Editorial

The Insolvency Act: Paramount Considerations

The usually ponderous wheels of the legislative process can be made to revolve with quite startling rapidity when driven by urgent necessity – as witnessed by the rapid passage of the Insolvency (No 2) Bill, which completed all its parliamentary stages on 22 March.

The Bill was prompted by the recent decision of the Court of Appeal in the case of the charter airline, *Paramount Airways Ltd.* The company had fallen into financial difficulties, and in 1989 the court had appointed administrators in the hope that it could be salvaged. Under sections 19(5) and 44(2) respectively of the Insolvency Act 1986, administrators and administrative receivers, had only 14 days from the date of their appointment to decide whether to adopt the employees' contracts of employment. The 14 day limit has always been recognised as being hopelessly short for the formulation of a realistic business plan to rescue a company. Adoption has very serious implications, particularly for administrative receivers, since it renders them personally liable under the contract. However, it had become the general practice, apparently sanctioned by the unreported High Court ruling in the *Specialised Mouldings* case in February 1987, for administrators and receivers to side-step these provisions by giving written notice to each employee within 14 days that their contracts of employment would not be adopted.

The administrators of Paramount followed this course, only to be told by the Court of Appeal that their letters of disclaimer were a sham, and of no legal effect. The effect of their Lordships' ruling (subject to appeal to the House of Lords) is that, if administrators or receivers continue to employ and pay staff 14 days after their appointment, then they will impliedly have adopted the contracts of employment – with all the consequent liabilities. The effect of the *Paramount* ruling would be that insolvency practitioners would often be prompted to dismiss a large proportion of the workforce within the 14 day period. Another is the likelihood of a drying-up of administrations and receiverships, with more companies being forced into liquidation – leading to more job losses.

Hence the Insolvency Bill. Its main effect is to allow administrators and receivers to adopt restricted contracts of employment, excluding employment obligations other than wages, salaries and pension contributions falling to be paid from the date of appointment, which will be treated as expenses of the administration or receivership. The Bill was welcomed, with some reservations, by the Opposition, by a most insolvency practitioners and by the CBI and Chambers of Commerce.

However, some problems remain. Lord Donaldson has pointed out that the Bill does nothing to alleviate the troublesome uncertainties in the 1986 Act about what constitutes "adoption". And, of immediate concern to many practitioners, is the fact that the legislation is retrospective only to 14 March, when Michael Heseltine announced his intention to legislate. In the wake of *Paramount*, there are expectations of a deluge of huge claims from the ex-employees of collapsed companies. This Act, welcome though it is to see the Government acting so quickly, only applies emergency first aid to an area of law that now requires radical judicial and legislative surgery.

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