

# JOH Consultancy LLP

## October 2013 Technical Update

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### Administration order not granted as condition para 11(b) not met

In the case of **Re Data Power Systems Ltd and others v Safehosts (London) Ltd and another** [2013] All ER (D) 15 (Sep) the court reviewed whether the administration order was reasonably likely to achieve the purpose of administration. The court decided that the conditions of para 11(b) were not able to be met and wound up the company.

### Court dispenses with need to call a meeting and send a proposal in Administration

In the case of **UK Coal Operations Ltd and other companies** [2013] All ER (D) 71 (Sep) the court was asked to allow the administrators permission to dispense with the requirements of paras 49 and 51 of Sch B1 based on the avoidance of unnecessary expense and the fact that the proposal was no longer relevant. The court confirmed that it did have the power to do so and based on the circumstances it was appropriate in this instance.

### Liquidator forced to trial

In the case of **Fennell v Halliwells LLP** [2013] All ER (D) 161 (Sep) a member of the solicitors firm, who had resigned in 2009, sought permission to bring a claim against the defendant in liquidation. That

purpose was to seek a declaration that the claim against him, which the defendant's liquidators had maintained but had taken no steps to pursue, had been released by the defendant and could not be brought by reason of the terms of the retirement deed. The liquidator contended that to permit the proposed claim would amount to an interference with their strategy of seeking to negotiate and mediate all claims, rather than litigate. The court however held that since negotiations had failed, (i) it was time that the issue was resolved, (ii) no other way of resolving it was available, and (iii) its resolution might save costs in relation to other claims.

### False documentation does not evidence charge was a sham

In the case of **Re Kurd (a bankrupt)** [2013] All ER (D) 79 (Sep) the debtor claimed that the father had a charge over his property and the charge included, (i) two loans totalling £75,000 advanced in 2007, (ii) £250,000 in respect of leather skins supplied in 1998-9, (iii) mortgage payments totalling £88,000 paid on the property, (iv) ransom payments totalling £175,000 made to free the debtor from captivity when he had been kidnapped during two visits to Pakistan, and (v) a further £22,000 spent on the property. The court held that although false documentation had been submitted in respect of the supply of leather goods, no sham had occurred and the charge was valid for some of the claims.

## SIP 16 UPDATE

The draft SIP 16 is going live on 1 November. The emphasis is on transparency and I am sure that non-compliance will be dealt with promptly and harshly. I have therefore listed a few points for you to action to ensure your compliance.

### TO DO

**Documents** - Please ensure you have updated your SIP 16 disclosure proforma and don't forget to update your proposal with this information as well. The matters to be disclosed have risen and there are 24 points so make sure you have them all. However they have been broken down with subheadings giving more structure to the disclosure.

**Diary** - make sure this is flagged to send within 7 calendar days.

**Checklists** - if you have checklists then they need to be updated too.

**Training** - now might be a good time to spend 30 minutes discussing with staff what is expected in respect of reports and maybe also seek to introduce sending your proposal out within the 5 business days of appointment to tackle both the disclosure issue and the need to call a meeting as soon as reasonably practicable.

## SIP 11

SIP 11 was re-issued in May 2007 to accommodate more sophisticated banking and the ability to hold global accounts. The explanatory note also issued, advised that it was considered that the SIP still required a re-write but as we know this has yet to occur.

### Para 2.2

The SIP is about money and how we evidence our handling of estate funds. Our fees have recently been highlighted again as an area for concern, but is it our fees or our ability to write a cheque for our fees from the realisation of the entities' assets once we have a fee resolution? There will always therefore be controls in place to ensure no anomalies occur and you need to put systems in place to review.

## Rules Modernisation

The Red Tape Challenge has finished for Insolvency and the recommendations from this consultation have now been incorporated into the modernisation of the rules. The consultation for the modernisation of the rules is open until 24 January 2014. Indication is that the rules will be introduced in 2015. Further information may be found at <http://goo.gl/K90Bp7>.

## Protected Trust Deeds (Scotland) Regulations 2013

The purpose of the regulation is to consolidate and amend the previous Regulations 2008, SSI 2008/143 and will be coming into force on 28 November 2013. The changes introduce more criteria to be met before a trust deed can gain protected status, a structured approach to fees charged, and increased information available to creditors. Here is a link to the draft regulation <http://goo.gl/eM8bzI>.

## EU Liquidation & Insolvency Register

The EU Council Regulation on Insolvency Proceedings, and the provisions relating to the European Community Liquidation and Insolvency Register (ECLAIR), applies to companies whose centre of main interest (COMI) is within any EU member state, irrespective of its place of registration, Companies House has confirmed. The Companies House original guidance was incorrect. See Dear IP 59 for further clarification.

## Changes to the Companies Act 2006

The Enterprise and Regulatory Reform Act 2013 (Commencement No 3, Transitional Provisions and Savings) Order 2013 is in

force from 1 October 2013. As well as dealing with the automatic discharge of a bankrupt, it also has changes in respect of the CA 06. The changes introduced require a quoted company to have a remuneration policy, detailed in a separate document and approved by shareholders. Something to add to the investigation checklist if you deal with many quoted companies.

## Further clarification on Paymex from HMRC

HMRC have now issued further guidance in the form of RCB 25/13. This briefing note indicates that Paymex also applies to Trust Deeds.

## North London Insolvency CPE Group

The North London Insolvency CPE Group and has been running for over 15 years and offers the opportunity to obtain CPD quarterly. The meetings welcome speakers from the insolvency industry covering a wide range of topics. Please contact Lane Bednash at Valentine & Co ([lbednash@valentine-co.com](mailto:lbednash@valentine-co.com)) or Myles Jacobson at Streets SPW Plc ([myles.jacobson@spwca.com](mailto:myles.jacobson@spwca.com)) if you are interested in joining the group.

## JIEB & CPI 2014

If you or a colleague are sitting the JIEB or the CPI exams in 2014 then I would urge you to review the courses I am offering: <http://www.insolvencyexamtraining.co.uk/index.html>.

## JIEB Senior Moderator

Applications outlining suitability for the role together with a detailed CV should be sent in the first instance to Elliott Skinner [elliott.skinner@icaew.com](mailto:elliott.skinner@icaew.com). The closing date for applications is **5 pm on Monday 21st October 2013** with interviews planned to take place in mid-November.

## SIP CTD

### Para 2.2

The IP is required to keep records "to identify the funds (including any interest earned thereon) and other assets of each case" and they must be held separately from the firm or the IP's funds.

The account must meet the following criteria:

- the bank is not entitled to combine the account with any other account (including any global, omnibus, master, hub, nominee, sub accounts or similar) or exercise any right to set off or counterclaim against money in that account in respect of any money owed to it on any other account;
- interest payable on the money in the account(s) must be credited to that /those account(s);
- the bank must describe the account(s) in its records to make it clear that the money in the account does not belong to the office holder or his firm;
- no individual case funds/account(s) can be set off against any overdrawn case funds/accounts.

### Para 2.3

There is nothing in the SIP that we don't already know and I would suggest that your systems have been rigorously tested by time and your RPB.

However I would just take the opportunity to remind IPs that if you do not review your firm's client account regularly then I would suggest introducing a weekly review and documenting this review. The client account is normally not interest bearing and if you intend to keep funds in a client account for more than a couple of weeks you should ensure this is moved to an interest bearing account.

### Author

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