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TECHNICAL UPDATE

Employees, TUPER & Common Ownership

The Employment Tribunal recently ruled on whether employees made redundant prior to a company entering into Administration could bring an unfair dismissal claim against the connected company who purchased the assets from the Administrator. The tribunal held that there was a commonality of ownership between the original and the successor company and allowed the successor company to be joined in. The hearing will take place in May. Further information may be found [here](#) and [here](#).

Bankruptcy, Annulment & the Actions of the Trustee

In the case of [Oraki and another v Dean & Dean](#) (a firm taken over by the Law Society) [2017] EWHC 11 (Ch) the debtors obtained a conditional annulment order in 2013. Unfortunately the conditions of the order were not met and the bankruptcies continued. The debtors then submitted that the judgments had been obtained by fraud and that counsel had misled the judge at the previous hearing. They sought to void the judgment and all and any actions and costs. The court dismissed the application although the court was prepared to accept that the judgments had been obtained by fraud. The court held that even if it was held that the bankruptcy order ought not to have been made, the court had the discretion to determine the acts done were not void and the Trustee was entitled to be paid his costs.

Trust Assets & the Right to an Indemnity for Costs

In the case of [Gillan and others v HEC Enterprises Ltd and others and other applications](#) [2016] EWHC 3179 (Ch) the court considered the application from the claimants to continue with litigation despite the companies being in Administration and the application of the administrators of two companies for an indemnity for their costs out of the trust assets. The claimants had asked the administrators for permission to continue with the litigation which was denied. The administrators then tried to mediate between the parties and mediation failed. At para 40 of the judgment the judge stated that in respect of comments made in correspondence by the Administrators' solicitors "Such comments did not help to promote the prospect of progress by agreement between the parties. Further, such comments were revealing as to the attitude which the administrators were taking, presumably on the advice of [their solicitors]. The administrators' attitude was that they knew best and, in addition, they were entitled to be paid for the work they chose to do out of the assets owned by the Claimants." The claimants questioned the indemnity basis costs being sought and the judgment makes clear that all the costs sought on an indemnity basis were not appropriate. The judge suggested that the administrators should attempt to negotiate a settlement as to costs on the basis of the comments made in the judgment.

New Rules: Closures

The New Rules helpfully change the way we may close liquidation, bankruptcy and Administration cases.

[No more final meetings and no more Gazette adverts for final meetings BKY & LIQS](#)

There will certainly be a cost benefit to not having to call final meetings and advertise them.

[PROCEDURE MVL, CVL, CL & BKY Legislation](#)

MVL - S94 amended by SBEEA15 & R5.9 & 5.10

CVL - S106 amended by SBEEA15 & R6.28

Compulsory Liquidations (CL) - S146 amended by SBEEA15 & R7.71

BKY - S331 amended by SBEEA15 & 10.87

ALL except ADM - R18.14 content of final report or account.

[Opted out creditors](#)

The below does not apply where creditors have opted out.

[Notice](#)

Notice must be given to all creditors/members and the contents of the notice are detailed in the case specific rules.

[Proposed/Final Account R18.14](#)

Common to all is the need to send the final account/report compliant with R18.14. For MVLs though you send out a *proposed* final account to members. In CVL you send the final account to members as well as creditors. In BKY a copy of the final report is to be sent to the bankrupt.

[8 weeks notice](#)

The creditors are given 8 weeks from delivery of the report to object to the office holder's release, request further information or make an application to court to challenge remuneration or expenses.

Further implementation of the Dereg and SBEE Act 2015

The Deregulation Act 2015, the Small Business, Enterprise and Employment Act 2015 and the Insolvency (Amendment) Act (Northern Ireland) 2016 (Consequential Amendments and Transitional Provisions) Regulations 2017 is due to come in to force in March 2017. The document may be found [here](#).

Recast EC Regulation on Insolvency amended

The EU have issued a [Corrigendum to Regulation \(EU\) 2015/848](#) (i.e. the Recast EC regulation on insolvency due to come into force on 26 June 2017) of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings. The amendment clarifies that the regulation only applies to insolvency proceedings opened from 26 June 2017. A copy may be found [here](#)

Scotland and New Insolvency Rules

Scotland are now joining in and a consultation on [Public Services Reform \(Corporate Insolvency and Bankruptcy\) \(Scotland\) Order 2017](#) has been published with responses requested by 22 March 2017. Further information may be found [here](#).

Amendments to Special Administrations

The Investment Bank (Amendment of Definition) and Special Administration (Amendment) Regulations 2017 are due to come into force in February 2017 and a copy may be found [here](#). This brings in a duty for the administrator to co-operate with

the FCA and takes away a client's entitlement to interest on an unsecured claim for the return of client money (where the client does not claim against the client money pool for the period after the bank enters special administration).

Blog on Insolvency Rules

The Insolvency Blog on the new rules is being posted on by all so if you want to know some of the issues identified from the draft new rules I would suggest visiting it [here](#).

RPB Visit due?

If you are expecting a visit from your RPB soon then you might want to consider the following:

- If you provide services online then your website needs a link to the online dispute resolution platform (ODR), which may be found [here](#), this is required by the ODR Regulations (Regulation EU No.524/2013) which came into force in February 2016 and may be found [here](#).
- Dear IP 73 highlights the need for the AML due diligence to review the OFSI consolidated list of targets which may be found [here](#).
- Also, a letter from the bank confirming that funds are held on trust is being requested for client accounts from the RPBs.

New Rules and Webinars

Everyone is doing webinars on the New Rules. I would highly recommend the ICAEW's free webinars on the New Insolvency Rules one of which was given by Michelle Butler on 26 January 2017. More information may be found [here](#). We at The Compliance Alliance are also providing webinars on the new rules. If you sign up for a year you will also have access to our back catalogue, [here](#) is further information.

New Rules: Closures - ctd

Release and vacation of office

MVL - at the end of the eight weeks from delivery and within 14 days the liquidator needs to comply with S94(2) by sending the final account (i.e. not the proposed final account but the final version so will need to re-date as we do now) to the members and the Registrar of Companies (RoC). The final account also needs to be accompanied by another notice dealt with in R5.10. Once filed the liquidator vacates office under S171(6) and is released from office under S171.

CVL - at the end of the eight weeks from delivery and within 7 days of the end of the 8 weeks the liquidator needs to comply with s106 by sending the final account to the RoC together with a statement about any objections to release. Once delivered the liquidator vacates office under S171(7) and is released from office under S171.

CL - at the end of the 8 weeks from delivery the liquidator needs to comply with s146 by filing with the Court, RoC the and the Secretary of State (SoS) the final account. Once filed the liquidator vacates office under S172(8)(b) and is released from office under S174(4)(d)(ii) unless this is objected to.

BKY - at the end of the 8 weeks from delivery the liquidator needs to comply with s298(8) by filing with court, the Official Receiver and the SoS the final report. Once filed the Trustee vacates office under S298(8)(b) and is released from office under S299(3)(d) unless this is objected to.

Note: ADM to CVL - is reverting to pre April 2010 procedure where the final report and the conversion form (old 2.34B) are filed at the same time. This will create a small period of time between the final report and conversion to CVL which will need to be reported on in the first CVL report.

See Michelle's webinar for information on the anomalies between each of the processes.



Joanne Harris has 19 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.