

JOH Consultancy LLP

February 2014 Technical Update

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When creditors do not participate

In the case of **Re Parmeko Holdings Ltd (in liquidation) and other companies** [2014] All ER (D) 39 (Jan) the administrator of a group of four companies held meetings to try to obtain approval of the proposals. No creditors attended the meetings and no proxies were received. The administrator then made an application to court seeking directions. The court held that where no creditors had voted at all, then the administrator did not need to make an application to court in respect of the proposal. However, he would need to obtain fee approval from the court.

Business rates bound by CVA

In the case of **Kaye v South Oxfordshire District Council** [2014] All ER (D) 134 (Jan) the Supervisor of a CVA made an application to court for directions on the issue of whether the non-domestic business rates outstanding for the full year were caught within the terms of the CVA. The court considered that the full year's non-domestic rates could be considered a contingent liability under r13.12.

Equity of Exoneration

In the case of **Day v Shaw**, [2014] All ER (D) 120 (Jan) a debtor obtained judgment and then applied for a charging order. In order that the charging order be satisfied, the charge held by Barclays in respect of a

business loan would need to be paid from the joint equity. The court held that the wife had the right to claim equity of exoneration and to have the full amount of the Barclays loan paid from her husband's equity, since the business had never been profitable.

Establishment to be determined by EU

In the case of **USDaw and another v Ethel Austin Ltd (in administration) and another** the issue of whether establishment should be part of the definition within s188 Trade Union and Labour Relationships (Consolidation) Act 1992 (TULRCA) was again raised. The issue is whether the European Directive 98/59, art 1(a)(ii) has been properly integrated into the TULRCA. The definition of s188 allows the Redundancy Payments Office to pay less in respect of protective awards if the definition of establishment is applied. This has now been referred to the Court of Justice of the European Union.

Proving Solicitors Negligent

In the case of **Hellard and another v Irwin Mitchell** [2014] All ER (D) 206 (Jan) the trustee in bankruptcy sought to challenge the advice given to the bankrupt from his solicitors and prove that they had been negligent. The court held that it was reasonable for the solicitor to rely on Counsel's advice when providing his own advice. The solicitor was not deemed to have been negligent.

COMPANY BOOKS AND RECORDS

I am supposed to be reviewing SIP 17 this month but I am conscious of its limited application. I thought a review of the IP's obligation in respect to all books and records might be useful.

Company/Personal Books and Records

ADR SIP 17

SIP 17 states that the books and records of the company are not the responsibility of the ADR, although he may use his powers to obtain and review them during his appointment. When the receivership ends, the ADR has to return the books and records to the director, or if the company has entered liquidation, the liquidator. In the event that the location of the directors is unknown and the company is not in liquidation, the ADR must consider winding-up the company.

Insolvency Regulations 1994

ADM reg 3A

The administrator may destroy the books and records one year after the company has been dissolved.

Compulsory Liquidation reg 16(1)

The liquidator may only destroy the books and records when he has received authorisation from the official receiver.

CVL & MVL reg 16(2)

The liquidator may destroy the books and records one year after the company has been dissolved.

Bankruptcy reg 30

The trustee may only destroy the books and records when he has received authorisation from the official receiver.

NB: For compulsory liquidation and bankruptcy make sure you have the official receiver's authority before destroying the records.

IP Record Insolvency Practitioners Regulations 2005

The IP record needs to be kept for 6 years from when you are released from office.

Red Tape Challenge and New Rules

The end of the Red Tape Challenge has resulted in the government undertaking to introduce changes, however, this may not be occurring immediately. Some of the proposed changes may occur when the New Rules are introduced. The date for this is unclear and seems to have moved back to 2015/16. The changes to primary legislation will occur when parliamentary time permits. The announcement may be found at <http://goo.gl/8FYpOr>.

Licensing of IPs

After being advised that further consultation was to occur before split licences were to be introduced, the Deregulation Bill shows that the government are determined to introduce this despite the concerns of the profession. A letter has been sent to stakeholders and the closing date for the further consultation is 21 February 2014. If you wish to lodge a comment, information may be found here <http://goo.gl/s9eCcj>.

Consumer Credit Licence

Finally some good news, the government has acted on concerns raised in respect of the necessity for IPs to be licensed for consumer credit work and have decided to extend the proposed exemption for IPs to cover debt advice and associated activity where this is undertaken in anticipation of a formal appointment. However, where an IP is undertaking regulated credit activities outside of the formal IP role, they will need to seek FCA authorisation.

New TUPE Regulations

Are you up to speed with the new TUPE Regulations that came into force on 31 January 2014? There are some important changes of which employers need to be aware. Key changes include:

- Pre-transfer consultation - in collective redundancy situations a transferee may consult, or start to consult, with the relevant

representatives before the transfer takes place. The transferor must agree and the transferee must give written notice to the transferor.

- Change in location is a "change in workforce" for the purposes of the ETO defence - this prevents genuine place of work redundancies from being automatically unfair.

- Employee liability information - the Regulations extend to 28 days (from 14) the deadline for a transferor to provide employee liability information to the transferee.

For further information contact Imogen Noons, Legal Director of DLA Piper UK LLP by email imogen.Noons@dlapiper.com.

IVA Protocol Updated

The IVA Protocol was updated on 1st January. Further information may be found at <http://goo.gl/77rkF2>.

Tax on PPI

In case you missed the notification published by R3, the name and address of the person to contact to obtain a unique tax reference in respect of PPI is: Ian Dunbar, Scotland East SME HMRC, Elgin House, 20 Haymarket Yards, Edinburgh, EH12 5WN. Tel: 03000 561522 email: ian.dunbar2@hmrc.gsi.gov.uk

Guidance on Strike-off from Companies House

Companies House have issued the following document Guidance: Strike off, dissolution — Part 1 annual requirements — GP4 which may be found at <http://goo.gl/Q26Dj>.

CPI Re-sit Course 2014

The results for December's exams were issued 31 January. If you did not quite make it past the finish line then you may want to consider joining me on my re-sits course which is on Sundays and will start in March 2014. Further information may be found at www.insolvencyexamtraining.co.uk.

CTD

Insolvency Guidance Paper Systems for Control of Accounting and Other Business Records

This guidance paper looks at the obligation of the IP in respect of the books and records of an insolvent estate.

Control of records

The suggestions are that a system will need to record:

- the practitioner's initial enquiries to establish the nature and location of records;
- the steps taken to safeguard records;
- requests made of directors and others to deliver up records;
- what records have been taken under the practitioner's control, and when and how this was done;
- the location of the records;
- whether third parties have had access to the records (and for what purpose); and
- the eventual disposal of the records, and when and how this was done.

Records in electronic form

The guidance also expects that the principles may be applied to electronic data in respect of its retrieval, storage and destruction.

Joint appointments

This will also need to be considered when taking joint appointments and determining who will be responsible for the insolvent's records and ensuring that your firm's internal system is followed.

Author

Joanne Harris is a licensed Insolvency Practitioner and has 15 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.

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