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TECHNICAL UPDATE

Position on rent being appealed

An appeal has been filed in the Supreme Court Pillar Denton Ltd and others v Jervis and others (Re Games) case and the judgment is expected to be issued end of June.

Dissolved unregistered company wound-up

In the case of Re Agrenco Madeira – Comércio Internacional Lda [2014] All ER (D) 118 (Apr) the court considered the scenario of whether a company was able to be wound-up as an unregistered company under the IA 86, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under, or by virtue, of the laws of the country under which it was incorporated. The court held that it was possible.

When is a company insolvent?

In the case of Carman (liquidator of Casa Estates (UK) Ltd) v Bucci [2014] EWCA Civ 383 the Court of Appeal considered when a company was deemed to be unable to pay its debts, within the meaning of s123 of the Insolvency Act 1986. The court stated that the tests of cash-flow and balance sheet insolvency should be used together when applying the cash-flow test. A realistic examination might reveal that a company was in any commercial view insolvent, even though it was able to continue to pay its debts for the time being.

Voidable dispositions stopped Administration

In the case of Re Brown Bear Foods Ltd Shaw v Webb and others [2014] EWHC 1132 (Ch) the court considered whether to make an administration order where a petition had been issued. Whilst the court accepted that the criteria of para 11 of Sch B1 could be met, due to various voidable dispositions amounting to £115k which had occurred since the petition in this instance, it would not be appropriate.

Tracing unchronological transactions

In the case of Relfo Ltd (in liquidation) v Varsani [2014] EWCA Civ 360 the liquidator of a company had successfully brought a tracing claim against the defendant in his recovery of money paid by the company. The judge had found that the defendant had benefited through unjust enrichment. The Court of Appeal held that, in order to trace money, it was not necessary that the payments should occur in any particular order, let alone chronological order.

Increase in court fees

There has been an increase in court fees for insolvency proceedings:

- Petition for bankruptcy (presented by debtor) now £180
- Petition for bankruptcy (presented by creditor/other person) now £280

Insolvency Guidance Paper - Dealing with Complaints

The IGP states that complaints are to be dealt with professionally and expeditiously. Not doing so will undermine confidence in the insolvency profession and more importantly may bring the profession into disrepute. So not dealing with the complaint as soon as it is received may aggravate the matter and your RPB will take this into consideration if it ends up being referred to them.

Steps to be taken

- The complaint should be acknowledged promptly,
- ascertain the background facts and seek additional information from the complainant as required asap,
- if complaint is unjustified, the complainant should be provided with a full and clear explanation of the reasons for that conclusion,
- If an error has been made, rectify the error promptly and offer an apology,
- notify that a complaint can be referred to the Insolvency Service Complaints Gateway at any time, (as we know complaints must now be referred to the Insolvency Service in the first instance),
- advise of steps taken to review and respond to the complaint,
- the likely timetable for the response, and
- the reasons for any delay.

- Petition for an administration order now £280
- Any other petition now £280
- Winding-up fee now £160

Further information may be found here <http://goo.gl/5y7OCp>.

Distraint and the new regime

The Tribunals, Courts & Enforcement Act 2007 and the Taking Control of Goods Regulations 2013 was fully enacted on 6 April 2014. The remedy of distress has been abolished and is replaced with the Commercial Rent Arrears Recovery (CRAR). The process requires the following criteria to be met:

- At least 7 days' rent must be owing
- Notice of 7 days must be given
- Goods seized must be limited to rent owed and no more
- The CRAR may only occur between 6am and 9pm

No consequential amendments to the insolvency legislation appear to have been made.

Changes to Corporate and Personal Insolvency Scotland

The Insolvency (Scotland) Amendment Rules 2014 will come into force on 30 May 2014. New provisions are being added to modernise and improve the procedures for the devolved processes of receivership and liquidation and further information may be found here <http://goo.gl/9UI84t>. The Bankruptcy and Debt Advice (Scotland) Act 2014 was only partially enacted on 30 April 2014. Its provisions include mandatory advice to be given to debtors from an approved money adviser before making an application to enter into sequestration, and for a specific group of vulnerable debtors to receive targeted financial education, to help improve their awareness of the underlying causes of financial hardship. Further

information may be found here <http://goo.gl/oJqC7D>.

VAT de-registration not appropriate in insolvency

HMRC have issued guidance advising IPs that they should not de-register unless all assets have been realised. This means that IPs will need to submit VAT 100s quarterly, adding to the compliance burden and risking a fine if not completed. Further information may be found here <http://www.hmrc.gov.uk/briefs/vat/brief1314.htm>.

New guide for legal charges

The land registry has issued an updated guide: Practice Guide 29 – Registration of Legal Charges and Deeds of Variation of Charge and the guide may be found here <http://goo.gl/T7c2ud>.

Progress reports in CVL

The ICAEW have reminded members that a post-2010 CVL requires a copy of the progress report to be filed annually at Companies House.

PRA Guidance for Schemes of Arrangement

The Prudential Regulation Authority (PRA) has issued guidance which seeks to provide a response to the feedback received on its consultation. It clarifies its view of schemes of arrangement, explains its role in assessing schemes of arrangement and gives supplementary information on interaction with the Financial Conduct Authority (FCA) as well as the PRA's complementary supervisory statement on capital extractions. Further information may be found here <http://goo.gl/cxxwfm>.

Insolvency Guidance Paper - Dealing with Complaints ctd

The duties of IPs

It is the IP's job to help the individual understand the legislation and the duties of the IP and for the IP to understand how his actions may be seen as wrong or unfair by complainants, as the duties of the office holder may be misunderstood. When responding to a complaint, an insolvency practitioner should provide, where appropriate, a clear explanation of the matters affecting the duties of an office holder, including the relevant legislation.

Other matters to consider

- The desirability of establishing a formal complaints procedure within the firm,
- procedure set out in writing, which can be communicated to complainants,
- whether complaints should be reviewed by another principal in the firm (where possible) or by an independent practitioner, and
- early resolution of complaints by telephone conversations and meetings.

I would personally recommend ensuring that you have a log and a separate file for all complaints made to ensure these are dealt with promptly.

PII

The IGP refers to the need where appropriate to inform the IP's Professional Indemnity Insurers. I have found this to be a contentious issue with IPs and yet the benefit may be that you obtain cheaper insurance! When to advise the PII depends on your policy but any suggestion of negligence or misfeasance is usually required to be reported.

I am giving a more detailed presentation on the issue of complaints and how to deal with them at the R3 SPG Technical Review in Birmingham and Huddersfield.



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

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