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Small Business, Enterprise and Employment Bill

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Second Reading

Lord Bilimoria (CB):

With regard to insolvency, Britain's insolvency environment ranks pretty highly. In fact, we rank seventh in the world. The Bill talks about reforming insolvency in this country. I do not believe it is doing it in bold enough terms. For example, we are not going as far as having the famous American Chapter 11 or the Canadian Division 1 principles—and, surprise, surprise, countries number 1 and 2 in the insolvency environment are Canada and the United States of America. Those two measures, Chapter 11 in particular, provide a company trying to restructure with protection from creditors to give it time to do so. I have gone through this. I tried to institute a company voluntary arrangement. We got 90% of our creditors to agree, but we could not go through because there was no protection and one of the creditors scuppered the whole arrangement.

The Bill talks about pre-pack administrations. This is meant to be the least worst alternative. I have had to go through this procedure. It is awfully painful, but it is there to save brands and businesses if companies go through the procedure above board, as we did. I am proud to say that today we have a brand and a company that are flourishing. The worst thing about it is that when I went through that procedure I realised how

badly misused it is in this country. It is misused to the extent that shareholders, creditors and, worst of all, employees suffer. That is not on. I do not think that the measures in the Bill go anywhere near far enough to improve the pre-pack administration regime. Bringing in Chapter 11 would be the best way of taking things forward. Do the Government agree?

Lord Hunt of Chesterton (Lab):

My last point concerns the issue of insolvency, an issue which is dealt with at the end of the Bill and is important for high-tech companies. Many high-tech companies are formed and many become insolvent—it is a chronic situation. The need to have Chapter 11-type arrangements here to enable our small companies to avoid insolvency and continue trading has been raised both by the *Financial Times* and by the noble Baroness, Lady Wheatcroft, in our discussions yesterday. I recently saw how such arrangements worked in France, where a high-tech company which provided high-level environmental services to most cities in France became

overextended. Such a situation in Britain would have resulted in the collapse of the company. In France,

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however, the Government stepped in; arrangements for creditors were arranged for several years; the service continued, and the technology is developing. In the UK I recently visited the law courts, and seeing 70 companies going down every 30 minutes is a pretty sombre sight. With some assistance or investigation some of the value in those companies could be saved. BIS could provide that kind of information.

Finally, Part 10 addresses an important aspect of insolvency, when the employees become redundant. Current legislation makes the compensation dependent on the payment rates of the staff. In some cases where the company descends into bankruptcy, the payments to the staff may well be less than the minimum wage. Surely the redundancy payment by the Government's Redundancy Payments Service should be based on minimum wages. That is not allowed for in the Bill but I strongly recommend it.

Lord Leigh of Hurley (Con):

I have to say that I do not have quite the same experience as the noble Lord, Lord Bilimoria, in respect of insolvency. I am pleased to say that I have had limited involvement with the insolvency profession, but from time to time I have seen it in my professional career and I welcome the Government's approach to bring a spotlight to this area. Generally, the direction of travel to provide greater competence to unsecured creditors is very welcome. I am not sure that abolishing the creditors' meeting carries us in that same direction and I note that some amendments in the other place have led to the beginnings of a rethink. I certainly welcome mechanisms that compensate creditors for director misconduct, and I am pleased to see that administrators have been given the same powers as liquidators in certain circumstances.

It is, of course, appropriate to consider regulation of the insolvency business. I believe that the current system works quite well, but having the reserve power to establish a sole regulator if there are instances of

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abuse seems to be the right approach. Christmas, which will shortly be upon us, is traditionally a great time for retailers but also a time when many go to the wall. The experience of a well known electrical retailer two years ago has raised some valid questions about some professional practice in this area.

Similarly, the Government's approach in respect of pre-packs is very welcome. To put it into perspective, every year some quarter of a million businesses disappear from the register of Companies House. Of those, 20,000 go into insolvency procedure, and of those, only about 600 to 700 are through a pre-pack. So the numbers are relatively small, but the public are right to be concerned when very quick deals take place and the subsequent owners of the business turn out to have been the same people who ran it into the ground only a few days before. I believe that the direction of travel of the BVCA's turnaround code of conduct and, in particular, the Graham report, is the right direction. There are some specifics in the report which are, of course, not mentioned in the Bill, such as the requirement for a

pre-pack pool. I have reservations about how that would work in practice. Other ideas, such as the requirement for the proper marketing of a business within a pre-pack process, must be right.

I appreciate that the Government want to see the impact of the Graham report before putting new legislation in place. Indeed, as the author of the report herself says, nobody wants unnecessary legislation, so again the creation of a reserve power to make regulations if things do not work out seems to me to be the right approach. A major concern to me is that the pre-pack proposals, while seeking to protect against abuse, fail to give employees, customers and creditors any comfort about the ongoing viability of the business itself. One idea for my noble friend would be, as part of a pre-pack, and possibly other insolvency situations, for a turnaround professional to be charged with the role of reviewing the business before administration and that professional ensuring that the management of the business is undertaken as intended after the pre-pack for the greater good and not just for themselves. To date the focus has been on Old Co., and I would like to look at New Co.

Lord Mendelsohn (Lab):

In relation to the provisions on insolvency, we heard a strong consensus across the House regarding measures looking at pre-packs. We believe that there is a case for pre-packs but we must ensure that we deal with the abuses and the potential negative consequences of introducing them. The speeches of the noble Lords, Lord Bilimoria, Lord Mitchell, Lord Hodgson of Astley Abbotts and Lord Leigh of Hurley, all identified the balances that have to be struck when we are dealing with this issue. I am sure that the comments of the noble Lord, Lord Bilimoria, about Chapter 11, which were warmly received in parts of this House, will come up in Committee, and I look forward to that.

Baroness Neville-Rolfe:

The noble Lord, Lord Bilimoria, started the discussion on Chapter 11. We shall talk about this in Committee, as there was quite a lot of interest expressed on it today, but it might be worth mentioning in advance of Committee that World Bank data indicate that the UK regime pays more to creditors, quicker and at lower cost, than the US, France and Germany. Chapter 11 is often criticised for its high cost; hence it is potentially sometimes less successful for small business.

On insolvency, the noble Lord, Lord Mitchell, expressed concern about pre-packs, although my noble friend Lord Hodgson took a different view. The independent Graham review found that pre-packs fulfil a positive and unique role in the insolvency landscape but identified a number of issues with current practice in how pre-packs are carried out. The review recommended a voluntary package of six reforms, which are being taken forward by the profession and the industry. They are making good practice on the recommendations and we hope to see these in place early in 2015. On the point made by my noble friend

Lord Leigh about the future viability of pre-pack businesses, I am sure he would agree that swamping business with increased regulation would be counterproductive. I was glad that he agrees that a reserve power is the right approach.