
Editorial

Cork: The Revised Framework

Some pessimists must have feared that the Cork Report on Insolvency Law and Practice had been shelved indefinitely. But these fears have been confounded. The publication on February 28 by the Department of Trade and Industry of the White Paper, "A Revised Framework for Insolvency Law" (Cmnd 9175. HMSO. 4.65) heralds some needed reforms in the field of insolvency law. The Government plans to bring forward an Insolvency Bill at the earliest practicable opportunity.

The proposals have two principal purposes: to simplify procedures and maximise the use of voluntary arrangements for the collection settlement of debts and to tighten up the qualifications of insolvency practitioners. The latter aspect reflects antipodean practice and is to be underpinned by compulsory guarantees.

Directors involved in a compulsory liquidation are to be automatically disqualified for three years and liquidators can ask the court to impose longer bans on, and to attach personal liability to, directors found to have engaged in wrongful trading.

The clarification of receivers' powers, duties and obligations by statute is also a very welcome step. But the rejection by

the Government of a Ten Per Cent Fund to be set aside in all receiverships for unsecured creditors is a disappointment to many who consider that unsecured creditors get a raw deal. Equally disappointing but very predictable is the retention of preference for tax debts. This was a question on which the Cork Committee unhesitatingly rejected the argument that debts owed to the community ought to be paid in priority to debts owed to private creditors. The arguments were carefully set out in paras 1410–1425 of the Cork Report and are feebly dealt with by para 27 of the White Paper. The Revenue is not the only involuntary creditor and individuals should not be made to suffer for the general good, especially where the general good is infinitesimal in comparison with the individual loss.

The measures proposed for providing information to unsecured creditors are also long overdue. Within three months of his appointment a meeting of unsecured creditors will have the opportunity of hearing the receiver's report and if dissatisfied of making representations to the court.

The acceptance of the concept of court Administrator (already known Down Under) will be an attractive option where rehabilitation of a company is envisaged.

With the exception of the two omissions to which attention has been drawn the White Paper presents a satisfactory response to the Cork Report.