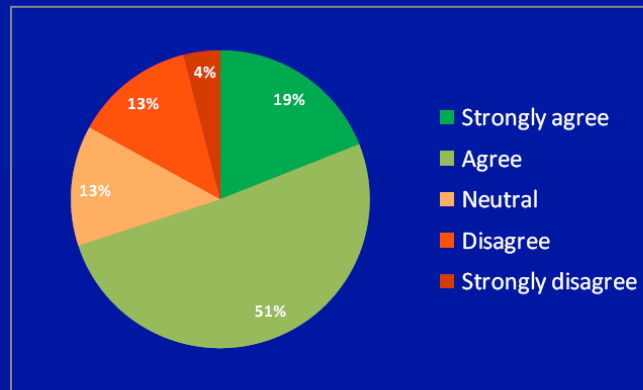
In an environment in which we have seen very significant losses arising from major insolvencies and bankruptcies, it is always tough for the professionals to justify their value add and obtain fee approvals. We are seeing a greater increase in judicial review of fees, in the UK and Australia there are governmental reviews of the way in which insolvency practitioners charge their fees, the issue has become something of a political “hot potato”. Given the breadth of our respondents in terms of professions and geography, this is clearly a worldwide issue.

With regard to resource, over 50% of respondents agreed that they did not have adequate resources for the workload over the last two years and a further 38% were neutral. This should be a concern for the profession. Although the last two / three years could be regarded as a “once in 70 years” marketplace, it is clear that many left the profession and were not replaced between the years 1995/96 and 2005/06 and with the complexity of the problems involved and the multinational nature of the companies that are filing, the profession needs to ensure that we have continuity, succession and therefore sustainability.

In many ways, the fee pressures experienced during the recession provide a succession and sustainability challenge to the professions. On the one hand, they are expected to create new generations of practitioners, on the other hand they are criticised for the fees that they charge which compensates the very same professionals.



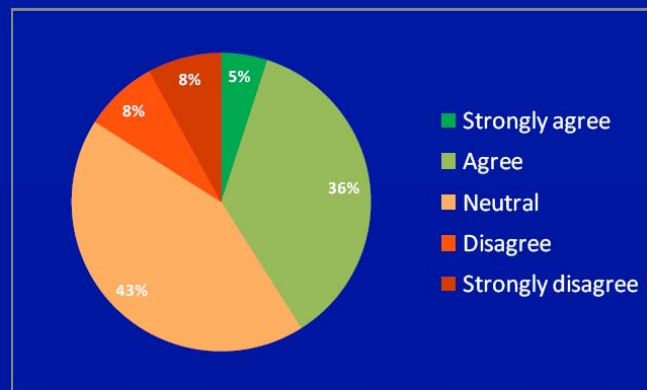
During this recession the bankruptcy / reorganisation legislation in my country has helped me to deal effectively with the issues I have faced as an insolvency practitioner



9



During this recession the bankruptcy / reorganisation legislation in other countries has helped me to deal effectively with the issues I have faced as an insolvency practitioner



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In many ways, these two slides should be extremely gratifying to INSOL and other institutions that have sought to improve the effectiveness of legislation and in particular international standardisation, over many years.

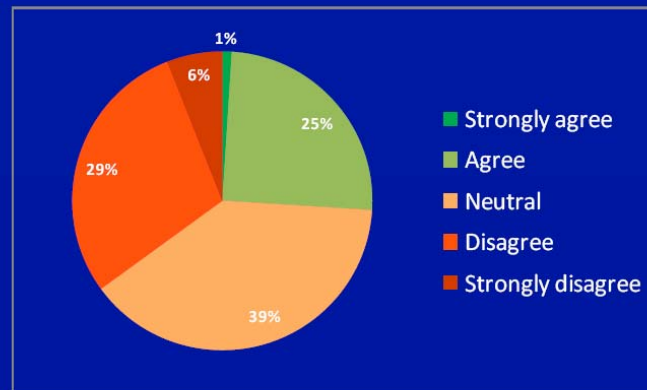
It is perhaps not that surprising that with regard to legislation in practitioners' domestic jurisdictions, nearly two thirds believe that their own legislation has helped them deal effectively with the issues faced. More surprising and particularly gratifying, is the fact that respondents felt overwhelmingly that the legislation in other countries has helped them to deal effectively with the issues they faced. Indeed, very few felt that foreign legislation was unhelpful.

If such a survey had been conducted 10 or 15 years ago, I suggest that the results would have been very different indeed. The efforts of INSOL, UNCITRAL and others have clearly had a major, positive, impact. The work is never done as will be seen from the following slides, but there has been a major step in the right direction.



I have experienced the following issues during this recession:

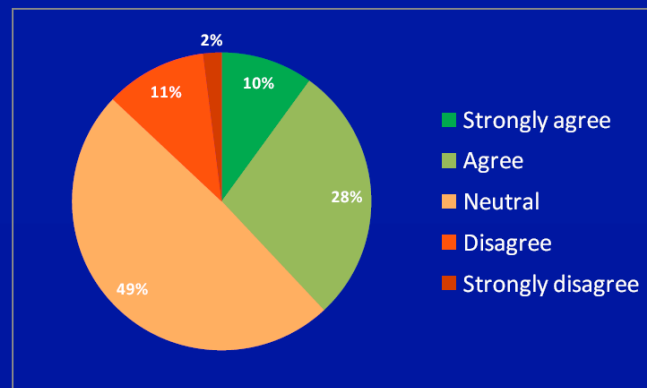
- Difficulty in operating effectively across borders



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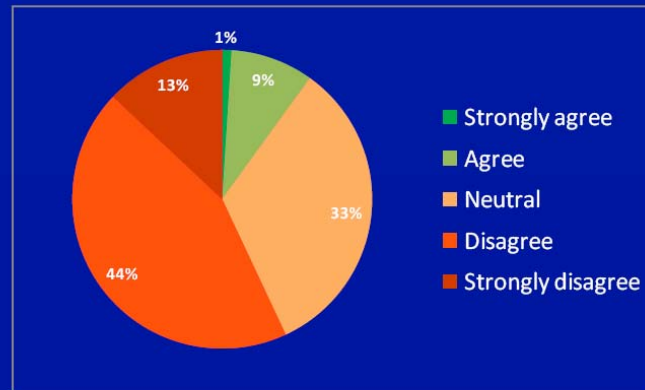
I have experience of cross-border protocols and they have had real beneficial impact



12



In my experience of multi jurisdictional insolvency, I see local creditors making sacrifices for the greater good of the restructuring



13

If the previous two slides dealt with the legislative environment in domestic and overseas jurisdictions, the responses to these slides demonstrate that in practice, there are still issues which militate against effective cross-border insolvency. There is a gap between what the legislators are trying to achieve and the practical implementation.

Nearly two thirds of the respondents have had difficulty in operating effectively across borders (slide 13) and in the vast majority of cases, respondents have not seen local creditors making sacrifices for the greater good of a restructuring. These responses certainly didn't surprise the panel, they corresponded precisely with their own experience.

That said, a number of respondents, 38%, had a good experience of cross-border protocols and believe that they have had a real beneficial impact. Indeed, only 13% disagree with this statement. Clearly, there is considerable work to do in making legislation work on the ground and getting more and better use from cross-border protocols.

In what country are you based?

Are you a a) lawyer b) accountant c) financial advisor d) government / regulator e) other

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
During this recession the bankruptcy / reorganisation legislation in my country has helped me to deal effectively with the issues I have faced as an insolvency practitioner					
During this recession the bankruptcy / reorganisation legislation in other countries has helped me to deal effectively with the issues I have faced as an insolvency practitioner					
The problems faced and the solutions employed have been unique to this recession and therefore do not provide lessons for the future					
I have experience of cross- border protocols and they have had real beneficial impact					
I believe that in this recession the boards of companies have responded more quickly than in the past in taking advice to deal with their difficulties					
Financial stakeholders distinguish between rescuing valuable businesses and supporting those that do not deserve it					
In my country the insolvency profession is seen as a positive force for restructuring/ rehabilitation					
In my country insolvency practitioners are seen primarily as liquidators					
In my experience of multi jurisdictional insolvency, I see local creditors making sacrifices for the greater good of the restructuring					
I have experienced the following issues during this recession:					
- Difficulty in getting creditor acceptance of fee levels					
- Inadequate resource for the available workload					
- Difficulty in getting acceptance that we have added value to a situation					
- Difficulty in operating effectively across borders					

What has made you feel most positive about your work in the last two years?

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