

CASE LAW

- IP NOT RESPONSIBLE FOR DIRECTOR'S DECISION FOR ADMINISTRATION
- INQUORATE BOARD MEETINGS WILL INVALIDATE INSOLVENCY
- COMI REVISITED

HINTS & TIPS

- SBEE
- LEGISLATIVE UPDATE**
- FLOATING CHARGES FOR BUILDING SOCIETIES
 - CHANGE TO FEES
 - NEW PREFERENTIAL CREDITOR

- SCOTTISH PERSONAL INSOLVENCY
 - NORTHERN IRELAND PERSONAL INSOLVENCY
- GENERAL INFORMATION**
- EU INSOLVENCY
 - INSOLVENCY V ERA

- SIP 16 & PRE-PACK POOL
- SRA NO LONGER REGULATES SOLICITOR IPS
- IS REPORT ON COMPLIANCE
- UPDATES TO COMPANIES HOUSE DOCUMENTS

TECHNICAL UPDATE

IP not responsible for director's decision to enter administration

In the case of *Re BW Estates Ltd; Randhawa and another v Turpin and another* [2015] All ER (D) 27 (Mar) the applicants challenged the decision to appoint administrators, the remuneration and requested that the costs of the application be paid personally by the administrators not as an expense of the estate. The court held that any decision to place the company into administration would be a challenge to the directors and not the administrators. The administrators just needed to determine whether the statutory purpose could be achieved and only needed to look ahead and not consider the motives of the directors. The issue of remuneration will be the subject of a second hearing if an agreement is not reached and the issue of the appropriateness of the time spent will be reviewed. The costs of the application, the court held, were to be borne by the applicant but may be reconsidered at the remuneration hearing.

Inquorate board meetings will invalidate insolvency

In the case of *Pui-Kwan v Kam-Ho and others* [2015] EWHC 621 (Ch) the court held that because the board of directors meeting, which purported to agree to place the company into administration, was inquorate, then the company had not entered into administration. The court held that rule 7.55 therefore could not be relied on as

the company had not entered an insolvency process.

COMI revisited

In the case of *JSC Bank of Moscow v Kekhman and others* [2015] All ER (D) 288 (Feb) the court reviewed the decision to not annul a bankruptcy order made against a Russian national in the UK. The order was made on the basis that the individual had an international estate and no bankruptcy procedures applied in the domicile of the individual. The individual's connection to the UK was based on liabilities he had incurred in the UK.

Floating Charges for Building Societies

The Financial Services (Banking Reform) Act 2013 (Commencement (No 8) and Consequential Provisions) Order 2015 SI 2015/428 allows UK Building Societies to create floating charges without a registration scheme. It commenced on 26 March 2015 and may be found here <http://goo.gl/1C1G3X>.

Change to fees

The Insolvency (Amendment) Rules 2015 SI 2015/443 which amends the remuneration legislation is available here <http://goo.gl/dfUjPc>. If you wish to continue to charge for remuneration on a time-costs basis then I would suggest you need to review time-costs on different case types for the last 2 years so that realistic fee estimates broken down

Small Business, Enterprise and Employment Act 2015 (SBEE)

The Small Business, Enterprise and Employment Act 2015 received royal assent on 26th March 2015. The effect for insolvency is that certain legislation will come into force two months after it received royal assent, so 26th May 2015.

Be aware that there are currently no transitional provisions, so from 26th May certain legislation will immediately apply to all cases.

Below I have detailed the relevant sections and the impact for IPs.

SBEE s120 & 121

These sections allow both liquidators and trustees to conduct the case without requiring sanction.

SBEE s127

You will now be able to extend an administration with relevant creditors' approval for 12 months before needing to revert to the court.

SBEE s128

This section will have the most impact on IPs and I suggest you should all be reviewing your current administrations. The legislation now states that you cannot exit via a CVL if you are only paying the prescribed part. With no transitional provisions, you should review your proposal documents.

by work type may be given.

Another new preferential creditor

The Deposit Guarantee Scheme Regulations 2015 SI 2015/486 introduces another preferential type of creditor to the Insolvency Act 1986. This will allow the Financial Services Compensation Scheme to lodge preferential claims. The legislation is available here <http://goo.gl/oMg3Ye>.

Scottish Personal Insolvency

After much draft legislation and hype the new insolvency laws have gone live in Scotland and ICAS have helpfully detailed the changes here <http://goo.gl/qhEXyj>. Also the following: Act of Sederunt (Rules of the Court of Session and Sheriff Court Bankruptcy Rules Amendment) (Bankruptcy and Debt Advice (Scotland) Act 2014) 2015 SSI/2015/119 came into force, which may be found here <http://goo.gl/oUkLxY>.

Northern Ireland Personal Insolvency

The Insolvency (Northern Ireland) Order 2005 (Consequential Amendments) Order (Northern Ireland) 2015 SR 2015/159 comes into force 21 April 2015. The provisions apply when an individual who holds certain offices becomes bankrupt and the legislation may be found here <http://goo.gl/aE3TgI>.

EU Insolvency

The amendments to the EU insolvency law are proceeding and on target for introduction by 2017. Further information is available here <http://goo.gl/woMJEE>.

Insolvency v ERA law a call for evidence

The Insolvency Service are consulting about the apparent disparity between insolvency legislation and employment legislation. Further information may be found at <http://goo.gl/lAlwqj>. Your views should be submitted to policy.unit@insolvency.gsi.gov.uk

SIP 16 & Pre-pack pool

The latest information from the Insolvency Service indicates that the pool and the new SIP16 will not be ready until later in the year and further information may be found here <http://goo.gl/osntZI>.

SRA will no longer regulate solicitor IPs

The SRA from 1st November 2015 will no longer regulate solicitors who hold an insolvency licence. Solicitors wishing to maintain their insolvency licence will need to seek licensing from an alternative RPB.

IS report on compliance

The Insolvency Service have issued a report in respect of their own licensing responsibilities which may be found here <http://goo.gl/lqjHFL>.

Updates to Companies House Documents

The following documents have been updated at Companies House: GP2—Life of a company part 1: annual requirements, GPLLP2—Life of a limited liability partnership, GP4—Strike off, dissolution and restoration and GPLLP3—Limited liability partnership strike off, dissolution and restoration.

SBEE - ctd

SBEE s128 ctd

Does your proposal allow you to continue in office and pay a prescribed part distribution in the Administration and then exit via dissolution? You may want to consider converting your administrations to CVLs before 26th May 2015.

SBEE s129

This section provides for the government to introduce legislation in respect of connected party sales. It requires further legislation to enact so will have no impact from 26th May and has a sunset provision of 5 years.

SBEE s130

This section deals with the attachment of floating charges in administration in Scotland.

SBEE s131 & 132

The introduction into the Insolvency Act of the power to admit small debts without a proof of debt in both personal and corporate insolvency. Further legislation is required to define the level of a "small debt" and I assume this will be introduced before 26th May. Again, since there are no transitional provisions from 26th May this will apply to all current cases.

SBEE s134

The time limit for challenging IVAs was obscured by the 2010 rule changes for out of court IVAs, although clarification was provided via Dear IP. This section seeks to confirm the position.

SBEE s135

Fast track IVAs which were dealt with solely by the Official Receiver are being abolished.

SBEE s136

The legislation is being changed to require a progress report to be issued if the liquidator changes within the first year.



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