

**CASE LAW**

- DISCLOSURE AND COSTS UNDER THE FINANCE ACT 2008
- VOTING IN IVA WHEN CHAIRMAN IS UNSURE
- WHEN IS A VALIDATION ORDER APPROPRIATE?

- COSTS IN RESPECT OF A S214 CLAIM
- SURRENDERING GROUP RELIEF WHILST IN RECEIVERSHIP
- DISCRETION USED WHEN EXCEPTIONAL CIRCUMSTANCES

**SBEE & DEREG**

- SBEE & DEREG

**LEGISLATIVE UPDATE**

- MODERNISATION OF THE RULES
- FCA AUTHORISATION

- LAW COMMISSION REPORT ON PREPAYMENTS

**GENERAL INFORMATION**

- GUIDANCE ON BANKRUPTCY AND LIVING ABROAD

# TECHNICAL UPDATE

## Disclosure and costs under the Finance Act 2008

In the case of *Revenue and Customs Commissioners v Ariel* (as Trustee of the Estate in Bankruptcy of Halabi) the court considered on appeal whether the Registrar had power to give directions to the Trustee in respect of a third party notice issued under Sch 36 of the Finance Act 2008. The court held that the only question it could answer was whether the Trustee could disclose the documents and not who should fund disclosure or what categories of documents were to be disclosed. The Trustee's reluctance to comply with the order was due to insufficient assets to fund the disclosure of documents. The judgment made an aside, suggesting that the Revenue should fund the cost of compliance with the notice but stating that it will be a matter for the First-tier Tribunal to consider and determine.

## Voting in IVA when chairman is unsure

In the case of *AB Agri Ltd v Curtis and others* [2016] All ER (D) 121 (Jul) the court considered how the chairman treated for voting purposes the claim of a creditor owed money under a guarantee in an IVA proposal meeting. The debtor disputed the validity of the guarantee and the IP decided to admit the claim for £1 and treated it as an unliquidated debt. The court was clear that this was the wrong approach. If the guarantee was valid then all the funds due

under the guarantee were owed and this was not an unliquidated claim. The court held that R5.22(2) allowed a claim to be admitted or rejected and R5.22(4) set out how to treat any claim if the chairman was in doubt, which was to allow the vote and mark it as objected to subject to the vote subsequently being declared invalid. The approach of the chairman of admitting the claim for £1 as an unliquidated claim was a material irregularity under s262(1). The IP who chaired the meeting was ordered to pay half the costs due to not following the rules appropriately.

## When is a validation order appropriate?

In the case of *Express Electrical Distributors Ltd v Beavis and others* [2016] EWCA Civ 765 the question whether a retrospective validation order of a voidable disposition should be made was considered by the court. The court held that for a validation order to be made it needed to be demonstrated that it was for the benefit of the general body of unsecured creditors, such that it was appropriate to dis-apply the usual pari passu principle. The fact that the payment made was accepted in good faith was not sufficient.

## Costs in respect of a s214 claim

In the case of *Re Ralls Builders Ltd (in liquidation); Grant and another v Ralls and others* [2016] EWHC 1812 (Ch) the court was asked to

## SBEE & DEREG

We had new legislation introduced in May 2015, Oct 2015 and April 2016. I thought a quick review might help over the next few months.

### SBEE 2015 26 May 2015 following came into force:

#### S120-121 Sanction

- No more requirement to seek sanction under Schedule 4 & 5 IA 86 only.
- Sanction still required to open a bank account in bankruptcy and compulsory liquidation.
- Also special resolution for distribution in specie still required if company has adopted table A CA85
- Note where sanction is required by the Act or Rules apart from Schedule 4 & 5 this is still applicable, i.e. r2.71, r4.183 etc.

#### S127- Extensions of ADM

- May now extend by 12 months instead of 6 months without a court application.
- Remember that you can only extend once, so if you have already obtained a 6 month extension you cannot request a further 6 months.

#### S128 Prescribed part distributions

- Distribution of the prescribed part in the ADM may be made without a court order
- ADM to CVL may only occur if there is payment to unsecured creditors other than the prescribed part.

#### S129 Sales to connected parties

- Insolvency Service have 5 years from 26.05.2015 to introduce legislation on sales to connected parties.

consider the issue of costs incurred by the joint liquidators in preparing their claim against the directors for an action under s214 IA 86. The court held that whilst the judge found that the directors ought to have realised the company was insolvent, that did not make them instantly culpable under S214. In any event, even if the court made an order under s214 and quantified a contribution to be made by the directors that would not have entitled the liquidators to have a contribution to their costs.

### Surrendering group relief whilst in receivership

In the case of *Farnborough Airport Properties Ltd and others v HMRC [2016] UKFTT 0431 (TC)* it was decided by the First-tier Tribunal that receivership constituted 'arrangements' for the company to cease to be under the same control as the other group members and therefore was no longer entitled to surrender group relief to other companies in the group. This may well impact upon Administrations, Administrative Receiverships and LPA/Fixed Charge Receivership. It is not known yet whether the case will be appealed.

### Discretion used when exceptional circumstances identified

In the case of *Grant and another v Baker and another [2016] EWHC 1782 (Ch)* the court considered the appropriate balance when exceptional circumstances had been identified. The court held that the discretion used by the judge, who identified exceptional circumstances, was inappropriate. The postponing of the possession order until the debtor's daughter stopped residing at the property did not balance the interests of the unsecured creditors, the government department and the reasonable needs of the the

debtor's wife and his daughter (whose needs were defined as exceptional circumstances). The judge revised the postponement of the possession order for 12 months.

### Modernisation of the Rules

The Insolvency Service announced at their Insolvency Live conference and on Twitter that the draft Insolvency Rules will be available in Autumn, and I assume this will be by 1st October at the latest, with April 2017 seeing the implementation of the new rules.

### FCA authorisation

The Insolvency Service stated in their Insolvency Live event that there was no need to revisit the authorisation requirements for advising on consumer credit debt. This means that the exclusion for IPs is extremely limited, leaving most IPs in need of obtaining authorisation from the FCA.

### Law Commission report on prepayments

The Law Commission has published a report following a project on Consumer Prepayments on Retailer Insolvency which may be found [here](#). The recommendations may be found at page 115-117 and range from insurance taken out by the company to protect prepayments made, to recommendations for a class of creditors after preferential creditors and before the floating charge-holder and unsecured creditors.

### Guidance on bankruptcy and living abroad

The Money Advice Service and Insolvency Service have issued guidance to help those living abroad and it may be found [here](#).

### SBEE & DEREG - ctd

S130 Attachments of floating charges in Administration Scotland

- It seems that the crystallisation of the floating charge is not contractual in Scotland and is triggered by statute.
- This meant that if more than the prescribed part was to be paid, the floating charge would not be triggered until the company went into liquidation.
- Now able to pay floating charge holder if application made to court to pay unsecured creditors more than the prescribed part.

S131-132 Creditors not required to prove small debts

- No secondary legislation has been introduced to bring this into force and we shall probably not see this enabled until the new Rules in 2017.

S134 Time limit for challenging IVAs

- Where there is no interim order the time limit to challenge runs from when the creditors approve the proposal.

S135 Abolition of fast track IVAs.

S136 Voluntary winding-up: progress reports

- This section amends sections 92A and 104A of the Insolvency Act 1986.
- A progress report must be issued if the liquidator changes within the first year of the liquidation and this resets the reporting date.

Deregulation Act 2015 26 May 2015 following came into force:

Para 5 - relates to the filing of an intention to appoint providing an interim moratorium and if a petition is filed after that time a para 22 appointment is still able to proceed.

Part 7 of Schedule 6 - Paragraphs 24 to 28 of part 7 of schedule 6 repeal one element of the priority given to employees' wages in certain insolvency proceedings, because the type of employment contract to which it relates no longer exists.



Joanne Harris is a licensed Insolvency Practitioner and has 18 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 is also a partner of The Compliance Alliance which offers a range of services that may be tailored to individual IP's needs.

M: 07780 613826

E: [jo@johconsultancy.co.uk](mailto:jo@johconsultancy.co.uk)

E: [jo@thecompliancealliance.co.uk](mailto:jo@thecompliancealliance.co.uk)

W: <http://www.johconsultancy.co.uk>

W: <http://thecompliancealliance.co.uk>