APPENDIX (2.)

1(57)

ILRC - 51st Meeting

Brief for Item 8 (Liquidators, Trustees, Receivers and Administrators - Qualifying Requirements)

Alfred comments as follows:-

"I agree with Ritchie in regard to the automatic disqualification and transitional provisions.

Qualifications - Guidelines

I agree broadly with (a), (b) and (c) of paragraph 5 of Ritchie's Paper, but would not go along with (d). The mere fact of being able to pass an optional Paper in Insolvency does not, necessarily, qualify one to act as an Insolvency Administrator.

I cannot, for example, see the R.I.C.S. including an optional paper in Insolvency in their examinations and, in some instances, a Chartered Surveyor might well be a desirable Receiver.

Furthermore, I do not think it is for us to tell the "Approved Bodies" what subjects they should include in their examinations. Provided the IA has been approved by the Department and has been in practice for a minimum period of either 3 or 5 years and, by one method or another, is insured against negligence, and bonded, I feel we have gone as far as we should."

E R Lewis

Assistant Secretary
9 January 1981

ILRC - 51st Meeting

Brief for Item 5 (Schemes of Reconstruction, Arrangement or Compromise)

Comments by John Hunter are attached.

Alfred approves the paper but would like to see stressed somewhere the benefit that would accrue, not only to shareholders and creditors, but also to employees.

E Lewis

Assistant Secretary
9 January 1981

ILRC 162- SCHEMES OF RECONSTRUCTION, ARRANGEMENT OR COMPROMISE

Comments by John M. Hunter

1. I think it will be a pity if we cannot recommend a simple procedure for an arrangement between a small limited company and its creditors as an alternative to the complicated, expensive and dilatory procedure under section 206 of the CA 1948 and which has the grave disadvantage of not providing for a stay of enforcement proceedings pending consideration of the company's proposals.

2. I have in mind particularly the small family trading company, which is little different in reality from a partnership, and where the business may be saved from cessation , perhaps with the injection of additional capital, if the creditors will accept a composition on their debts, which they are often willing to do.

3. If the company resolves to put forward a scheme of arrangement with its creditors or any class or classes of them, why can the procedure for voluntary arrangements with individual debtors not be adapted to enable this to be done ? After all, this procedure has been to some extent based on the procedure and practice relating to creditors' voluntary winding-up. Why cannot it not be used to avoid a winding-up in an appropriate case ?.

4. I take the point in paragraph 19 that the determination of classes may be a difficult matter, though I would hesitate to say that this was "often" the case. In the sort of simple scheme I envisage being proposed, such difficulties would not frequently arise. In any case there is always the safeguard that a dissatisfied creditor may still proceed with a compulsory insolvency application or may apply to the Court to have the voluntary arrangement set aside.

5 January 1981.

ILRC - 51st Meeting

Additional Brief for Item 8 (Liquidators, Trustees, Receivers and Administrators - Qualifying Requirements)

Peter Avis has commented as follows:-

"In the introductory paragraph 1, Ritchie suggests we call these people "Insolvency Adminstrators". I would like to suggest that we give consideration to a change of designation, possibly using the term "Insolvency Practitioners" as we shall, I am sure, see many instances when an Administrator is called in to take care of the affairs of a company, etc, where an insolvency situation is not necessarily present or likely to arise and I feel that if he were to be known as an "Insolvency Administrator" it could possibly have a very damaging affect on the trade of the company. If we prefer to retain the title "Insolvency Administrators" then we should, I think, make it clear that for the purposes of qualification requirements only we would include an "Administrator"appointed in non-insolvency situations.

Para. 3. Disqualification

(d) 1. Should we also include a shareholder, i.e. "or an employee, or shareholder of the debtor company, or partner of an officer or former officer, etc".

2. I believe we were quite happy in some instances to see a joint appointment, should we refer to this in (d).

3. Would it be possible to enlarge the wording "associated company" both in this qualification and in (e) to embrace any other company relationship which might be present. I am thinking of a group of companies with subsidiaries and sub subsidiaries, etc.

E L REEVES
Assistant Secretary
12 January 1981

ILRC - 51st Meeting

Brief for Item 7 (Delinquent Directors)

Peter Avis comments as follows:-

Page 2, para. 10. Personal Liability

" Whilst I agree with the sentiments expressed in the paragraph in principle, it would seem that we need clarification here as to the ultimate responsibility, is it to be solely that of the "responsible officer", or would be bear only part of any shortfall; what would be the position of a creditor, would he go against the "responsible officer" or would his right of action be against the company ? "

E L REEVES
Assistant Secretary
12 January 1981