

# JOH Consultancy LLP

## September 2012 Technical update

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### **ADM to CVL - Effective Date is Date of Registration**

In re **Globespan Airways Limited v Registrar of Companies** 2012 EWCA Civ 1159 the court has determined that the effective date is the date registered by Companies House, not the date received. The court further clarified that if the notice of conversion was received prior to the date that the administration expired, then the administration would be effectively extended until the date of registration allowing there to be no loss of the "relevant date". This judgment gives comfort as this issue was not addressed by Re E-Squared Ltd [2006] 1 WLR 3414.

### **Rent, Provisional Liquidation and the Lundy Granite Principle**

In re **MK Airlines Property Limited (in administration) v Katz (and others)** [2012] All ER (D) 142 (May) there was a review of the Lundy Granite principle and its application to a provisional liquidation. The point considered was whether rent was due as an expense for the two quarters sought and therefore had the premises been used "for the benefit of the estate". The judge did find that this principle applied to provisional liquidations. However, the judge found that the provisional liquidator had not had sufficient time to determine if he wanted to use the premises, having been appointed only 2 days before the quarter date.

### **When Administration Proposals are Rejected Should an Application to Court for Directions be Made?**

In re **Lavin and others v Swindell** [2012] EWHC 2398 (Ch) the judge commented that he preferred the approach of Lightman & Moss to Sealy & Milman and held that the Administrators had no choice but to make an application to court for directions where the administrator's proposals had been rejected. The only foreseeable exception would be where a revised proposal was approved by creditors.

### **May an Appointment Outside the 10 Day Limit be deemed an Irregularity and addressed by R7.55 IR 86?**

In re **Euromaster Ltd** [2012] EWHC 2356 it was considered whether an appointment of an administrator outside the 10 day time limit would be a nullity or an irregularity. The judge found it to be an irregularity and hence rectifiable. However, due to the lack of sufficient notice given to creditors about the application, he did not feel that he could give an order waiving the defect. The judge did state that the administrators were in office and their prior acts were valid, subject to an application being made by creditors to challenge this, but the application was to be made prior to the administrators sending a notice of intention to pay a dividend or exiting to CVL.

## SIP 9

The new SIP 9 came into force on 1 November 2011.

#### DISCLOSURE Para 5 & 6

Great emphasis is placed on the disclosure to creditors of payments made to associates and also disclosure of business or personal relationships held with those agreeing fees, where the relationship could give rise to a conflict of interest.

I would suggest that maybe firms' ethical checklist should be amended to also identify these relationships, hopefully making it easier for staff to then ensure the correct disclosure is made in reports.

#### SUGGESTED FORMAT Para 8

##### Appendix Para 4

The recommended information to provide for creditors to analyse your fees is detailed here. I would suggest putting this in your proforma as guidance for staff or drafting proforma paragraphs based on these guidelines.

#### POLICY FOR RECOVERING COST OF SUPPORT STAFF Appendix Para 5.a

Irrespective of whether you do or do not charge support staff time to a case, you must provide information about what your policy actually is and I would suggest you detail this in your disbursement and charge-out rate policy document or add as a comment at the bottom of your SIP 9 table.

#### MINIMUM CHARGEABLE UNIT Appendix Para 5.a

It has been stated that the minimum unit that should be used by IPs is 6 minutes and if you currently recharge time in minimum units greater than 6 minutes I would suggest you review your policy and seek to change it. Again you may wish to add as a comment at the bottom of your SIP 9 table.

#### Appendix Para 6

The new format does not give a recommended detailed breakdown but I would refer you to the previous SIP 9 and use the categories there.

#### SUB-CONTRACTED WORK Para 11 & 12

It is a new requirement to provide information about work that has been sub-contracted but which was capable of being dealt with by the officeholder or his staff. I would suggest this would include debt collection or ERA work. It is usually easy to justify this as it is usually more cost effective to employ subcontractors in these areas.

## Third Party Funding

In *Re Hellas Telecommunications (Luxembourg) II SCA (in administration)* [2011] EWHC 3176 (Ch) third parties funded the Administration. At the end of the administration certain creditors wished the company to be placed into compulsory liquidation, however, the administrators wish to exit via dissolution. The court held that since the funding agreement was unclear on the issues, the funds could be used to place the company into compulsory liquidation and to fund it.

## Which court has precedent in respect of annulment proceedings?

In *Re Arif v Zar and another* [2012] EWCA Civ 986 the wife had filed for a divorce and contended that the bankruptcy of her husband was a sham and was also seeking an annulment of his bankruptcy. The judge in the Family Division invited the Bankruptcy Court to transfer the annulment proceedings to the Family Court. The registrar in the Bankruptcy Court considered the matter and declined. The judge of the Family Division then made an order transferring the proceedings to the Family Division. The Court of Appeal upheld the decision of the Bankruptcy Court registrar.

## Whose property is it?

In *Re Quaintance v Tandan* (24 July 2012) the court followed the principles in *Jones V Kernot* and were happy to infer common intention where it was obvious that the original intention had changed. In this case Q & T bought a property in joint names. T provided the deposit and the rest was funded by a joint mortgage. Within 12 weeks of moving in the relationship broke down and Q left the property and did not leave a forwarding address. When the bank

repossessed the property they held half the funds for Q and contacted him. T obtained an order stopping payment to Q. The court held that it was clear the intention had changed and all funds were ordered to be paid to T.

## ISA Fees increase

From the 1 October 2012 the ISA fees will increase as follows:

Compulsory fee from £18 to £22  
 Voluntary fee from £23 to £25  
 BACS no increase 15p  
 Cheque fee from £1 to £1.10  
 CHAPS FROM £10 to £10.30  
 Unclaimed dividend from £25 to £25.75

## The Red Tape Challenge

As previously advised the reform of the rules is delayed to allow insolvency to be addressed under the Red Tape Challenge. The process has now started and the areas of the regulatory system which are open for comment include:

- how insolvency procedures work
- the regulation of insolvency practitioners
- the disqualification of directors regime

You may participate by logging onto the website below:

<http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/insolvency/>

## Bankruptcy Reform Scotland

Scotland has recently finished a consultation on bankruptcy reform. The responses are available to view at the link below:

<http://www.aib.gov.uk/sites/default/files/publications/Report%20on%20Bankruptcy%20Law%20Reform%20Consultation.pdf>

## SIP 9 ctd

### CHANGES TO CHARGE-OUT RATES Para 16

The need to only report on material changes to charge-out rates has been removed and firms now need to report all changes to charge-out rates. If you have a web page for the guide to fees for creditors and your disbursement policy then I would add a table with historic information about charge-out rates here and then give details of the link in all reports sent.

### SUB-CONTRACTED WORK Para 17

Sub-contracted work needs to be disclosed in all reports, either your intention to sub-contract work or details of work that has been sub-contracted out.

### MILEAGE SIP Para 18.b

The SIP clearly identifies mileage as being a category 2 disbursement and therefore needing a specific resolution before this may be paid. I would suggest reviewing your disbursement policy document and making sure that mileage is easily identified and the basis of the recharge is clearly explained. You may also need to review the time management and disbursement system you use so that you do not mistakenly pay this as a category 1 disbursement.

### CATEGORY 2 DISBURSEMENTS AND SEQUENTIAL APPOINTMENTS SIP Para 22

The good news in the new SIP 9 guide is that once you have a category 2 disbursement resolution then this will carry over from Administration into CVL.

### PRE-APPOINTMENT COSTS Para 23

The requirement to provide information on pre-appointment costs is new and applies to all case types. I would suggest amending your reports to ensure this is included.

### Author

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