

CASE LAW

- COURT ALLOWED SALE OF FIXED CHARGE ASSETS
- IPO AND IPA NOT MUTUALLY EXCLUSIVE
- COURT ABLE TO REPLACE PROPOSAL

- COURT DOES NOT ALLOW CHALLENGE
- SHARE SALE SUBJECT TO TUPE
- MANAGING DIRECTOR FOUND TO BE EMPLOYEE

SIP

- 3.1 IVA

LEGISLATIVE UPDATE

- EUROPEAN ACCOUNT PRESERVATION ORDER

GENERAL INFORMATION

- NEW FORM 4.72
- LAND REGISTRY CHANGES

- COMPANIES HOUSE CHECK FOR UNDISCHARGED BANKRUPTS
- JIEB RE-SITS
- JIEB MARKERS SOUGHT
- BANK STATEMENTS ANALYSED

TECHNICAL UPDATE

Court allowed sale of Fixed Charge Assets

In the case of [Rollings and others \(as Joint Administrators of Musion Systems Ltd\) v O'Connell \[2014\] EWCA Civ 639](#) the court held that it was appropriate to proceed with a hearing seeking authority to sell fixed assets even if the secured creditor was not prepared for the hearing. They also authorised the sale by the Administrator of the fixed assets as though they were not subject to the security.

IPO and IPA not mutually exclusive

In the case of [Re Edmondson Thomas and another \(joint trustees in bankruptcy of Stephen John Edmondson\) v Edmondson \[2014\] EWHC 1494 \(Ch\)](#) an Income Payments Agreement had been entered into in order to claim the nil tax code. A trustee was then appointed who assessed the debtor's income and sought an Income Payments Order. The court had initially held that it was not possible but that has now been overturned.

Court able to replace proposal

In the case of [Registrar of Companies v Swarbrick and others \(Joint Administrators of Gardenprime Ltd in Administration\) \[2014\] EWHC 1466 \(Ch\)](#) the court reviewed its power to require the Registrar of Companies to retrospectively

amend the information held at Companies House. In this case administrators had filed their proposal which breached some confidentiality clauses. The administrators applied to court to have the proposal removed and replaced with an edited version. The Registrar of Companies contested the Courts ability to apply R2.33A IA86 retrospectively but the court held it did have this power under r2.33A IA06 and s1081 Companies Act 2006.

Court does not allow challenge out of time

In the case of [Contrarian Funds Llc v Lomas and others Re Lehman Brothers International \(Europe\) \(in Administration\) \[2014\] EWHC 1687 \(Ch\)](#) the court reviewed the issue of whether it was appropriate to give leave to a creditor to make an application out of time, to challenge the rejection of a proof of debt. The court did not allow for the out of time challenge.

Share sale subject to TUPE

In the case of [Smith v Jackson Lloyd Ltd, \[2014\] All ER \(D\) 157 \(Apr\)](#) the company transferred its shares to the subsidiary of a larger group. The group company took control, announced the purchase, advised that staff would be integrated and there would be no changes to the terms and conditions. The employees then challenged on the basis of lack of consultation. The tribunal and court held that there had been a TUPE transfer under regulation 3(1)(a), 3(2) and 3(6) and therefore consultation was required.

SIP - 3.1 IVA

The new SIP 3s come into force on 1 July. Here are some practical tips on the documents you should consider introducing to reflect the higher level of compliance required.

Let us start with the principles of the new SIP 3:

- Transparency
 - Fairness
 - Act professionally
 - Act with objectivity
 - Failure will bring the profession into disrepute
 - Provide sufficient information to allow for an informed judgement
 - Report accurately providing clear and useful information
- Remember SIP 1 requires that you document your compliance with the SIPs.

Advice to the debtor, section 8

This section now requires that an IP have procedures to provide information and explanations at each stage of the process. I think engagement letters will need to be significantly enhanced if they do not already provide the information in a) to e). It is not just the engagement letter that will need to be amended; I believe you probably also need to amend your letter to the debtor when you provide the proposal to document sections c) to e). You may also want to introduce a form for the debtor to sign where there are modifications proposed detailing his understanding of the impact and acceptance of the modifications.

Managing Director found to be Employee

In the case of [BIS v Knight UKEAT/0073/13/RN](#) the managing director and sole shareholder of a company had not taken salary for 2 years but had been able to produce an unsigned contract of employment and various P60s in support of her claim that she was genuinely an employee of the company. The Employment Tribunal held that she was an employee.

European Account Preservation Order

The European Union has adopted the European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters. The European procedure will be available to citizens and businesses and allows an ex-parte application to be made to freeze a debtor's bank account where there is a high risk that the funds and assets will be dissipated before the creditor is able to enforce judgment in that jurisdiction. It will only apply to cross-border cases. Further information may be found here <http://goo.gl/bNOckh>.

New form 4.72

Companies House will be issuing new forms to be used from 9 June 2014. One of the new forms is 4.72 and you will need to ensure your own system has the new form and it is being used.

Land Registry changes

From the 30 June only certified copies of documents are required to be filed at the Land Registry and not originals. Further information may be found here <http://goo.gl/wYct7k>

Companies House check for Undischarged Bankrupts

Companies House currently makes automatic checks against the Register of Disqualified Directors in respect of Appointments and from 8 June 2014 a similar procedure will be introduced for Undischarged Bankrupts (and other types of personal insolvency).

JIEB Re-sits

If you want to make sure you are on the pass list in March 2015 then you need to consider what help you need. I have spaces available on my JIEB re-sits courses which start at the beginning of July. If you or a colleague are re-sitting the JIEB exams in 2014 then I would urge you to review the courses I am offering: <http://goo.gl/ahB2cB>.

JIEB markers sought

Those interested in applying to become a JIEB marker should send an email to Steve Treharne, stevetreharne@btinternet.com and include a covering letter outlining suitability for the role and a detailed CV. Anyone interested in putting his or her name forward is welcome to contact Steve, by email in the first instance, for a no obligation discussion.

Bank statements analysed

There is a product on the market called StatementReader which is an application that converts and summarises scanned bank statements into Excel. It may be purchased on either a pay-as-you-go basis (for between 45p and 80p per page, plus VAT) or an annual basis (from £500 for a single user, plus VAT). A free trial of the application can be downloaded from www.StatementReader.com.

SIP - 3.1 IVA ctd

Meeting the debtor, section 9

This section requires that you offer the debtor the opportunity of a meeting, but more importantly that you as the IP assess at each stage whether a meeting should occur. Again, the only way to evidence compliance with this is to document your consideration of this issue, either as part of your checklist or have a separate document that details what criteria you are using to assess the need for a meeting.

Assessment, section 10

The IP needs to be satisfied, at each stage of the process, that there are procedures in place to ensure that an assessment is made of the criteria detailed at a) to f) has occurred. If you are fortunate you will have an internal report on the appropriate of an administration and I think this is exactly the sort of document you are now required to produce to demonstrate your assessment of an IVA and this needs to be completed. I would suggest, before the proposal document is sent to the Debtor.

Documentation, section 11

The evidence that you have complied with the SIP is demonstrated in the detailed file notes, letters, emails etc. Please ensure you have introduced the additional documents and when you have discussions with the debtor or creditors, confirm the details of the discussion in emails or letters.

Initial advice, section 12

This section seems to focus on due diligence and the expectation that the IP obtains sufficient information to provide the appropriate advice. I believe that this should be covered by ensuring that the debtor/IP completes a comprehensive checklist covering assets, rights of action, income and expenditure. You should already have this and be using it.

TO BE CONTINUED NEXT MONTH



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>