

INSOLVENCY LAW REVIEW COMMITTEE

Agenda for the Preliminary Meeting on Friday,
25 February 1977 at 3.00 pm.

- 1 Introductory remarks by the Chairman.
(Scope of the review)
- 2 Administrative arrangements (Secretary).
- 3 Sub-groups or Panels; their proposed
work, numbers, composition and method of
communication with the main Committee.
- 4 Consultative letter.
- 5 Frequency of meetings; preferences for
a specified day.
- 6 Agenda for meeting on 1st March.

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INSOLVENCY LAW REVIEW

Minutes of the First Meeting of the
Review Committee on
1 March 1977

Present:

- K R Cork (Chairman)
- P G H Avis
- J S Copp
- G Drain
- A Goldman
- J M Hunter
- M V S Hunter
- D McNab
- P J Millett
- T R Penny
- C A Taylor
- E I Walker-Arnott
- T H Traylor (Secretary)
- E L Reeves (Assistant Secretary)

In Attendance:

- J R Endersby
- D Graham
- A J Sim
- G A Weiss

1 The committee met at 10.00 am. The minutes of the preliminary meeting held on 25 February were agreed and signed by the Chairman.

MATTERS ARISING

2 Further discussion took place regarding the relationship between the proposed specialist working groups or panels and the committee, and how these panels would operate in practice. Some members voiced reservations about the proposals as they had been formulated at the preliminary meeting. The view was expressed that the responsibility should be seen to be that of the committee and that it would be necessary for the committee to keep a strong control over the panels. It was suggested that in practice what was proposed was an enlargement of the committee and that it would be necessary to appoint one or two members of the committee to each panel.

3 The Chairman stressed that nothing produced by a panel would be sent to outside bodies unless it had been approved by the committee. He did not feel that a committee of this size could deal with all the detailed work involved. He envisaged that the panels would be given specific remits; for example, the accountancy panel could be asked to review the practice in other countries when details of these had been received and the legal panel could be asked to report on the legal problems which would arise if a comprehensive insolvency system was proposed. On receiverships there was the legal aspect (which would be considered by the legal panel) and the practical aspect (which would be considered by the accountancy panel). When the panels' views had been submitted to the committee and considered, a consultative paper could be produced for circulation to outside bodies.

4 The Chairman suggested that the panels should be formed and used only where appropriate. Whether or not a matter should be referred to a panel would be for decision by the committee.

5 The committee agreed to proceed on that basis.

GENERAL DISCUSSION OF PRINCIPLES

6 The committee had before them two papers, a Discussion Note on the Scope of the Review produced by the Chairman (now numbered ILRC 2) and a note on the Objectives and Purposes of Bankruptcy and Winding-Up produced by Mr Millett (now numbered ILRC 3).

7 A general discussion followed. Points made were that the last major discussion on bankruptcy principles was over the period 1869-1882 whilst that on companies was before 1862; circumstances have changed considerably between those dates and the present time; this would probably be the last opportunity this century to look at the whole question anew; the scope should cover all executions, particularly those in the lower Courts; Court decisions should be made enforceable (which they are not always at present); there should be machinery to deal with small debtors no longer coming within the scope of bankruptcy legislation; the possibility of less formal procedures should be looked at; insolvency for ordinary people should be made easier, whilst at the same time having stronger powers available against delinquents.

8 It was generally agreed that it would be necessary to re-examine the basic philosophy of insolvency to see whether or not the present principles needed to be changed. It was further agreed that this matter should be considered at the next meeting and the

Secretary was asked to prepare a working paper for consideration.

CONSULTATIVE LETTER AND LISTS OF CONSULTEES

9 The Chairman referred to the draft consultative letter and proposed list of consultees which had been placed before members and invited comments on the draft and suggestions as to additions to the proposed addressees.

10 A number of members proposed additions to the list of addressees and the Chairman suggested that these should be provided to the Secretary. He also felt that the proposed letter should be sent to other relevant Committees (such as the Wilson committee) sitting at the present time.

11 There was discussion on the Annex to the proposed letter. It was suggested that "Enforcement Procedures" and "Functions of the Official Receiver" might be added; a proposal that something relating to cost effectiveness should be included was rejected. [However, the point was made that members should be provided with copies of the Bankruptcy and Winding-Up statistics which are published annually by the Department of Trade - this will be done.]

12 Other points made included:

- (a) the more weighty the letter the more effective it would be; ?
- (b) consultees would be able to give oral evidence, in addition, if they so wished or at the invitation of the committee;
- (c) members were free to arrange for copies to be sent to interested parties who were not on the list;
- (d) individual members should not deal directly with the Press;
- (e) some recipients might find it helpful to know which subjects will be dealt with by the committee over the next 3-6 months. [This will be arranged with the consultees concerned - Secretary.]

13 Finally, it was agreed that the Secretary should be empowered to redraft the letter and Annex in the light of the suggestions which had been made.

INSOLVENCY SERVICE DOT

14 Mr Taylor undertook to prepare a paper on the organisation of the Department's Insolvency Service and the duties of Official Receivers in England and Wales.

RECEIVERSHIPS

15 The committee had before them a Note on Receiverships (ILRC 1) prepared by Mr Muir Hunter. Mr Hunter explained his paper and a full and lengthy discussion then took place.

16 During the discussion the following points were made:

- (a) the receiver is, and should be, the agent of the company and not of the appointor; if necessary, this should be made more clear in the relevant legislation; ?
- (b) considerable business was financed against the security of a floating charge; this was usually working capital, loan capital being provided under a fixed charge;
- (c) receivers appointed by banks were usually receiver/managers whose task was to see whether or not the business could be kept going, and the banks took care to see that their appointees are competent;
- (d) however, almost anyone could be appointed a receiver, and not all debenture-holders were banks;
- (e) there was no advance warning of the appointment of a receiver; however, any such warning could be detrimental to the prospects of keeping the company going;
- (f) receivers do not act for creditors generally; it is one creditor enforcing his remedy and unsecured creditors often feel aggrieved;
- (g) there is rarely any measure of the worth of a company at the time of appointment of a receiver;
- (h) some receiverships operate far too long, sometimes for years;

- (j) there is often a further loss by the continuance of trading; receivers should only trade for a beneficial realisation of the assets;
- (k) the receiver should get the best realisation for all creditors;
- (l) the existing statement of affairs arrangements were not working properly;
- (m) most of the other EEC countries do not recognise floating charges;
- (n) the existence of a fixed charge rather than a floating charge was usually more detrimental to the interests of other creditors;
- (o) business in Scotland had operated until quite recently without floating charges;
- (p) many large undertakings were without fixed assets, notably leasing companies.

17 The committee agreed, provisionally, at this stage that:

- (a) charges were necessary (although some reservations were expressed about the necessity for floating charges);
- (b) the appointment of a receiver should be given immediate publicity;
- (c) a receiver should be a member of a recognised professional body with the same sort of qualifications as a liquidator, and should not be a director or employee of the company concerned;
- (d) the receiver should be the agent of the company, and act for the best beneficial interest of all creditors;
- (e) the receiver should be accountable to all creditors;
- (f) the receiver should call a meeting of creditors within three months;
- (g) the creditors should be able to appoint a committee of 5 or less;

*but /
without acting?*

but also?

- (h) the committee would have the right to apply to the Court regarding the conduct of the receiver;
- (j) nothing would remove the right of any creditor to petition for winding-up;
- (k) the receiver should be protected from pressure from certain classes of creditor (eg preferentials);
- (l) goods delivered after the appointment of a receiver would be his personal responsibility unless he arranged for their immediate return.

18 It was decided that further consideration would be given to the terms and conditions of floating charges, including such questions as to who should be entitled to have a floating charge.

NEXT MEETING

19 It was agreed that the main item for discussion at the next meeting would be "General Principles" and the meeting would be held on Thursday, 24 March 1977.