TECHNICAL UPDATE

Request to call meeting & when to adjudicate claim

In the case of Kean v Lucas [2016] EWHC 2684 (Ch) (28 October 2016) the court considered the level of assessment of a creditor's claim appropriate by an IP prior to calling the meeting requested. The court held that the test was to ensure it was bona fide and not obviously wrong. In this particular case the court agreed that the creditor's claim was weak, contradictory and unsupported by accounting records, the director's Statement of Affairs or any other written agreement. However, the court held that there was insufficient evidence to support the liquidator's suspicion that the claim was made in bad faith and the review of the validity of the claim should have been dealt with at the creditors' meeting and not upon the request for the meeting being made.

Right to sell assets subject to insolvency proceedings in India

In the case of Hooley Ltd v The Victoria Jute Company Ltd and others [2016] CSOH 141, copy of the judgment may be found here, three Scottish companies with their only assets in India were placed into Administration, after being subject to liquidation proceedings in India.The Administrator sold the assets of all the companies to the secured creditor. The secured creditor sought a declaration from the Court of Sessions as to the validity of the sale to be able to enforce his rights in India. An Indian creditor objected and argued that the security was invalid in Indian law and therefore the Administrator was invalidly appointed, the security was unenforceable in India and the Administrator had no right to sell those assets since they were the subject of ongoing insolvency proceedings in India. The court held that if the security was in place it was valid against all the assets of the company and an Administrator could be appointed. The Administrator therefore had the power to carry out his duties and sell the assets without regard to Indian law or local insolvency proceedings in the locale of the assets.

Marshalling and subrogation

In the case of McLean and another (as Joint Administrators of Dent Company (a partnership) (in administration)) v Berry and others [2016] EWHC 2650 (Ch) the court considered the issues of marshalling and subrogation. The bank had security over partnership and personal assets of the partners. Security had also been given to another creditor (the daughter of two of the partners "M") over specific assets. The bank was also given security pursuant to the Agricultural Credits Act 1928. The bank was paid from realisations not subject to the agricultural charge. The Administrators appointed by the bank then sought directions in respect of the payment of funds held. The court held that secured creditor M had the right in equity to require that the first secured

New Rules - Part 1

Continuing on from my last technical update I shall be highlighting some issues the New Insolvency Rules creates for IPs:

Forms

As noted elsewhere the forms for submission to Companies House will be produced by Companies House. The Insolvency Service have indicated on their blog that they will producing a limited number of forms going forward relating to rules: 7.41, 7.42, 7.69, 7.99, 7.100, 10.55, 10.56, 10.101, 14.4, 15.18, 16.2, 16.3 and 19.9. Practical Law have stated they will be producing precedents for many of the previous forms for their clients and the software providers VisionBlue and Turnkey have indicated they will be producing forms.

Calculation of Time Periods

The amendments to the current regime for calculating time periods seem a bit bizarre. The current wording indicates that, for example, 12 months will run from 10th October 2016 to 10th October 2017 which means in the following year when you report, you shall be reporting on 10 October 2017 to 10th October 2018. Effectively the IP would report twice on 10th October 2017 in two different reports in respect of an IP's receipts and payments account. Where the IP is claiming time costs there will be a duplication of the time reported in the period SIP 9 table provided by the IP.

These issues have been raised by Michelle Butler on the Insolvency Service Blog and it can only be hoped they are addressed before going live on 6th April 2017.

creditor be treated as having satisfied himself as far as possible out of the security to which the latter had no claim i.e. the agricultural charge. The court held M could claim the proceeds of the assets subject to the agricultural charge by the application of the principle of marshalling, and she was entitled to prove as an unsecured creditor in the administration for any shortfall. The other issue the court considered was whether the Trustees in bankruptcy could prove in the administration for a sum equal to the realisation of partnership assets falling outside the scope of the agricultural charge. The court held the principles of the Partnership Order 1994 applied and not the Partnership Act 1890 and therefore the Trustees could not prove.

Fees for distributing compensation funds to creditors

The Disqualified Directors Compensation Orders (Fees) (England and Wales) Order 2016 SI 2016/1047 which may be found here came into force on 30 November 2016. This allows for fees to be drawn by the Secretary of State for distributing funds to creditors under a compensation order. The Disqualified Directors Compensation Orders (Fees) (Scotland) Order 2016 SI2016/1048 which may be found here covers the same issue for Scotland and comes into force on the same date.

Bank Recovery and Resolution Directive

HM Treasury has published its response to the Bank Recovery and Resolution Directive 2014/59/EU (BRRD) which may be found here. As a consequence the following statutory instrument 'The Bank Recovery and Resolution Order 2016' has been drafted which may be found here.

New Insolvency Rules 2017

The Insolvency Service opened their Blog on the New Rules this week and already queries are being posted. I would suggest visiting their blog **here** to obtain the latest information on the difference between what is written and what is meant ;-). The Insolvency Service has also published a destination table which may be found **here**. Finally some good news, there will be amendments made to the New Rules before they go live.

Companies House & New Forms

Companies House has confirmed that they will be issuing forms in respect of the New Rules, although they are taking the opportunity to rename the documents.

Electronic filing of bankruptcy petitions

It has been announced that from 1 November 2016, bankruptcy proceedings in the multiple lists are to be dealt with in line with Practice Direction 51O, which provides for a pilot scheme for electronic working. The notification may be found here.

RBS to offer compensation to small business owners artificially distressed

The Royal Bank of Scotland is to set up a scheme to compensate some of its customers who claim to have suffered through the bank having artificially distressed small business owners for its own gain through its Global Restructuring Group. More information may be found here.

New Rules Part 1 - ctd

Be aware that the New Rules are not consistent in indicating when something should be sent and refers in some instances to "delivered by" and others "sent by".
Care is required especially as now you will be able to send documents by second class post.

Transitional Provisions

Another area that the Insolvency Service has taken an interesting approach to and a welcome one to IPs, I am sure, is the transitional provisions. The Insolvency Service has sought to make the New Rules applicable to all cases.
The transitional provisions therefore deal with what will occur if a process is intimated before the New Rules are implemented but is finalised after the New Rules come into force. An example would be where a meeting of creditors had been called before the 6th April 2017 but held after this date. For consistency the approach is that the process will need to be finished using the old rules.
As with all areas in the New Rules there are some errors which then make it unclear what an IP should do.
One particular area is annual meetings of creditors and members in a CVL where the case was pre 6th April 2010. The transitional provisions refer to a progress meeting under S104A still being required. Since a S104A progress meeting does not exist it is assumed that they are referring to the old S105. However, no similar requirement has been provided for in respect of an MVL still open but which commenced prior to 6 April 2010.
Pre 6 April 2010 bankruptcies and compulsory liquidations will not require annual progress reports to be sent.
For a more in depth analysis to Part 1 of the New Rules by Michelle Butler and other areas you may wish to purchase our webinars. Further information may be found here.

Compliance Alliance

Joanne Harris 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 both The Compliance Alliance and JOH Consultancy which offer a range of services that may be tailored to an individual IP's needs.

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