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TECHNICAL UPDATE

Personal liability and CFAs

In the case of *Stevensdrake Ltd v Hunt & Anr* [2016] EWHC 342 (Ch) the court reviewed the liability of Stephen Hunt (SH) in respect of the CFA agreement and the effect of the amended CFA which held that SH was personally liable on the success of the case. The liabilities related to counsel's fees, solicitor's disbursements, solicitor's base fee and solicitor's success fee. The court held that SH was liable for counsel's fee, the solicitor's other disbursements and interest on those disbursements but not for the solicitor's fees. The decision was based on the parties' dealings during the life of the case and not just the CFA agreement signed. The judge did pose a question about whether the common practice of IPs to insist that the solicitor's fee is only paid on the basis of asset realisations offends the indemnity principle.

Directions sought in absence of sanction

In the case of *Re Longmeade Ltd (in liquidation)* the joint liquidators applied to court for directions about whether to call a meeting of creditors to vote on whether they should pursue an action against BIS for negligence in circumstances where 99% of creditors by value opposed the claim being pursued. The court was clear that no meeting should be called, although it did suggest that further clarification from creditors should be sought. If there are minority creditors that indicate that the liquidators should pursue this claim, then the court agrees

that the liquidator should pursue the claim.

Wrongful trading or not?

In the case of *Grant and another (Joint Liquidators of Ralls Builders Ltd) v Ralls and others* [2016] All ER (D) 142 (Feb) the court considered the issues of wrongful trading. The court held that although the directors "ought to have concluded by a certain date that there was no reasonable prospect of the company avoiding insolvent liquidation", continued trading had not caused loss to the company overall or worsened the position of the creditors as a whole.

Building Society able to create floating charges

The Draft *Building Societies (Floating Charges and Other Provisions) Order 2016* was laid before the House on 8 February and provides for building societies to create floating charges and the appointment of a receiver but not an administrative receiver. A link to the draft order is [here](#).

Republic of Ireland Bankruptcy

The *Bankruptcy (Amendment) Act 2015* came into force in the Republic of Ireland on 29 January 2016 and mirrors the bankruptcy regime in England with a reduction to one year for discharge, for contributions to be reduced from five years to three years and with the re-vesting of the matrimonial

CDDA and new reporting requirements

The ICAEW provided a webinar on the changes to D reporting given by Mark Danks from the Insolvency Service (IS).

Some of the key issues to be aware of:-

Digital Portal - control submission, review and further reporting will all go through the digital portal.

Dashboard - each IP will have a dashboard and the control of D reports will be through a login using the IP's number and his email address. If you have changed firms or emails recently you may want to contact the IS to confirm they have your correct details.

Format of the D report - I am sure you are all keen to know what resemblance there is between the current D report and the online D report; my understanding is very little. The D report will ask a list of factual questions. If you answer 'no' then you move on to the next question. If you answer no to all the questions you are effectively submitting a D2 report. If you answer 'yes' then you are asked more questions on that particular issue. There is no facility to attach documents. The problem for IPs at the moment is that the questions asked have not been publicised so it is impossible to build a checklist or give training to staff. Of more concern is that Mark Danks sees this as a work in progress and therefore fully anticipates that the questions will change once IPs start using the portal. It is expected that guidance will not be issued by the IS until the summer.

home within three years. The Act may be found [here](#).

Non court petitions for bankruptcy

The following legislation comes into force on 6 April 2016 and has been introduced to allow for individuals to petition for their own bankruptcy without making an application to court:

- Insolvency (Amendment) Rules 2016 [here](#)
- Enterprise and Regulatory Reform Act 2013 (Commencement No 9 and Saving Provisions) Order 2016 [here](#)
- The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 [here](#)
- The Insolvency Proceedings (Fees) (Amendment) Order 2016. [here](#)

D reporting changes

The amendment to D reporting comes into force on 6 April and may be found in the following statutory instruments:

- The Insolvent Companies (Reports on Conduct of Directors) (England and Wales) Rules 2016 [here](#)
- Insolvent Companies (Reports on Conduct of Directors) (Scotland) Rules 2016 available [here](#)
- The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 [here](#)

Mental Health & Insolvency

A new charity has been set up to help those individuals suffering from mental health problems with

their money difficulties. The website is [here](#). They are currently seeking help with a [questionnaire](#).

Case closure & installment payments

Case closure is a priority for IPs as legal requirements and regulatory demands require that cases be kept open for no longer than necessary. In addition there are cost consequences as result of not being able to close the file. Where you have a debtor or director in an insolvency paying a debt by installments resulting in the case being kept open for years, Cavendish IP Solutions will purchase the right to collect these payments going forward, for any amount, regardless of security, paying a lump sum to you so that the case can be closed. Contact Cavendish IP Solutions on 020 7612 9550 or email info@cips.uk.com for further information.

Webinars

If you feel the need to catch up on some recent issues or just need the CPD we have issued the following webinars this month:

Health & Safety Deborah Manzoori
SIP 9 & 16 Michelle Butler
Compliance Hazards Joanne Harris
 Each webinar is £25 plus VAT or you can obtain firm annual membership for £250 plus VAT. To obtain further information or sign up please email us.

Opportunity for newly qualified IP

A small South East London firm is seeking a newly qualified IP with a view to the person eventually taking over the practice. If you are interested please email jo@johconsultancy.co.uk and I shall forward your details.

CDDA and new Reporting requirements - ctd

Directors' information - the Dashboard does not currently have the facility to pull through information from Companies House in respect of directors but will eventually.

Time extensions - Mark Danks has made it quite clear that time extensions will only be available on an exceptional circumstance basis and not a case basis. So if your premises are flooded, you have had a fire or your internet connection is lost, that will be considered an appropriate reason.

Transitional Provisions - there will be at least a 6 month overlap between the old and new regime if not longer. All cases up to 5 April will have 6 months to complete a D report and submit it in paper form. All cases from 6 April will be under the new regime and will require the D report to be submitted online within 3 months.

ADM to CVL - Under the new regime, i.e. if the ADM is on or after 6 April then you only submit a D report online for the ADM only. Of course this raises issues with ADM to CVL cases if the ADM was prior to 6 April then the CVL when it occurs post 6 April will still be under the old regime. Mark Danks has indicated though that an email confirming that no further issues have arisen in the CVL should be acceptable, but do check with the IS first that this is the case.

Offences - It is an offence for the IP not to submit the D report within three months. It is also an offence if the IP fails to advise the IS of any other issues identified after the submission of the D report. This is a concern and something IPs will need to consider in the way they approach investigation work. I would suggest that you would still seek to complete a full investigation within 6 months and that your checklist has a reminder to advise IS of further issues identified.



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