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TECHNICAL UPDATE

Statutory duty of a director

In the case of *Re Pro4Sport Ltd (in Liquidation); Hedger (Liquidator of Pro4Sport Ltd) v Adams* [2015] All ER (D) 12 (Sep) it was found that a director was not in breach of his statutory duty where he sold the assets of the company a month before liquidating the company. The director was entitled to rely upon advice provided by a professional and was not obliged to obtain the highest value as detailed in the three valuations obtained, where he could demonstrate he was acting in the best interests of creditors.

Even if you win you may not be awarded costs

In the case of *Brooks & Willetts (liquidators or Robin Hood Centre Plc) -v- Armstrong* 2015 EWHC 2289 (Ch) the liquidators issued proceedings for a wrongful trading claim of £705k but were only awarded £35k. The court felt that the liquidators' claim was so hugely overstated that the directors' refusal to negotiate was appropriate and refused to award costs to the liquidators.

Court questions IP's decisions at VA meeting

In the case of *Rowbury and others v Official Receiver and others* 2015] All ER (D) 129 (Sep) the following decisions made by the chairman of the meeting of a proposed IVA were challenged: 1. why the meeting was not suspended for a revised proxy to be

submitted, 2. why the meeting was not suspended to allow another creditor to vote, and finally 3. why a creditor was allowed to vote for more than they were entitled. The court suggested that the decisions of the IP led to irregularities which had a material impact on whether the VA was approved. The court therefore revoked the proposal leaving the debtor as a bankrupt.

1st October legislation

There is way too much for me to try to cover here so if you are not quite sure of everything that went live 1st October may I refer you to our blog <http://goo.gl/Pl8ykI>.

Strike off & no more corporate directors

A couple of the amendments that have now come into force are the reduction from three months to two months for the Registrar to strike off a company and for a corporate director to now meet the exemption criteria. The link will provide further information <https://goo.gl/mbG9ev>.

Northern Ireland and SBEE

The Small Business Enterprise and Employment Act (SBEE) which was enacted in England and Wales earlier this year has the equivalent provisions being brought into force in Northern Ireland with effect from 1 October 2015. Further information may be found here <http://goo.gl/YJxT6T>.

SIP Update

SIP 1

The new SIP 1 came into effect on 1 October with little lead in time for IPs to put in place the relevant changes to document packs. I hope though that your initial letter to creditors now advises that you "are bound by the Insolvency Code of Ethics when carrying out all professional work relating to an insolvency appointment". This should therefore be in your VA and CVL letters when calling the initial meeting of creditors as well as post appointment in ADM, BKY and CL.

SIP 9

Despite the new remuneration legislation coming into force on 1 October the new SIP 9 will not be published until 1 November and will come into force 1 December. Disappointingly, the RPBs have advised that there will be no proforma given in the new SIP 9.

Please be aware that there were new Guides to Fees issued for new cases from 1st October and these may be found here <https://goo.gl/8LgaM3>.

SIP 16

The new SIP 16 comes into effect from 1 November and there are a few immediate issues that need to be addressed by IPs.

The first is to remember that you now need to send your SIP 16 disclosures to the RPB of the lead appointee.

IS Publications

The Insolvency Service has reviewed its guidance publications and will shortly begin the process of replacing the existing Word and PDF documents with new web based content. The latest batch deals with options for paying off your debts and may be found here <https://goo.gl/m4Uxb>.

Calculation of employee overtime contributions

A consistent approach in calculating employee overtime contributions for IVAs may have been provided by Scotland's AiB, further information may be found here <http://goo.gl/zq3Jks>.

PPI payout deadline

A BBC article has indicated that the FCA may be considering a deadline for PPI mis-selling claims to be made within two years. The article may be found here <http://goo.gl/yi9Ffw>.

New FCA register

The FCA have created a new register which is easier to search and this went live on 7 September 2015. Further information may be found here <https://goo.gl/NjRo6M>.

Litigation Funding & Assignments £30,000+

Cavendish IP Solutions take assignment and fund litigation in insolvency situations on claims valued from £30,000. The team is headed by a licensed IP and barrister, a lawyer and an accountant. They are familiar with insolvency case management issues and are able to review and respond quickly to enquires by IPs.

Further information may be found on their website <http://www.cips.uk.com> or contact them directly at info@cips.uk.com.

Health & Safety Nuggets

Here is the fifth in our series of H & S nuggets from Simon Joyston-Bechal, solicitor at Turnstone Law: It is a criminal offence for an IP to sell an article or substance for use at work, unless everything reasonably practicable has been done to ensure it is safe. There are some limited exceptions but "sold as seen" is no defence; and selling unsafe second hand work equipment through an agent will not be a protection, unless you have put the right steps in place to pass responsibility on to the agent. Watch out for agents' standard terms, which usually pass responsibility back to the IP. Click [here](#) for further information about training on H & S for IPs.

The Compliance Alliance

Well we are up and running and busy producing useful guidance for IPs. You may be interested in the practical information being provided via our blog where we have had a guest blogger discussing new RPO requirements thecompliancealliance.co.uk/blog/. You may also be interested in our webinars on Employment issues for the IPs as Officeholders or as Employers, as well as Michelle's webinar on the remuneration rule changes. We have updated our document packs for the 1st October changes and are busy making changes for the new SIP 16 requirements for 1 November.

Whisper, whisper

I understand that a meeting has recently been held to discuss partial licensing ... unfortunately that is all I know ;-)

SIP Update - ctd

SIP 16

Next is the requirement to "ensure that any connected party considering a pre-packaged purchase is aware of their ability to approach the pre-pack pool (see the appendix) and the potential for enhanced stakeholder confidence from the connected party approaching the pre-pack pool and preparing a viability statement for the purchasing entity." So a new letter is required to the purchaser covering the pre-pack pool, viability study and where it is a connected party the suggestion they seek independent advice.

Then we have the need to ensure agents and valuers used have PI insurance in place. If you just use 2-3 agents it may be worth obtaining these and keeping them in a separate file and reviewing annually. Otherwise you will need to ensure this is requested when agents are instructed.

The final enhancement to SIP 16 which will significantly impact IPs is the marketing essentials. IPs now "should advise the company that any marketing should conform to the marketing essentials as set out in the appendix to this Statement of Insolvency Practice.". So I would suggest as well as the company you will also need to advise the agent of the marketing essentials and more importantly have the agent provide evidence that these have been complied with.

So final thoughts, do you have in place your appropriateness of ADM that covers SIP 16 issues, have you enhanced your engagement letter to meet the additional requirements as well as your notification to creditors of the roles of the IP and finally have you fully enhanced your SIP 16 disclosure to be sent within 7 days of completion of the sale?



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

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