Northern Ireland Assembly

Committee for Enterprise, Trade and Investment

OFFICIAL REPORT (Hansard)

Insolvency Bill: DETI Briefing

27 September 2012

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Members present for all or part of the proceedings:
Mr Patsy McGlone (Chairperson)
Mr Phil Flanagan (Deputy Chairperson)
Mr Steven Agnew
Mr Paul Frew
Ms Maeve McLaughlin
Mr Stephen Moutray
Mr Robin Newton
Ms Sue Ramsey

Witnesses:

Mr Reg Nesbitt	Department of Enterprise, Trade and Investment
Mr Jack Reid	Department of Enterprise, Trade and Investment

The Chairperson: We have with us today Reg Nesbitt, director of insolvency services, and Jack Reid, deputy principal of insolvency services. You are both very welcome. Included in our pack are the paper from the Department on the outcome of the policy consultation; a briefing from the Committee Clerk that gives a background summary of the contents; and a departmental briefing and covering brief on the policy proposals that are included in the legislation and were previously considered by the Committee on 8 March. Can you just give us a bit of an oversight? Then, if members want clarification or further expansion, I am sure that you will be happy to take questions.

Mr Reg Nesbitt (Department of Enterprise, Trade and Investment): Congratulations to you on achieving the Chair. The Committee has asked to be advised of the outcome of the consultation on proposals to amend insolvency legislation.

It is our practice to keep insolvency legislation in parity with that applying in England and Wales. That saves people in one jurisdiction who need to take insolvency proceedings against an individual or company in the other jurisdiction having to acquaint themselves with a different system of legislation. We note that some of those who responded to the legislation voiced their approval of the principle of parity. For example, the Insolvency Practitioners Association said in its response that it supported the concept of bringing greater uniformity between the two jurisdictions. Grant Thornton saw efficiency savings resulting from the alignment of the law that our proposals would achieve.

We find ourselves in a position of needing an Assembly Act to implement changes in line with those made by the Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2010 that came into operation in England and Wales in April 2010. There are three major changes aimed at modernising the administration of insolvencies by permitting greater use of electronic communications. The first is to establish that documents stored and transmitted in electronic form are as good and as valid in law

as paper ones. The second is to enable office holders in insolvency proceedings to communicate information by displaying it on websites and giving those entitled to see it a password to view it. The third is to make possible the holding of virtual meetings of creditors or company members.

A number of minor changes will be made to procedure. For example, the requirement for liquidators and members in creditors' voluntary liquidations to call meetings of company members and creditors each year to present an annual account will be replaced with the requirement to send them an annual progress report that includes a receipts and payments account. The provision for deeds of arrangement, which is a procedure that has fallen into disuse, will be repealed, largely because the individual voluntary arrangement (IVA) procedure has succeeded it.

We consulted approximately 460 organisations and individuals, and 17 responses were received. Five did not make any comment on the policy, and the attitude of the other 12 respondents was generally favourable. The Crown Solicitor and the Chancery and Probate Liaison Committee stated concerns about one of the minor proposals that would have altered the procedure to secure the approval of creditors to a debtor's proposal to enter into an individual voluntary arrangement. The proposed alteration was to no longer require the chairman of the creditors' meeting to report the result to the court. The Crown Solicitor and the liaison committee pointed out to us that the court needs to know the result if there is a bankruptcy petition pending against a debtor. We are in correspondence with them to agree on how the matter should be settled. It looks as if we will simply withdraw that particular proposal.

Four respondents raised concerns about the impact of the proposals on people without access to computers, especially elderly people and those living in rural areas. Our policy is that it is right to give those who prefer to communicate using modern electronic means the right to do so. It would be foolish and wrong to try to hold back progress and deny ourselves the benefit that can flow from using up-to-date communications technology. Respondents mentioned speed, efficiency and reduced cost. The Chartered Accountants Regulatory Board pointed out in its response that permitting virtual meetings by teleconferencing and video conference will encourage greater creditor involvement in the insolvency process. KPMG stated that the proposal to allow information to be communicated by website will prove beneficial to the environment in respect of the carbon footprint.

It is also our policy that those who need or prefer to communicate using traditional paper-based methods should still be able to do so. The safeguards built into the English legislation that we intend to replicate should achieve that result. It will be possible to send documents by email only if the intended recipient agrees to that means of communication. There will be a requirement for those entitled to see a document displayed on a website to be notified that they have the right to ask for a paper copy free of charge.

A physical meeting will have to be held instead of a virtual one if 10% or more of the creditors by value want it. We feel that what we are proposing will accommodate and serve the needs of those who prefer to use IT to communicate and those who prefer more traditional means.

The Chairperson: Thanks very much for that. One point of clarity: there was the one about the notification to the court. Are you seeking to address that issue? The courts had concern that they needed to be formally notified in the event of bankruptcy.

Mr R Nesbitt: Yes. Usually, the courts really have no involvement in IVAs. Up to now, we have been notifying the courts of the results. We did not see any point in notifying them about a result if the courts were never involved. However, if someone has taken out an IVA, which is usually done through a private sector practitioner, a creditor could apply to the courts to have him made bankrupt. Therefore, it is useful for the courts to know that they have the result of that creditors' meeting on the IVA proposal.

Mr Newton: It is just a small point, but you said that 10% of creditors could call a creditors' meeting. That is a very small percentage. That could be one or two persons.

Mr R Nesbitt: Creditors' meetings are very poorly attended. Empirical evidence shows that creditors are just not really interested in attending meetings.

Mr Newton: To get their money back.

The Chairperson: They just want their money.

Mr R Nesbitt: Exactly. You then have to look at who controls most of the creditors. Normally, you will find that it is HMRC, financial institutions or a major supplier. That 10% really falls into a very small category of people who will not be able to influence the outcome at all. You may get an individual who wants to attend those creditors' meetings just to make a noise but actually does not influence the outcome at the end of the day. Therefore, we are saying that if 10% want the meeting, we will give it to them.

The Chairperson: So, we are quite agreed on the course of action. OK, thanks very much for that.