

CASE LAW

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DRAFT RULES OCT 2016**LEGISLATIVE UPDATE**

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GENERAL INFORMATION

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- APPOINTMENT OF ADMINISTRATOR OUT OF HOURS
- NEW HEALTH & SAFETY ENFORCEMENT REGIME

TECHNICAL UPDATE

Duties of an officeholder to adjudicate proofs of debt

In the case of *Parker V Nicholson and others* [2015] All ER(D) 278 (Nov) the Trustee in bankruptcy made an application to court for directions on whether to admit a proof of debt and therefore whether a meeting of creditors should be convened based on the value of the proof of debt. The court's view was that it is the role of the Trustee to adjudicate claims and there was criticism that having made the application it prevented a creditors' meeting from being called for 8 months.

Possession orders

In the case of *Garwood V Bolter* [2015] EWHC 3619 (Ch) the Trustee sought possession and sale orders on three properties owned by him. The Trustee did not know the occupiers or the terms under which they occupied the premises and were joined in the application as 'Persons unknown'. The court gave an order for sale but not possession, since service could not be proven and there were potential deficiencies in the termination of tenancy. The court also indicated that separate applications should be made with specific pleadings against the occupiers.

Full disclosure required for recognition in Great Britain

In the case of *Re OGX Petr leo e G s SANordic Trustee A.S.A. and another v Ogx Petroleo E Gas S.A.*

(*Em Recupera o Judicial*) and others [2016] All ER (D) 62 (Jan) an application was made under the Cross border Insolvency Regulation 2006 for recognition of a reorganisation plan approved with creditors in Brazil and a stay of any proceedings in Great Britain. The arbitration proceedings in Great Britain had been agreed to by the parties three months after the reorganisation plan had been approved. The court found that the purpose of the application was to frustrate arbitration proceedings. It also found that full and frank disclosure had not been made to the court and the applicant had failed to include the relevant parties to the application, therefore it was an abuse of the recognition process of a foreign proceeding.

Contingent creditors & relief under S1157 for liquidator

In the case of *Re Powertrain Ltd (in Liquidation)* [2016] All ER (D) 48 (Jan) the liquidator sought an order of the court to be able to make a distribution without regard to potential product liability claims and relief under S1157 CA 06 from rights of action for negligence, breach of duty or breach of trust. The court held since claims were unlikely under the product liability, the balance of interest was with making a distribution now. The court also granted relief under S1157 CA 06 on the basis of this applying to a liquidator.

Pensions and bankruptcy

The appeal re *Henry V Horton* will be heard 21/22 April 2016.

Draft Rules Oct 2016

The new rules if they are to be launched in October 2016 are rapidly approaching and I thought it might be helpful to discuss some of the changes if they go through as they currently are.

Transitional Provisions

Something I am sure we are all quite keen to understand after the debacle that was the 2010 Rules. The current proposal is to apply the new rules to all post-2010 cases with a few exceptions depending if you are in the middle of a process, i.e. calling a meeting. The old rules will apply until the meeting/process has occurred and then the new rules will apply to the case.

This seems like a really good idea and stops the running of cases under different legislation. The only snag is that all staff will need to be fully conversant with the new rules before they are introduced and with the final draft of the rules potentially not being published in April this will create problems.

Order of the Oct 2016 Rules

- Part 1** Scope, Interpretation, Time and Rules about Documents
- Part 2** CVA
- Part 3** ADM
- Part 4** Receivership
- Part 5** MVL
- Part 6** CVL
- Part 7** Compulsory Liquidation
- Part 8** IVA
- Part 9** Debt Relief Orders (DRO)
- Part 10** BKY
- Part 11** BKY/DRO Restrictions & Undertakings
- Part 12** Court Procedure & Practice

Finance Bill 2016 & MVLs

The purpose of the legislation is to tackle tax avoidance where there is a distribution of capital instead of income. This means that if the following conditions apply:

- the distribution is received from a close company on a winding up;
 - the individual continues to be involved in a similar trade or activity within two years after the distribution;
 - the main purpose(s) of the winding up is to secure a tax advantage;
- then the distribution will be treated as income. The consultation on the draft legislation ends 9 February and if approved comes into force 6 April 2016.

Northern Ireland CDDA

The **Debt Relief Act (northern Ireland) 2010 (consequential amendments) Order (Northern Ireland) 2016** comes into force on 7 March 2016. The legislation will include debt relief orders and restrictions. The legislation may be found here <http://goo.gl/v8F1od>.

Scotland Corporate changes

The **Public Services Reform (Insolvency) (Scotland) Order 2016** partly comes into force on 1 April 2016 and then fully by 1 October 2016. The implementation is tied to the SBEEA 15 so if we do not go live with the draft modernisation rules in October 2016 there could be delays. The draft order may be found here <http://goo.gl/gBfi5T>.

Scottish Bankruptcy Law

The **Bankruptcy (Scotland) Bill** has completed stage 1 in the Scottish parliament. It seeks to consolidate various pieces of bankruptcy legislation and a draft of the bill is

available here <http://goo.gl/xVP5ZW>.

PPF & new guidance

The PPF has published refreshed guidance for Restructuring and Insolvency Professionals on 20 January 2016 which may be found here <http://goo.gl/Pg1B86>. The PPF is taking an active interest in protecting schemes and ensuring they are not "dumped". They are seeking to ensure that any proposed agreements provide for enhanced realisations to the PPF to reflect the true benefit to the company of crystallising this liability.

Appointment of Administrator out of hours

The Insolvency Service have issued guidance on how to notify the court of an out of hours appointment which may be found here <https://goo.gl/CISeg3>.

New Health & Safety Enforcement Regime

Simon Joyston-Bechal of Turnstone Law explains the new sentencing guidelines for health & safety offences in force 1 February 2016. The sentences are now based on turnover and will dramatically increase the level of fines, particularly for larger organisations. This could be very serious for the larger IP firms, now facing potential fines in excess of £100 million for health & safety breaches. Worse still, IPs are particularly vulnerable to criminal prosecution as individuals because they take appointments in a personal capacity and they are an attractive prosecution target. Unintended consequences of the way punishments are now calculated mean that IPs are much more likely to be imprisoned for breaching health & safety laws. A more detailed article is [here](#).

Draft Rules Oct 2016 - ctd

Order of the Oct 2016 Rules ctd

Part 13 Official Receivers

Part 14 Claims by and Distributions to Creditors in ADM, Winding up and BKY

Part 15 Decision Making

Part 16 Proxies and Corporate Representation

Part 17 Creditors' and Liquidation Committees

Part 18 Reporting and Remuneration

Part 19 Disclaimer in Winding Up and BKY

Part 20 Debtors at Risk of Violence: orders not to disclose address

Part 21 The EC Regulations

Part 22 Permission to act as Director etc. of Company with a Prohibited Name (s216)

Schedule 1 Revocations

Schedule 2 Consequential amendments

Schedule 2 Punishment of offences under the Rules

Schedule 3 Service of documents

Schedule 4 Calculation of time periods

Schedule 5 Insolvency jurisdiction of County Court hearing centres

Schedule 6 Information to be provided in the bankruptcy application

Schedule 7 Additional information to be provided in the bankruptcy application

Schedule 8 Information to be given to creditors

Schedule 9 Determination of insolvency office-holder's remuneration

Schedule 10 The EC Regulation

The Compliance Alliance will be producing webinars on the significant changes based on the draft rules from March so you may start to familiarise yourself with what you need to know for when the new rules go live for both new and old cases. Of course these may be subject to change once the final draft rules are issued and when the legislation is enacted.



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