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TECHNICAL UPDATE

Scheme of Arrangement for Ukraine Bank

In the case of *Re Public Joint-Stock Company Commercial Bank "Privatbank"* [2015] EWHC 3299(Ch) the court considered whether it was appropriate for a Scheme of Arrangement under English law to be sanctioned for the largest Ukraine bank. The court held that since the 2016 and 2021 loan notes held by the bank were governed by English law and these were the creditors subject to the Scheme it was appropriate. The bank also had an office and assets in England. The court also considered whether the creditors could be treated as a single class and agreed they could.

Challenges to a Trustee's actions after he is released

In the case of *Borodzicz v Horton* [2015] All ER (D) 03 (Dec) the trustee in bankruptcy realised the main asset, the debtor's flat, and was able to pay the only creditor in full with statutory interest with the surplus of £38,000 being remitted to the debtor. The trustee then obtained his release from office. The debtor wished to challenge the Trustee's actions in respect of the Trustee's fees, his solicitor's fees, the petitioning creditor's fees, including VAT paid on these fees, and legal fees in excess of the amount of sanction obtained. The court held that when the Trustee obtains his release he should not then have to deal with challenges. The only ground the debtor was allowed to progress was the

payment of the solicitor's fees in excess of the sanction amount.

English registered company; director liable under German law

In the case of *Kornhaas v Thomas Dithmar, acting as liquidator of the assets of Kornhaas Montage und Dienstleistung Ltd C-594/14 CJEU* the company was incorporated and registered in England but the company's COMI was in Germany. The German liquidator wished to bring proceedings against the Managing Director (MD) for payments made by the company after it became insolvent. The European court found that in these circumstances it was appropriate to apply German law to the MD's conduct.

Limitation direction set aside

In the case of *Hawkes v County Leasing Asset Management Ltd and others* [2015] EWCA Civ 1251 the company had financial difficulties and entered Administration and then Liquidation. The company had entered into a transaction prior to the insolvency to sell the assets but this transaction was not challenged and the company was dissolved. The sole director and shareholder then sought to restore the company and also to have a limitation direction made to suspend time during the dissolution period in order to pursue claims of misrepresentation. The court overturned the original limitation

New SIP 9

The new SIP 9 came into force on 1 December 2015.

Application

Whilst it had been anticipated that the new SIP would only apply to new cases, it seems this is now applicable to all cases but only in England and Wales. This is significant as it means that old pro-forma reports will need to be amended to reflect the new SIP requirements whilst continuing to be consistent in the time-cost information to be provided.

Guides to fees

It had been anticipated that these would no longer be required, but new guides were published on 1 October. The new SIP no longer suggests referring creditors to the R3 Creditors' website. If you listened to Allison Broad's webinar (found [here](#)) on the new SIP 9 you will also be aware that there is some controversy about which guides to send dependent on the date of appointment and the ICAEW suggest that old cases dependant on date be sent old guides.

SIP 9 Table

It was always going to be a problem running two systems, one of which required a breakdown by staff type and one which allowed for blended rates and an estimate in respect of each area of work. The suggestion from the webinar is that we should continue to provide the information in the old style SIP 9 format, although this is certainly not stated as a requirement by the SIP and creditors requested blended rates being given.

direction obtained on the basis that no case had been made for the right of action.

Jackson Reforms applied to insolvency

The insolvency profession will no longer be exempt from the Jackson Reforms from April 2016. It will be interesting to see if the power to assign rights of actions introduced by s246ZD SBEE 2015 will be more utilised due to the loss of the exemption.

Increase in licensing fees for IPs

The Insolvency Practitioners and Insolvency Services Account (Fees) (Amendment) Order 2015 SI2015/1977 increases fees for IPs and members and came into force on 31 December 2015. It may be found here <http://goo.gl/AfXp5d>.

Requirement for local authority to meet care needs in Wales

The Care and Support (Business Failure) (Wales) Regulations 2015 SI 2015/1920 comes into force on 6th April 2016 and clarifies "business failure" by defining various insolvency events which will then impose a duty of local authorities. The order may be found here <http://goo.gl/sSMNw1>.

Scotland, LLPs and Sequestration

The Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 and the Bankruptcy and Debt Advice (Scotland) Act 2014 (Consequential Provisions) Order 2016 comes into effect 9 March 2016. The legislation deals with minor amendments to the

Bankruptcy Act 1985 and confirms that LLPs may not be sequestrated as well and clarifying the meaning of apparent insolvency. A copy may be found here <http://goo.gl/1APoem>.

Scottish IP lawyers to be governed by ICAS

The Insolvency Practitioners (Recognised Professional Bodies) (Revocation of Recognition) Order 2015 comes in to force 18 January 2016. The Scottish IP Lawyers are now regulated by ICAS.

IP regulation by the Insolvency Service

The Insolvency Service have published a document detailing how they will be implementing their new powers under the legislation introduced 1 October 2015 which may be found here <https://goo.gl/GBG2pR>. RPBs and IPs beware.

Health & Safety Nuggets

Here is the sixth in our series of H & S nuggets from Simon Joyston-Bechal, solicitor at Turnstone Law:

You may think that administrators are off the hook for health & safety criminal liability once they secure their discharge at the end of the job. The statutory discharge specifically excludes misfeasance, so it is unlikely to guard against a criminal conviction. You can still face personal criminal prosecution for an accident long after you dispose of an asset or your appointment has ended if, for example, you ought to have passed on a safety warning about a defect in premises or equipment that the buyer could not be expected to know about.

Click [here](#) for further information about training on H & S for IPs.

New SIP 9 - ctd

SIP 9 para 6(b)

Just a quick reminder of the ethical requirement to disclose relationships with parties who will be approving your fee and which potentially could give rise to a conflict of interest. This is not new, but tends to be forgotten.

SIP 9 para 7

The requirement to advise creditors of their rights in the first communication is broadened so this will include pre appointment notifications in IVAs, CVAs and CVLs.

SIP 9 para 9

The substance of the SIP though may be found in para 9 (a) to (f). So depending on how far along you are, you need to provide information about:

- anticipated work - what will be done and why,
- anticipated cost of work including expenses - what will be incurred,
- actual work done and why,
- actual costs of work and expenses - compare with estimate given,
- financial benefit of work if any.

The emphasis is not just in respect of estimates, but also narrative detail. The final nail in the coffin is the requirement to where possible provide an indication of the return to creditors which I would suggest necessitates providing an Estimated Outcome Statement.

SIP 9 para 10

If seeking a fixed or % basis for remuneration you need to explain why this is appropriate.

SIP 9 para 12

When providing estimates the subheadings to be used are defined in this section.

SIP 9 para 13

Remember when subsequently reporting that you need to provide actual fees for the period, total fees to date and a comparison with the fee estimate.



Joanne Harris is a licensed Insolvency Practitioner and has 16 years' experience in insolvency dealing with all case types. She was formerly a Director of Technical and Compliance in a top 20 firm before starting her own business to supply technical services for insolvency practitioners without a compliance resource.

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

M: 07780 613826

E: jo@johconsultancy.co.uk

E: jo@insolvencyexamtraining.co.uk

W: <http://www.johconsultancy.co.uk>

W: <http://www.insolvencyexamtraining.co.uk>