

CASE LAW

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TECHNICAL UPDATE

When is a stay of proceedings appropriate?

In the case of [Hosking and another v Apax Partners LLP \[2016\] EWHC 1986 \(Ch\)](#) the joint liquidators who had issued proceedings in the US and the UK sought a stay of proceedings in the UK. The court would only stay proceedings in exceptional circumstances. In this case there was a claim of fraud and the person accused had the right for the matter to be dealt with expeditiously. The US court was also shortly to decide on the issue of *forum non conveniens* (whether to refuse to take jurisdiction over matters where a more appropriate forum is available to the parties). The court allowed a short stay of proceedings only.

Administration valid despite inquorate meeting

In the case of [Re BW Estates Ltd \[2016\] EWHC 2156 \(Ch\)](#) the judgment creditors sought to have the administration appointment invalidated and "to unwind the entire course of the administration, including the orders previously made, on the mistaken footing that the company had validly and effectively entered into administration". Since this was not the first application made by the judgment creditors which attacked the administrators and the fees of the administrators the court suggested that this application 'smacked of abuse'. The court held there were sufficient precedents to deal with any anomalies of the board

meeting and dismissed the application.

Should ulterior motives be considered when making a bankruptcy order?

In the case of [Maud v Aabar Block S.a.r.l and another \[2016\] EWHC 2175 \(Ch\)](#) the court decided that the registrar had not taken the correct approach to the bankruptcy petition as a matter of law; having focused on whether there was an ulterior motive and not on addressing the interest of the class of creditors and weighing their views. The court therefore allowed the appeal and requested evidence be provided for the issues as detailed in this judgment to be reviewed and determined.

Classes in a Scheme of Arrangement

In the case of [Re SABMiller plc \[2016\] All ER \(D\) 47 \(Sep\)](#) the court reviewed the proposal for a scheme of arrangement and decided on the issue of whether larger shareholders would be deemed to be a separate class. In this case two majority shareholders held 40% of the shares and had already provided undertakings to accept mixed cash and shares for consideration and committed to a 5 year lock up which would not be attractive to minority shareholders. The principle to determine whether to treat a class as the same is whether those 'persons whose rights in a scheme of arrangement are so dissimilar that they cannot

October 2015 Legislative changes

As promised a further review of legislation introduced before we move on to the draft new rules next month. If you prefer a webinar, one on legislative changes over the last 12 months is available and further information may be found [here](#).

Fees - Insolvency (Amendment) Rules 2015

Not surprisingly top of the list for changes was fees and I would recommend one of Michelle Butler's webinars on fees if you are still feeling lost with the plethora of information provided by the RPBs.

IP record - The Insolvency Practitioners (Amendment) Regulations 2015

No more IP record, but the legislation now requires you to document administration of the case and material decisions.

Essential supplies - Insolvency (Protection of Essential Supplies) Order 2015

Essential supplies now includes IT suppliers and prevents suppliers from terminating or charging higher prices. The downside is that a personal guarantee is still required and supply can be terminated if payment for supplies is outstanding 28 days after payment is due.

Debt relief limits (DROs) and creditor petition level increases

DRO - debt increased to £20k, max assets £1k, value of motor vehicle £1k ([order here](#))
BKY - creditor petition increased to £5k ([order here](#))

sensibly consult together with a view to their common interests'. In this case it was clear that the majority and minority shareholders were dissimilar and should be treated as different classes.

New legislation

The Insolvency (Amendment) (No. 2) Rules 2016 SI 2016/903 came into force on the 3 October 2016 and may be found [here](#). The Rules make provision for the court to which an appeal should be made against a decision in proceedings under the Insolvency Act 1986 relating to corporate insolvency. Also [The Compensation Orders \(Disqualified Directors\) Proceedings \(England and Wales\) Rules 2016](#) came into force 1 October 2016 and a copy may be found [here](#).

New Insolvency Rules 2017

The Insolvency Service (IS) aim to lay the draft New Insolvency Rules before Parliament the week commencing 10th October with introduction still planned for April 2017. For further information you may wish to review our latest blog by Michelle Butler [here](#).

Practice Direction amendments

The Ministry of Justice has published the 86th Update—Practice Direction Amendments Making Document. Almost all of the amendments to the CPR Practice Directions will come into force on 3 October 2016. An interesting amendment is the right for the Court of Appeal to consider an application for permission to appeal; they now are able to "call in" the applicant for oral hearing or require further information. Registrars in bankruptcy are now being added to the list of judges who are "the court" correcting an earlier

oversight. The statutory instrument may be found [here](#) and the explanatory memorandum may be found [here](#). Practice Direction 510 - The Electronic Working Pilot Scheme has been extended for another year until 16th November 2017. A copy of the Direction 510 may be found [here](#).

Bonding

The IS is reviewing the bonding regime in insolvency and issued a call for evidence on the following issues:

- how the current bonding system works
- the weaknesses with the current bonding system
- what similar system operates in other professions
- potential non-legislative and regulatory changes
- potential options for legislative change

It seems that neither the Creditors nor the Insurers are happy with the current regime. Information on the matter and where to submit your evidence may be found [here](#).

IS recommendations for RPBs' complaints procedures

A report from the IS has set out a three recommendations for Recognised Professional Bodies (RPBs) to improve their procedures for complaints handling:

- RPBs should always approach the IP for information in respect of the complaint
- RPBs should discuss with IS the feasibility of providing compensation from the IP to the complainant
- RPBs experiencing particular issues in progressing cases should discuss with the Insolvency Service their plans for ensuring timely progression of complaints.

A copy of the report may be found [here](#).

October 2015 Legislative changes- ctd

Deregulation Act 2015

Authorisation of IPs - Secretary of State no longer able to directly authorise.

Appointment and release of Administrators - where there is no QFC there is no longer a requirement to notify prescribed persons - Minmar has been addressed. Also where a para 52(1)(b) statement is made, unsecured creditors' approval is not required for discharge from liability, para 99. Bank accounts for bankrupts - now ensures greater protection for banks in respect of 'after acquired property' where a bankrupt is provided a bank account before his discharge.

Deeds of Arrangements - repealed CDDA and information from third parties - the Secretary of State may now approach third parties directly for information.

Small Business, Enterprise and Employment Act 2015

Disqualification - expanded to include: conviction abroad, person who influences or instructs unfit director. Also allows for proceedings up to 3 years after insolvent event. The legislation also introduces

- Compensation Orders
- D reports on cases post 6th April 2016 - file online and within 3 months

Other areas:-

- giving Administrators the power to bring s213 and s214 actions;
- giving Administrators and Liquidators the power to assign rights of action in relation to s213, s214, 238, s239 & s244;
- setting out that the proceeds of any such claims (whether assigned or dealt with by the office holder) will not be available for floating charge-holders;

Further information may be found in Dear IP 68 and Technical Bulletin 112.



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.