APPENDIX

VOLUNTARY ARRANGEMENTS : CONTENTS OF THE PROPOSAL

The proposal must include a statement whether the EC Regulation applies and, if so, whether the proceedings are main or territorial proceedings.

In drafting the proposal it is helpful to follow the order in which the contents are listed in the Rules.

The proposal should include sections covering the following:

a) the nature of the arrangement: i.e. whether it is a composition in full and final settlement of debts, or a scheme of arrangement;

b) the background to the arrangement, including details of the circumstances in which the company has become insolvent and including any relevant personal circumstances of the directors;

c) the statement of affairs, which should include full details of assets and liabilities;

d) a realistic comparison of the estimated outcomes of the CVA and of winding up;

e) the actual financial proposal to be put to the creditors. This section should include:

   i) details of assets to be realised for the benefit of creditors and details of those which are to be excluded from the proposal, together with the reasons for the exclusion and whether alternatives are to be suggested;

   ii) proposals regarding after acquired assets and windfall gains;

   iii) proposals regarding future profit/income over a specific period;

   iv) whether third party funds are to be injected;

f) the intentions with regard to any business operated by the company stating in particular whether the business is to be continued, and if so, the extent, if any, to which the supervisor shall exercise any degree of control over the business. If the supervisor is not to exercise any degree of control, this should be specifically stated in the proposal. The purpose or aim of continued trading should be stated: have new opportunities been created that will generate profits to pay creditors; is the trade being wound down to generate funds from asset realisations or is the business being marketed (and, if so, how) as a going concern? Consideration should be given to including a summary cash flow projection;

g) the powers, duties and responsibilities of the supervisor. This will need to deal with the question of admission or rejection of claims, the manner in which funds are to be distributed to creditors and the basis on which the supervisor is to report to creditors;

h) miscellaneous matters which under the Act or Rules need to be included;

Other matters which the member should consider in order to facilitate the practical implementation of the proposal;

i) whether a committee of creditors is to be appointed and if so what will be its powers, duties and responsibilities;

j) what will happen to surplus funds arising, for example, from more beneficial trading than was originally envisaged, when the CVA is concluded;

k) confirmation that when the terms of the CVA have been successfully completed the creditors will no longer be entitled to pursue the company for the balance of their claim: that the CVA is in full and final settlement of their liabilities;

l) what will happen to unclaimed dividends or unpresented cheques when the CVA is concluded;

m) how to deal with creditors who have not made claims;

n) the power of the supervisor to summon meetings of the CVA creditors for the purpose of obtaining their views and in particular for obtaining their approval to any modifications to the CVA;

o) the requisite majorities required to pass resolutions at meetings of creditors and members summoned during the course of the CVA;

p) in view of the fact that the assets do not automatically vest in the supervisor it may be advisable for the proposal to provide for such vesting or for the supervisor to be granted a charge over assets, or to be given some other suitable form of security or for a declaration of trust or power of attorney to be executed;

q) the attitude to be adopted with regard to contingent creditors;

r) the situation with regard to overseas creditors;

s) the circumstances in which the supervisor is to present a petition for a winding up order;

t) the situation with regard to tax liabilities arising on disposal of the company's assets, or the future income of or gifts to the company from a third party, that are applied towards the payment of creditors' claims;

u) the inclusion of power for the supervisor or any creditors' committee to be able to determine that a CVA has no future and petition for winding up and authority to retain and use funds from the CVA for such cost.

When considering these issues the member should have regard to any relevant decisions of the court which have clarified points of law where the statutory provisions are either silent or ambiguous.

Many of these matters are dealt with in the standard terms and conditions produced by The Association of Business Recovery Professionals.