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TECHNICAL UPDATE

Administrators' Fees

In the case of *Re Brilliant Independent Media Specialists Ltd*Maxwell and another v Brookes and others 2014* All ER (D) 111 (Oct) the court was asked to approve the administrators' fees where the committee had refused to agree further remuneration. The court was asked to review the following: remuneration drawn after administrators were supposed to have exited via a CVL, work completed on investigations that were supposed to be the domain of the liquidator, work completed outside of the scope of the proposals and fees incurred after the administration had ended in respect of requests made by the liquidator. The court held that work completed after the administration ended was not recoverable. However all the other costs incurred were subject to a detailed review and of the £389,340.50 originally claimed, £233,147.25 was awarded taking into consideration r2.106 and the Insolvency Practice Direction.

Freezing order requires evidence and full disclosure

In the case of *Anglo Financial SA and another v Goldberg [2014] EWHC 3192 (Ch)* the court was asked to consider the continuation of a freezing order. The court rejected the request for the freezing order to remain in place due to the material non-disclosure of key information of the applicant and the lack of evidence of the likely dissipation of assets.

Insolvent Building Society creditors paid pari passu

The Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (Commencement No 2) Order 2014 SI2014/2796 comes into effect on 20th November 2014. This will allow HM Treasury to make an order ensuring that on winding up or dissolution any assets available to satisfy the society's liabilities to creditors or shareholders are applied on a pari passu basis.

Consumer Credit Licence

It seemed that there was clarity with Dear IP 61 in the issue of the Consumer Credit Licence but Dear IP 63 and the amended Dear IP 63 seem to have taken that away. The exemption for IPs seems very restricted. It seems that if you meet and give initial advice in "reasonable contemplation" of an insolvency appointment, you may be able to use the exemption. Any other work, i.e. writing to creditors on behalf of an individual or helping a debtor with their bankruptcy petition or *anything else* requires a Consumer Credit Licence. You may be covered for this work under your RPBs Group Licence if it is infrequent, but do check.

Integrated claims from HMRC

It seems that HMRC are in the process of organising themselves so that a single claim in respect of all tax and VAT liability will be

Non-statutory work

IPs in anticipation of the proposed fee changes are repositioning themselves in the marketplace and placing more emphasis on advisory and restructuring work. I thought a few tips on compliance and advisory work might be appropriate.

Advisory

Advisory work is an area where you will expose yourself to risk if you do not introduce procedures to protect yourself. I am sure you are aware that as a professional, any advice you give means that you will be deemed to have a duty of care to those you are advising. If you are discussing informally and for free you may still be sued if you "get it wrong" or if your client misunderstands or misinterprets.

Money Laundering

It is therefore imperative that you treat all potential clients as clients immediately. Even if you are giving free advice you should make sure you obtain client identification. Remember the family tree should be looked at and ML checks should be done on related entities.

Client

Set the client up on your database and this will hopefully ensure ML obligations are met.

Contemporaneous Notes

From the moment you meet your client to the final email/letter/report sent you should have notes and a paper trail of all the information exchanged as well as advice given.

submitted. HMRC has therefore requested that VAT 769 forms now be filed at two different locations and where you send it depends on the case type. De-registration requests need to go to a third address. Further information maybe found here <http://goo.gl/JBvuSR>.

Bonding

The issue of whether or not the wording within the bond was sufficient to meet statutory requirements was raised and IPs were told that this was being addressed directly with their bond providers. An update has been issued by the Insolvency Service (IS) via the ICAEW stating that they have addressed the issues with bond providers and they will not be taking any action against IPs and believe the actions of IPs are valid. The IS wishes to be notified of any action against IPs in respect of this matter as the IS may wish to be joined in the proceedings. Further information may be found here <http://goo.gl/XaYMun>.

Change is afoot

An Insolvency Guidance Paper on ROT is due to be issued shortly. A new draft SIP 16 incorporating SIP 13 will also be issued shortly. Under review are the Code of Ethics and SIPs 1, 4, 7, 8, 9 & 15.

Lexis Nexis free insolvency guides

Lexis Nexis are offering free insolvency guides. The first guide covers immigration issues for insolvency practitioners and may be found here <http://goo.gl/QvnS9I>. The second is on intellectual property rights and may be found here <http://goo.gl/Ay33vH>. You may sign up to receive these via email at <http://goo.gl/yo3YXc>.

IS Guidance on Investigations

The Insolvency Service has issued guidance entitled "Insolvent company investigations - what we do" which may be found here <http://goo.gl/kQhhCh>.

IS Newsletter

The Insolvency Service has issued its first newsletter which may be found at <http://goo.gl/BFUkaL>.

Insolvency Hour

A new Twitter account has opened @insolvencyhour which promotes a discussion hour once a week for those interested in the profession and topical issues on Thursdays 8-9pm.

JIEB tuition which gives students a voice

My JIEB classes have a maximum of 10 students meaning that all of my students have an opportunity to ask questions and participate in the learning process. My JIEB courses start 10th January on Saturdays and 16th March for block courses. For information click the link www.insolvencyexamtraining.co.uk/jieb2015.html

The panda made him do it

If you have enjoyed my technical update then may I ask you make a small donation to my husband's chosen charity as he will be running his first marathon next April. Here is a link to his sponsorship page, any and all amounts received with thanks www.justgiving.com/neilharris72bm/.



Non-statutory work - ctd

Audit Client

If the piece of work to be done is for an audit client you must obtain the agreement of the audit partner that the work can be done as it may be a case whereby it will prejudice what the audit team is doing.

Engagement Letter

Ensure you provide an engagement letter defining exactly what you are being engaged to do. Do not define the terms of the engagement using general terms, be very specific about the services you are to provide. Ensure this is regularly reviewed and if necessary amended with an addendum if the assignment changes. Remember to make sure the engagement letter is compliant with the Provision of Services Regulation 2009, a copy may be found here <http://goo.gl/5p5Ppc>.

Tax

Ensure your engagement letter clearly states that the advice given does not include tax advice on the forecasts or numbers within the report. Recommend they seek tax advice.

Report

If a formal report is required in respect of the advisory work then ensure this is reviewed by a second IP who has seen the engagement letter and therefore is able to determine if the report deals with all the issues defined within the engagement letter and addenda.

Expertise

I have no idea what kind of advice you may be giving but make sure you have the expertise and experience and make sure you are regulated by any appropriate body, e.g. FCA.

Professional Indemnity Insurance

I would recommend a conversation with your insurers asking if they have any particular requirements.



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

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