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TECHNICAL UPDATE

ISA and Third Party Funds

In the case of *Safier v Wardell and another (Joint Trustees in Bankruptcy of Safier)* and another [2017] EWHC 20 (Ch) the court was asked to consider the question of whether Secretary of State administration fees were payable on third party funds received to meet the liability of the bankruptcy. In this case there was an asset, which if realised, would have been sufficient to pay creditors in full. The Insolvency Service, for some reason, had changed its stance on this issue and was arguing that the fee was payable. The court has determined that "the receipt of third party funds is not part of the Trustee's function and the moneys are not payable into the ISA account" and consequently provided that the moneys are not paid into the ISA the Secretary of State fee is not payable. The recent Dear IP 77 has made it clear that on the basis of this judgment third party funds are no longer to be paid into the ISA account.

Directions from court on finalisation of expense claims

In the case of *Re Nortel Networks UK Ltd and others* [2017] EWHC 1429 (Ch) the administrators made an application to court for directions on how to finalise outstanding administration expense claims and the regime to be applied, since this is not covered under the insolvency rules. The court order obtained accommodated various different types of creditor but did allow for

the Administrators to advise expense creditors of a date for submitting their expense claim. The court was at pains to point out that it was not trying to change the order of priority and that expense creditors could make a claim after the date given but they would then only be able to be paid from the remaining funds in the Administration if there were any.

Admission of dishonesty not possible in consent order

In the case of *Re FW Mason & Sons Ltd (in creditors' voluntary liquidation); Richardson and another v White and another* [2017] EWHC 1512 (Ch) proceedings were issued by the liquidators against the former administrators and liquidators of the company under para 75 Sch B1 and S212 IA86. Immediately prior to the trial, one of the former administrators/liquidators agreed to an order by consent for all amounts requested but refused to sign an order by consent which stated he had been dishonest. The liquidators' apparent reasoning for seeking a consent order stating the IP had been dishonest, is that this might help them to make a claim under the IP's bond. The judge determined that it was not appropriate to make a court order by consent which admitted dishonesty. It was also not appropriate for the court to hold a hearing determining the issue of dishonesty alone when the respondent had agreed to an order to the monetary amount claimed. The reason for not having a hearing purely on the

Money Laundering

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017) came into force on 26 June 2017 and only 4 days' notice of the final version was given. The regulations are available [here](#). This is a rather tongue-in-cheek cherry pick of the new MLR 2017.

The Treasury and the Home Office have to do a huge risk assessment and have until 26 June 2018 to publish the results of the risk assessment BUT they may or may not make it all available to supervisory authorities depending on what's in it!

Before HM Treasury and the Home Office have published their assessment the Supervisory bodies (which will include all RPBs) need to do their own risk assessment which may change when HM Treasury finally make some/all of their assessment available!

Supervisory Bodies need to create risk profiles for each of their members, although in certain circumstances they can create a single risk profile for a "cluster" of members. Since insolvency stands alone, I assume IPs will not be part of a "cluster".

So finally on to IPs who have to do a risk assessment of their business as a whole, but again there is no requirement for RPBs to do their risk assessment first or provide the risk profile to IPs prior to them undertaking their own risk assessment.

issue of determining dishonesty was that the third party, the bond provider, was not joined to the proceedings.

Recast Regulation comes into force

The [Insolvency Amendment \(EU 2015/848\) Regulations 2017 SI 2017/702](#) came into force on 26 June 2017. There will be the need to make amendments to document packs to reflect the changes. The statutory instrument may be found [here](#).

Insolvency regime for Further Education

The [Technical and Further Education Act 2017](#) was given royal assent on 27 April 2017. The Further Education Act introduces an insolvency regime. The Act may be found [here](#).

Launch of Business and Property Courts

The Launch of Business and Property Courts will take place in Birmingham (6th July), Leeds (10th July), Manchester (11th July), Bristol (14th July) and Cardiff (24th July). The 'go-live date' for all of the courts is 2 October 2017. Further information may be found [here](#).

Chancery Guide amended

Chapter 30 of the Chancery Guide has been amended and may be found [here](#).

Protection for holiday bookings online

The Government is seeking to introduce legislation to protect individuals who book holidays online. Further information may be found [here](#).

European Central Bank proposes harmonisation of insolvency law

The European Central Bank on 7 June 2017 made a proposal for an EU directive on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU. Further information may be found [here](#).

Lord Neuberger & Cross Border Insolvency

On 19 June 2017 Lord Neuberger made a keynote speech to the International Insolvency Institute Annual Conference. The speech may be found [here](#).

UK Jurisdiction after Brexit

Sir Geoffrey Vos, Chancellor of the High Court, on 20 June 2017 gave a Lecture to the Faculty of Advocates on "The UK Jurisdictions After 2019" which may be found [here](#).

Protocol for Natural Person Proceedings

INSOL International has issued a "Protocol for International Recognition of Insolvency Proceedings Affecting Natural Persons (the "Protocol")" which may be found [here](#).

Pensions Regulator Report on BHS

The Pensions Regulator (TPR) has published a report into its involvement with the BHS pension scheme which may be found [here](#).

Money Laundering - ctd

IPs will need to document policies, controls and procedures they establish to mitigate and manage risks of money laundering and terrorist financing. So even more paperwork!

Regulation 21 requires IPs to screen employees which includes assessing skill, knowledge, expertise, conduct and *integrity*. I look forward to seeing how firms put in place an assessment for integrity.

Regulation 26 states that the beneficial owner, officer or manager of a firm will need to be approved by the supervisory authority and applications must be made by 26 June 2018. I am sure all the RPBs will be putting in place a system for the submission of applications shortly. Unfortunately though this may mean making an application to more than one RPB as the MLR 2017 widen the scope of supervisory authorities to their members, not just their "regulated" members. Therefore, for example, you may be qualified... and thus it would seem that both supervisory authorities would need to approve you.

Regulation 31(5) is slightly odd in that it allows an insolvency practitioner who has been appointed by the court as either Administrator or Liquidator but not a Trustee to continue even if the IP has been unable to apply customer due diligence.

Risk factors to assess the level of risk, and in particular to indicate high risk are dealt with in Regulation 33 which will be in the body of most checklists I am sure.

You may also want to think about how to document and establish centre of main interest (COMI) for corporate and personal insolvency on non-court appointments. ML checklist seems like a ideal place to add to your COMI issues.



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.