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TECHNICAL UPDATE

Transfer of assets to directors prior to insolvency

In the case of *Re Barons Finance Ltd (in liquidation)* [2015] EWHC 2007 (Ch), [2015] All ER (D) 126 (Jul) the directors purported to have assigned the book debts six months prior to the winding-up order. The liquidators believed this transaction was fraudulently backdated. The liquidators brought actions under s127, s238, s239 and s423 IA 86. The court held that the transaction had been fraudulently backdated and was voidable under s127 and also that s238 and s423 applied.

When is a gift not a gift?

In the case of *Re Hampton Capital Ltd Murphy and another v Elite Performance Cars Ltd and others*; [2015] EWHC 1905 (Ch), [2015] All ER (D) 118 (Jul) an individual had convinced the two directors to provide £1.4 million in respect of a property development. Unfortunately the money was used to buy cars, pay for gambling chips and to pay debts. The administrators sought to reclaim the money and one of their claims was made under s238 IA86 as being a gift. The judge held that to meet the requirements of s238(4) the party needed to actively participate.

Obligations of an IP

In the case of *Oraki and another v Bramston and another* [2015] EWHC 2046 (Ch), [2015] All ER (D) 175 (Jul) the bankrupts had been made bankrupt based on a

false debt. Despite many appeals their claim was not entertained until the solicitor who made them bankrupt was struck off. They had been made bankrupt 2005/2006 but the annulment of the bankruptcies did not occur until 2013. The bankrupts claimed that the estate had been mismanaged and that the trustee owed them a common law duty of care. The court held that only a statutory duty was owed and had been met by the Trustee. I understand an appeal has already been made.

ADR Regulation 2015

If you wish to know more about the ADR Regulation 2015 and how it impacts upon IPs may I suggest you read Michelle Butler's article on The Compliance Alliance Blog [here](#).

Northern Ireland

The Insolvency (Amendment) Rules (Northern Ireland) 2015 amends the Insolvency Rules (Northern Ireland) 1991 and introduces a new form 2.18BA: Notice of deemed approval of proposals. This comes into force on 3 September 2015 and further information may be found here <https://goo.gl/8QgiKX>.

Digital claim service for IPs

The Insolvency Service have published guidance to their new system which went live 30 March 2015. The guidance may be found here <https://goo.gl/MMvAYc>. All claims to the RPO must be submitted online. Since this now requires employees to go online, a

Draft SIP 9

The draft SIP 9 has finally been released and consultation is underway. I would recommend participating. Further information about the consultation may be found here <http://goo.gl/B8Uw3W>.

Draft SIP 9 para 5

This section is new and is an attempt at harmonisation. Since the new SIP 9 has no proforma, you are expected to provide consistent information through the life of the case.

Draft SIP 9 para 7

The new wording seems to be indicating that you no longer need to refer creditors to the Guide to Fees but merely to the R3 Creditor Insolvency Guide which is their website for creditors and this will fulfil the requirement. More importantly it also seems to be addressing the ambiguity in the draft legislation surrounding the approval of the liquidators' remuneration at the S98 meeting.

Draft SIP 9

A key omission is the requirement for the information to be in a prescribed format.

Draft SIP 9 para 9

Having removed the proforma, they have added this section to deal with the narrative detail to be provided for each case. Information needs to be in respect of anticipated work and anticipated expenses to be incurred.

new factsheet needs to be provided to employees when being made redundant and the various guidance notes may be found here <https://goo.gl/ofzIBb>. Make sure you update your employee letters.

Consultation on Small Business Commissioner

The consultation has opened about the introduction of the Small Business Commissioner to help in respect of disputes between small and large organisations where there is an imbalance of power. The consultation runs from 26 Jul 2015 to 21 Aug 2015 and further information may be found here <https://goo.gl/XJRRvA>.

R3 proposes personal insolvency moratorium

R3 has published a policy document on personal insolvency called "Breathing Space from Creditor Enforcement" where it is recommending that a 28 day moratorium be obtained upon application to the Insolvency Service to allow individuals to obtain debt advice. The document is available here <https://goo.gl/OQVrPG>.

Tools and information for and about IPs

The Insolvency Service has created a single entry point for tools and information for and about insolvency practitioners. The link is here <https://goo.gl/TCNw7C>.

The Insolvency Service Annual Plan

The Insolvency Service annual plan 2015 - 2016 has been published and is available here <https://goo.gl/fDRfB3>.

Syllabus for JIEB 2016

The deferral of the new rules to October 2016 has meant that the syllabus for JIEB in 2016 will remain the same and the current legislation will be tested. So for those with one or two papers outstanding or who do not quite make it over the threshold this year, this is good news. The official notification may be found here <http://goo.gl/IgOupp>. They have added a caveat though, and reserve the right to change their position if the new legislation is introduced earlier.

Need some CPD? Webinars

I have recorded a webinar on the SBEE Act 2015 and the Deregulation Act 2015. The cost is £25 plus VAT and to sign up for a copy of the webinar please email info@thecompliancealliance.co.uk A webinar will also be available in September on employment law and what you need to know as an employer, together with some policy documents you may wish to use for your firm.

Health & Safety Nuggets

Here is the fourth in our series of H & S Nuggets from Simon Joyston-Bechal, solicitor at Turnstone Law: "We don't have to worry about health and safety criminal prosecution because we are not trading". That would be a mistaken view. IPs are responsible for the safety of staff, visitors and even trespassers to vacant sites they control. Plan appropriate security, fencing and warning signs and consider gas, electricity and fire prevention. You are also responsible for the safety of people coming onto site to remove and dismantle plant and equipment, even if an agent is involved. Click [here](#) for further information about training on H & S for IPs.

Draft SIP 9 - ctd

Draft SIP 9 para 10

Whilst no proforma has been given, four suggested areas on which to provide explanations have been suggested: Statutory Compliance, Asset Realisation, Distribution and Investigations. Again, a reminder is given to provide consistent information, i.e. use the same categories when reporting.

Draft SIP 9 para 11

It seems summary information using blended rates is being suggested for each category to meet the legislative requirements of providing estimates, and when subsequently reporting the same format of blended rates and totals are to be used.

Draft SIP 9 para 12

If an IP wishes to request a fixed fee or percentage, then an explanation must be provided on why this is "appropriate, reasonable and commensurate". Also, the timing of drawing the fee where it is for a fixed amount also needs to be given.

Draft SIP 9 para 13

An IP cannot however provide a fee estimate based on different scenarios or provide a range of estimated charges.

Draft SIP 9 para 15

This section clarifies that the para 8-10 information which must be provided on all cases irrespective of the basis of the fee approval.

Draft SIP 9 para 16

The new section requires period and cumulative information to be given when reporting and one would assume the estimated amounts too.

Effective date

The anticipated effective date is 1 October 2015 and most importantly this SIP only applies to appointments from 1 October.



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Joanne also provides training for the JIEB, CPI, CPPI & CPCI exams.

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