

## CASE LAW

- MVLS & RATES AVOIDANCE SCHEMES
- TO BE OR NOT TO BE A DE FACTO DIRECTOR
- SPECIAL ADMINISTRATION & DISTRIBUTION OF TRUST FUNDS
- THE COURT, ZOOM & STREAMING
- IS A CVA A CONTRACT?

- NEW RESTRUCTURING PLAN

## LEGISLATION

- PRE-PACK POOL
- INSOLVENCY PRACTICE DIRECTION EXTENDED
- MORATORIUM & ENERGY COMPANIES
- INSOLVENCY EU EXIT
- CI&GA 2020 AMENDED

- HMRC & PREFERENTIAL STATUS
- CALCULATION OF WEEKLY PAY
- GENERAL INFORMATION
- REPORTING PSC DISCREPANCIES
- IDENTITY FRAUD & SCAM WEBSITES

- COMPANIES HOUSE ONLINE
- HMRC INSOLVENCY GUIDANCE
- HMRC VAT 700/56
- DEAR IP
- IVA PROTOCOL REVISED GUIDANCE
- COVID-19 CVA PROPOSAL

# TECHNICAL UPDATE

## MVLS & Rates Avoidance Schemes

In the case [Secretary of State for Business, Energy and Industrial Strategy v PAG Asset Preservation Ltd; Secretary of State for Business, Energy and Industrial Strategy v MB Vacant Property Solutions Ltd \[2020\] EWCA Civ 1017](#) the Court of Appeal determined that because of the determination premium, which was a genuine contingent asset, the liquidation was not artificially prolonged and therefore there was no abuse or subversion of the insolvency provisions. The Court also held that there was no harm to the public, a requirement of winding up on the basis of it being just and equitable.

## To Be or Not To Be a De Facto director

In the case of [Secretary of State for Business, Energy and Industrial Strategy v Rahman \[2020\] EWHC 2213 \(Ch\)](#) the court held that there was insufficient evidence on the balance of probabilities to indicate that the individual was a de facto director although “there might be something further to look into..” and it had not been proven based on the evidence presented.

## Special Administration & distribution of Trust Funds

In the case of [Re Supercapital Ltd \[2020\] EWHC 1685 \(Ch\)](#) the court was asked to consider a directions application for the special

administration asking for authority to distribute client funds held under the Payment Services Regulations 2017. The judge considered that the court had inherent jurisdiction to determine the application in respect of the distribution of trust funds.

## The Court, Zoom & Streaming

In the case of [Gubarev & Anor v Orbis Business Intelligence Ltd & Anor \[2020\] EWHC 2167 \(QB\) \(06 August 2020\)](#) the court considered the issue of video and/or audio of the proceedings at a trial which was live-streamed to a number of individuals outside the jurisdiction (including the United States, Cyprus and Russia) without the court’s permission and without any application being made for such permission. The issue seems to have arisen due to the solicitor not having read and understood the parameters of the orders made. Whilst it was determined that this had not been a deliberate breach of the order, the matter has been referred to the SRA.

## Is a CVA a contract?

In [Re Rhino Enterprises Properties Ltd and another \[2020\] EWHC 2370 \(Ch\)](#), the High Court considered whether a company voluntary arrangement (CVA) is a contract, and whether the Contract (Rights of Third Parties) Act 1999 applies so as to make CVAs enforceable by third parties. The applicants sought an order that would allow them to issue proceedings under para 75 Sch B1 IA86 for

misfeasance and the former Administrators suggested the clause in the CVA prohibited action being brought against them. The judge gave leave for the proceedings to be issued.

## New Restructuring Plan

In [Re Virgin Atlantic Airways Limited \[2020\] EWHC 2191 \(Ch\)](#) the first restructuring plan under the new legislation has been considered by the court and the order given for meetings to be called. Interestingly, the court also made an order that notice was to be given to the company upon any application to view the court folder due to the sensitive information contained on the file. This will allow the company to apply to restrict access, if appropriate, but the order does not automatically prohibit access.

## Pre-Pack Pool

Whilst the sunset provision relating to pre-pack sales in the SBEE Act 2015 passed, the government managed to put through a last minute amendment extending the provision. The government has now published its [findings](#) in respect of their review of the adequacy of the SIP 16 and whether further legislation is required. The government has also made [recommendations](#) and drafted proposed legislation for sales to connected parties in administrations during the first 8 weeks of the administration. Option 1 seems to be the sale approved as part of the proposal and Option 2 have an independent report completed on the proposed sale. This feels as though we are

reverting to a pre 2003 situation and connected parties interested in purchasing the assets and business will be allowed to trade under a licence until a sale is approved as part of the proposal. Since a sale may also occur even if a negative independent report under option 2 is obtained, it is difficult to understand how this draft legislation will help to tackle an issue which is based in perception rather than actuality. R3 have published a [Technical Alert](#) on the matter.

### Insolvency Practice Direction Extended

The Temporary Insolvency Practice Direction has been extended to 2 October 2020 and the [revised version](#) is now available. The following regional guidance supplementing the new TIPD has been issued so far:

[North: New TIPD variations and guidance \(5 October 2020\).](#)

[North: Electronic bundle guidance for insolvency cases \(6 October 2020\).](#)

[London: New TIPD variations and guidance \(1 October 2020\).](#)

### Moratorium & Energy Companies

The Insolvency (Moratorium) (Special Administration for Energy Licensees) Regulations [SI 2020/943](#) came into force on 3 September 2020.

### Insolvency EU Exit

The Insolvency (Amendment) (EU Exit) Regulations 2020 was laid before parliament on 30 June 2020.

### CI&GA 2020 amended

The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Early Termination of Certain Temporary Provisions) Regulations

[2020 SI 2020/1033](#) came into force on 1 October 2020. [The Corporate Insolvency and Governance Act 2020 \(Coronavirus\) \(Extension of the Relevant Period\) Regulations 2020 SI 2020/1031](#) came into force 29 September 2020.

### HMRC & Preferential Status

We appear to be one step closer to HMRC preferential status being introduced on 1 December 2020 with the draft legislation now available: [The Insolvency Act 1986 \(HMRC Debts: Priority on Insolvency\) Regulations 2020.](#)

### Calculation of Weekly Pay

The Employment Rights Act 1996 (Coronavirus, Calculation of a Week's Pay) Regulations 2020 [SI 2020/814](#) came into force on 31 July 2020.

### Reporting PSC Discrepancies

The Treasury has clarified that you only need to report PSC register discrepancies upon appointment and on new cases only and ICAEW have provided further information [here](#).

### Identity Fraud & Scam Websites

The IPA has posted an [article](#) stating that the IPA has become aware of a couple of recent cases where practitioners' names, their company names and associated entities have been used to create copycat websites without any consent.

### Companies House Online

Companies House had arranged for IPs to be able to permanently upload documents online as detailed in Dear IP 108. R3 have

issued a [technical alert](#) about known issues currently being experienced by IPs and have provided a further update about known issues in respect of being unable to submit a change of the registered address (in the process of being added), documents which exceed 4mb are not able to be uploaded and need to be sent in paper format to Companies House and also not being able to add additional users other than the IP.

### HMRC Insolvency Guidance

An [update](#) from HMRC has been issued which acknowledges the delay issues being experienced by IPs trying to progress cases. Unfortunately whilst HMRC advise progress is being made, it does not elaborate on when these will be resolved and IPs are being asked to contact R3 in particularly urgent cases.

### HMRC VAT 700/56

The VAT notice [700/56](#) has been updated at sections 1.4 (queries) and 8 (dividends).

### Dear IP

The latest Dear IPs are now available: [Dear IP 108](#), [Dear IP 109](#), [Dear IP 110](#), [Dear IP 111](#).

### IVA Protocol Revised Guidance

The government on 7 September issued [Coronavirus \(COVID-19\) Guidance for the Straightforward Consumer IVA Protocol](#).

### COVID-19 CVA Proposal

R3 have developed for SME companies the R3 [Standard Form Covid-19 CVA Proposal and Standard Conditions](#) to help members.



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Joanne is also a partner of both The Compliance Alliance and JOH Consultancy which offer a range of services that may be tailored to an individual IP's needs.