

INSOLVENCY LAW REVIEW

Minutes of the Seventieth Meeting of the Review Committee on
15 February 1982

Present: Sir Kenneth Cork (Chairman)
PGH Avis
J S Copp
AIF Goldman
J M Hunter
MVS Hunter
P J Millett
D McNab
T R Penny
E I Walker-Arnott
T H Traylor (Secretary)

In attendance: N Cave
D Graham

1. The Committee met at 10.00 am. The minutes of the sixty-ninth meeting held on 14 December 1981 were agreed and signed.

SECRETARY'S REPORT

2. The Secretary reported that apologies for absence had been received from Mr Drain, Professor Jack and Mr Weiss.
3. Papers circulated since the last meeting had been those relating to the agenda. Copies of Chapters 15 to 21 of the Report had been sent out on 14 December 1981, of Chapters 22 to 28 on 7 January, Chapters 29 to 35 on 22 January, Chapters 36 to 42 on 2 February, and Chapters 43 to 48 together with the 5 Appendices on 12 February.

GROUP TRADING

4. Paragraph 26 of the revised draft chapter dated 9 December 1981 was before the Committee for approval. Mr Copp had suggested that the last three lines should be amended to read "the Court should have power to treat an appropriate interest in the property as held in trust....". This was accepted and the paragraph, as amended, approved.
5. It was confirmed that the phrase "Insolvent winding up" in paragraph 33 was intended to mean any form of insolvent winding up, including liquidation of assets.

EXTRA-TERRITORIAL JURISDICTION IN INSOLVENCY

6. The Committee had before it a redraft of the chapter dated 21 December and comments by members. It was agreed that the title of the chapter should be "Extra-Territorial Aspects of Insolvency Law". Other suggested amendments were then considered.

7. Para 1. Sub-para (b) would comprise the first four lines only, the remainder forming sub-para (c).
8. Para 2. The last phrase would read, "the United Kingdom of Great Britain and Northern Ireland, which with the Channel Islands and the Isle of Man constitute 'the British Islands'". The reference to the Interpretation Act would be deleted.
9. Para 4 would be amended so as to omit the reference to Parliament.
10. Para 5 should start, "If it be (as we believe it should be) the paramount objective....". This would make the Committee's own position clear.
11. Para 6 would be amended to clarify its meaning.
12. Para 9. (a) The opening would be amended to read, "Despite the outmoded reference to 'British Courts' and although the powers are discretionary not only as concerns the Courts of the UK but also, necessarily the other Courts to which the section refers,...."
- (b) The paragraph would end at "...the fiscal authorities of a foreign State".
13. The redrafted chapter as amended was approved.

UK INSOLVENCY LAW AND THE EEC

14. The Committee had before it a redraft of the chapter dated 21 December and comments by members.
15. Para 2. The last sentence would also refer to quasi-fiscal claims; the final nine words would be omitted.
16. Paras 3 and 4 would be amended as suggested by Mr Walker-Arnott (see 'Brief').
17. Para 8 would be amended along the lines suggested by Mr Walker-Arnott (see 'Brief').
18. Paras 9 10 and 11 would be deleted, being replaced by Mr John Hunter's draft para 20 (see paragraph 15 of the Minutes of the 69th Meeting), and by a paragraph indicating that implementation of the Committee's proposals would be an important step towards preparing our insolvency law for EEC harmonisation, and that ultimate harmonisation of insolvency laws in a trading community is essential.

FINAL CHAPTER - THE NEED FOR REFORM

19. The Committee had before it a redraft dated 18 January. It was agreed that the headings or objectives in para 4 should be underlined in order to distinguish them from the detailed recommendations in the subsequent sub-paras. Other suggested amendments were then considered.

20. Para 1 of the previous draft would be retained, to which was added "fresh legislation of a comprehensive nature is urgently required".
21. Para 2. The drafting amendments listed in the two 'Briefs' were accepted. Also, "and individuals in the community at large" was deleted from line 15.
22. Para 4 line 1. After 'numerous' add "and many of them".
23. Para 4(1)(d). To start "the abolition of the outmoded concept of the act of bankruptcy and the introduction....", and end at "corporate".
24. Para 4(2)(d). Insert 'which are' in two places in line 3.
25. Para 4(3)(a). All after 'DAO' to read, "for the making of an order for payment by instalments from income".
26. Para 4(6). Delete 'widespread' from line 3.
27. Para 4(6)(b). For 'specified' read 'limited' in line 2, and delete 'pari passu'.
28. Para 5 line 4. For 'were entirely ignored' read 'have never been implemented'.
29. Paras 6 and 7. Amend and combine in one para the first four lines of para 6 and Mr Millett's redraft of para 7 (see 'Brief').

FINAL REPORT

30. The Secretary reported that a second list of typographical errors and other small amendments had been circulated. In addition, two further amendments were approved:
- (i) Para 855 line 9, delete 'to the Court',
 - (ii) Para 1124 to be amended to read,
 - "(a) the debtor and his wife;
 - (b) the debtor or his wife with (in either case) a dependant child or dependant children;
 - (c) the debtor's wife; or
 - (d) the debtor and a dependant parent of the debtor or his wife who....".
31. It was agreed that no further alterations to the text of the Report would be made other than obvious errors. The Secretary hoped to be able to circulate copies of Chapters 49 to 52, and the "Contents", by 22 February. Members were asked to let him have details of any typographical errors noted with all speed, the aim being to send the Master Copy for photo-printing and binding as soon as possible. Members would be kept informed of progress.

PUBLICITY

32. Members supported a proposal that a 'press release' should be issued by the Chairman when the Report had been submitted to

the Secretary of State. It was stressed that this would not include specific recommendations. The Chairman said it would be helpful if Members would send in a short note of points which might be made in the press release.

33. It was suggested that a press conference might be held shortly after the Report had been published by the Department; this might not be for two or three months.

NEXT MEETING

34. The next meeting would be held on Friday 2 April; further details would be circulated shortly.