



FINANCE AND ECONOMICS COMMITTEE

27th January, 1983

Desastre  
(Jersey)  
Law, 198 .  
Draft  
Brief  
CP-FE/13/83  
216(2) ✓

31. The Committee received [REDACTED]  
[REDACTED]  
to discuss a Paper, dated 22nd December, 1982, (designated  
Committee Paper F/13/83), prepared jointly [REDACTED]  
[REDACTED] being  
draft instructions to the Law Draftsman for the reform  
of the Law on Bankruptcy [REDACTED]  
[REDACTED]

The Committee considered the Paper and decided  
as follows -

- (1) A Jersey incorporated company, even though not resident or controlled in Jersey, and although it might not have any assets in Jersey, should nevertheless be capable of being made 'en desastre' under the proposed Law.
- (2) The Norman Customary Dower should be abolished.
- (3) The concept of a 'maritime desastre' should be abolished.
- (4) On the 'desastre' of a joint owner of property, as opposed to an owner in common, the Viscount should be empowered to sell the property and appropriate a share of the proceeds, except in the case of the matrimonial home.
- (5) The Law should provide that on a 'desastre' -
  - (a) a provision in a lease that the declaration would result in cancellation of the lease would be void; and
  - (b) irrespective of the terms and conditions of the lease the Viscount would be able to assign the lease subject to the permission of the lessor, with the proviso that the lessor would not be able unreasonably to with-hold such permission.
- (6) The order of preferences for preferential debts which would be applicable in all 'desastres' would be as stated in Stage 6 of the Paper, with the deletion of (d) Harbours and Airport Dues.

STATES CHIEF  
-2.FEB.1983  
FORWARDED

With regard to 4(c) in which it was proposed that the amount of any judgement obtained in the Royal Court or Petty Debts Court at least ten days before the declaration 'en desastre' should rank, the Committee felt that this was a very short period of time and suggested that the time might be extended to seventeen days and expressed the view that there was room for consideration as to whether or not such a judgement should rank as a 'preferred creditor'.

The Committee decided to include the provision at this stage, but reserved the right to give further consideration thereto when the draft law was being prepared.

- [REDACTED]
- (7) With regard to whether a debtor after a 'desastre' should be discharged from liability for the unpaid balance of his debts, the Committee decided that a person declared 'en desastre' would remain as such for a period of five years. The debtor and/or the Viscount and/or creditors could apply to the Court and ask for the five year period to be reduced or extended.
  - (8) The Committee questioned whether or not there were adequate provisions in the brief in respect of Directors of companies which were declared 'en desastre' [REDACTED]
  - (9) The Committee decided that one of the disabilities applying to a person declared 'en desastre' should be that he should not be able to obtain credit without declaring that he was an undischarged bankrupt.
  - (10) Provision should be made in the Law for the Viscount to be able to delegate wholly his duties and responsibilities where, for instance, several very large corporate 'desastres' were declared simultaneously as these would impose an un-acceptable burden on that office.

The Committee further decided that the revised brief should be forwarded to the Law Draftsman with a request that the necessary draft legislation be prepared.

With regard to consultation with professional bodies, the Committee agreed that it would send copies of the Bill when it had been prepared and to invite their comments thereon within a time scale of, perhaps, one month. [REDACTED]



Greffier of the States

STATES GREFFE  
-2.FEB.1983  
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Draft  
Bankruptcy  
(Desastre)  
(Jersey)  
Law, 198 .  
216/2(-)  
216/2(-)

FINANCE AND ECONOMICS COMMITTEE

5th August, 1985.

8. The Committee received [REDACTED] and considered the draft Bankruptcy (Desastre) (Jersey) Law, 198 .

The Committee noted that the purpose of Bill was to amend and extend the form of bankruptcy whereby a person's property was declared by the Court to be "en désastre". An important change which the draft Law introduces was that immovable property would become subject to "désastre" proceedings.

[REDACTED] the Committee as previously constituted, by Act dated 31 of 27th January, 1983. had requested the Law Draftsman to prepare a draft Law, incorporating decisions taken at that meeting. The Committee now had the 8th draft before it for consideration.

[REDACTED] drew the Committee's attention to the fact that the Committee as previously constituted had decided that the Law should provide that in a case of "en désastre" -

- (a) a provision in a lease that the declaration would result in cancellation of the lease would be void; and
- (b) irrespective of the terms and conditions of the lease the Viscount would be able to assign the lease subject to the permission of the lessor, with the proviso that the lessor would not be able unreasonably to with-hold such permission.

The Committee noted that it had proved to be extremely difficult to include in the draft provisions regarding leasehold interests and therefore this had been omitted because of the difficulties it would bring in its train.

The Committee then considered the draft in detail and agreed amendments as follows -

- (i) Article 31(1)(c)(iii) - Order of Payment of Debts.  
The period should be reduced from seventeen days to ten days.
- (ii) Article 37 - Application by Viscount for order of discharge.  
The period stated should be reduced from five to three years.

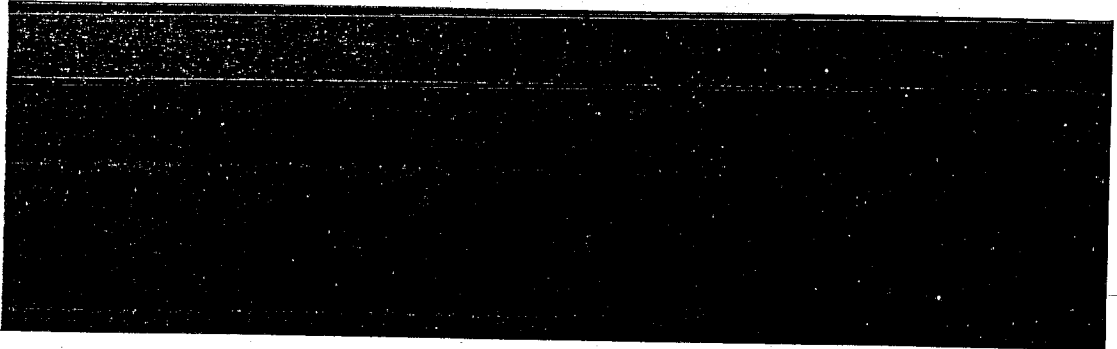
The Committee also agreed that further consideration should be given to -

- (a) Article 10(4) - Special provisions regarding Immovable Property. The word "equal" should be looked at further.
- (b) Article 40(2) - Disqualification of Directors.  
Whether the present draft which stated "a" Director might not be amended to state "any" Director.

- (c) Article 43 - Assistance for other Courts in Insolvency Matters.  
That this Article be looked at again from the fiscal point of view.

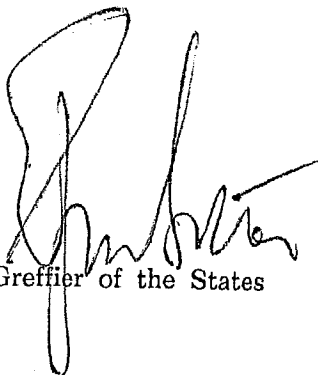
The Committee thanked the Officers concerned for the considerable amount of work they had undertaken in the preparation of the Bill and decided that prior to it giving further consideration thereto -

- (a) the Bill should be forwarded to the Jersey Lawyers Accountants and Bankers Joint Committee and to The Jersey Chamber of Commerce and Industry Inc. with a request that they review the proposals and respond not later than 31st October, 1985;
- (b) if any other interested parties would wish to have sight of the Bill and to comment on it, this should be arranged;



The Commercial Relations Officer was authorised to take the appropriate action.



  
Greffier of the States

STATES GREFFIER  
15. AUG. 1985  
FORWARDED



FINANCE AND ECONOMICS COMMITTEE

16th March, 1987

Draft  
Insolvency  
(Desastre)  
(Jersey)  
Law, 198  
216(5)

29. The Committee, with reference to its Act No. 8 of 5th August, 1985, [redacted] and considered a Paper, dated 2nd March, 1987, prepared by the latter officer.

The Committee noted that the process of review and discussion of the comments of the various professional and other societies on the draft Insolvency (Desastre) (Jersey) Law, 198 . had now been completed, but that it had not been possible to reach agreement on two matters which were now put forward for consideration and decision.

The first point concerned Articles 10(4) and 11 of the draft Law and the treatment in the desastre of an individual of jointly owned immoveable property. The Committee, in this connexion, considered a Paper [redacted]

[redacted] The Committee, [redacted] decided that Articles 10(4) and 11 were acceptable as drafted, including in particular the provisions regarding dependants.

The Committee then considered a Paper concerning Article 31 of the draft Law on the order of payment of debts. The Committee recalled that it had previously approved the order of preference, now set out in Article 31 of the draft Law, as follows -

- (1) Secured creditors (those having hypothecs on immoveable property and security interests in moveable property and those having hypothecs on ships).
- (2) Costs of the administration of the desastre.
- (3) Arrears of salaries and wages (subject to financial and time limits).
- (4)
  - (a) Arrears of Social Security contributions; and
  - (b) Arrears of Income Tax; and
  - (c) Arrears of Rent (in accordance with the customary law); and
  - (d) Amount of any Judgement obtained in the Royal Court or the Petty Debts Court at least ten days before the declaration "en desastre".
- (5) All other creditors.

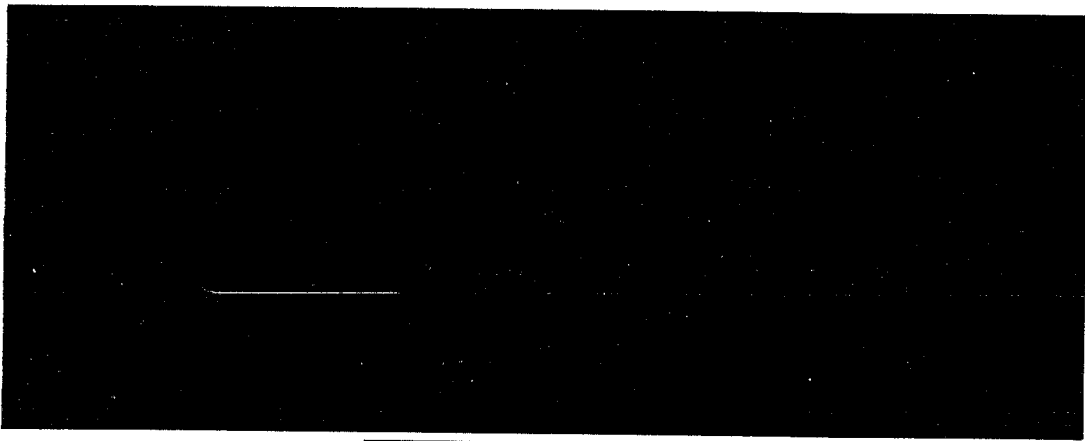
The preferred debts set out in (4) above would rank equally among themselves and would be paid in full unless the property of the debtor was insufficient to meet them in which case they would abate in equal proportions among themselves.

The Committee noted the comments of the Law Society, the Jersey Society of Chartered and Certified Accountants, the Clearing Banks and The Jersey Chamber of Commerce and Industry Inc.

The Committee decided that the list of preferential creditors should be amended including in (4) Parish Rates, and that the list was in general satisfactory. Concern was expressed with regard to Income Tax, Social Security and Parish Rates that preference should not apply if there had been laxity in collection of amounts due from time to time and that creditors should regard the amounts paid as fair and not unduly prejudicial to their own claims.

The Commercial Relations Officer was requested to review those three items and to prepare a Paper thereon for its consideration at a subsequent Meeting.

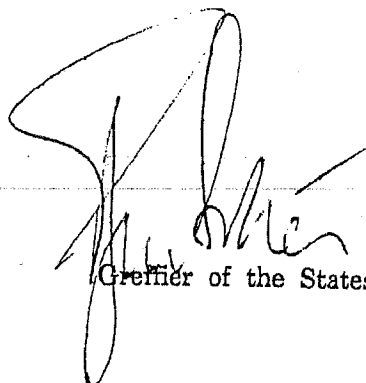
The Committee then referred to the Paper entitled "Instructions to Law Draftsman" and was informed [redacted] that all the instructions had been subject to extensive investigation and consultation with the various professional and other bodies. The Committee, on this basis, approved the instructions, subject only to deletion of the Paper's instructions regarding ~~of~~ Article 11(11) (dependants) which would remain as drafted.



The Committee concurred [redacted] that the draft Law should be retitled the Insolvency (Desastre) (Jersey) Law, 198 . (rather than the original title Bankruptcy (Desastre) (Jersey) Law, 198 .)

In conclusion, the Committee decided that it would await the further Paper to be prepared by the Commercial Relations Officer on Article 31, prior to forwarding the instructions to the Law Draftsman.

STATE'S GREFFE  
24. MAR 1987  
FORWARDED

  
Greffier of the States



FINANCE AND ECONOMICS COMMITTEE

30th March, 1987

Draft  
Insolvency  
(Desastre)  
(Jersey)  
Law, 198  
216(5)

25. The Committee, with reference to its Act No. 29 of 16th March, 1987, recalled that in discussing amendments to the draft Insolvency (Desastre) (Jersey) Law, 1987, it had considered the treatment of preferential debts and had been satisfied that income tax, social security contributions and parish rates should have preference, but was concerned that -

- (a) preference should not apply if there had been laxity in collection of amounts due from time to time; and
- (b) creditors without a preference should regard the amounts paid as fair and not unduly prejudicial to their own claims.

The Committee considered a Paper, dated 18th March, 1987, prepared by the Commercial Relations Officer and noted that -

INCOME TAX

The present position regarding income tax was that the Comptroller only had preference with regard to tax payable in respect of the year in which the desastre occurred and the preceding year. The Comptroller was treated as an ordinary creditor for any amounts outstanding for prior periods.

The Commercial Relations Officer believed that this seemed satisfactory and the draft could be amended to provide for this system to continue.

SOCIAL SECURITY CONTRIBUTIONS

In most desastres, the amounts owing in respect of social security were amounts due in respect of employees of the debtor. To the extent that these contributions were not paid, the employees' contribution records would be deficient and they might suffer reduced benefit. Also, as the contributions were in part deductions from employee wages it could be claimed that the debtor was holding them in trust for payment to social security and they would not then form part of the debtor's assets. Furthermore, and this seemed persuasive, the Social Security Department did not allow contributions to fall into arrears (for example it charged interest at one per cent a month as an incentive) and the Viscount had stated that the amounts claimed in recent desastres would rarely represent more than a year's contributions.

The Commercial Relations Officer believed that it would seem appropriate to allow Social Security contributions to be preferential without setting a time limit.



PARISH RATES

The Commercial Relations Officer suggested that these should be brought into line with the income tax debts and be allowed to be preferential for a maximum of two years.

The Committee approved the suggestions of the Commercial Relations Officer and decided that the draft should be amended on the above basis.

The Committee accordingly requested the Law Draftsman to prepare the amendments to the Bill as set out in its Act no. 29 of 16th March, 1987 and in its present Act, on the basis of a brief to be provided by the Commercial Relations Officer.



Acting Greffier of the States

STATES GREFFIER  
- 6. APR. 1987  
F. J. W. S.



FINANCE AND ECONOMICS COMMITTEE

12th June, 1989

Draft  
Bankruptcy  
(Desastre)  
(Jersey)  
Law, 198.  
216(5) ✓

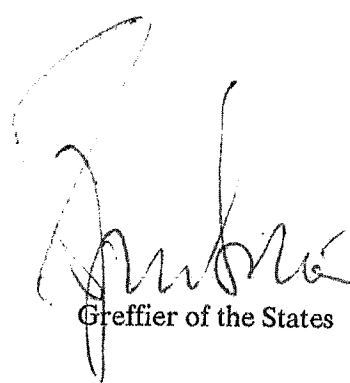
32. The Committee discussed [REDACTED] the draft Bankruptcy (Desastre) (Jersey) Law, 198., together with a draft Committee report and a Paper, dated 6th June, 1989, prepared by the Commercial Relations Officer.

The Committee noted that the draft reflected the policy decisions it had taken in 1983, 1985 and 1987 on various aspects of bankruptcy law and was also the outcome of considerable discussion with all the local professional bodies, including the Jersey Law Society, and involving the Attorney General, the Viscount, the Commercial Relations Officer and others.

Deputy Sir Martin Le Quesne queried various Articles in the draft Law and also statements in the draft Report. The Committee concurred with Deputy Le Quesne's suggestion that in Article 43 'Disqualification of Directors' only the Attorney General might apply to the Court for an order to be made against a director.

The Committee deferred consideration of the remainder of the draft Law in order that Deputy Le Quesne could discuss with the Attorney General, the Commercial Relations Officer and the Law Draftsman outstanding matters.

The Committee agreed that it would give further consideration to the draft Law when these discussions had been completed. However, as the points to be raised by Deputy Le Quesne did not affect the substance of the draft Law, the Committee decided to refer it in its present form to the Establishment Committee in order that it could comment on the staffing implications in accordance with an Act of the States dated 3rd April, 1979. The Committee, in this connexion, noted that the Viscount had confirmed there would be no net effect on staff resources in his Department as a result of the introduction of the legislation.

  
 Greffier of the States

