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# TECHNICAL UPDATE

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## ...and there's more out of hours appointments & electronic filing

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In the case of [Causer and another v All Star Leisure \(Group\) Ltd \[2019\] EWHC 3231 \(Ch\)](#) the parent company and five subsidiaries were to be placed into administration with a pre-pack immediately occurring. A petition had been issued against the parent company and the appointment was therefore progressed by the QFC with the directors placing the other five companies into Administration. The directors' appointments were all filed within court hours, however the appointment documents of the parent company, due to various filing difficulties with the e-filing system, occurred out of court hours. The conclusion of the judge was that the Practice Direction 510 (PD 510) prohibits out of hours filing by the QFC, but that the default is not fundamental and because no injustice had been caused, he was able to make an order curing the defect under R12.64. The recommendation by the judge was that PD 510 should be amended to allow out of hours appointments.

### Improper motive of QFC

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In the case of [C A & T Developments Ltd Koon v Bowes and others \[2019\] EWHC 3455 \(Ch\)](#) two individuals set up a company for the purpose of a business venture with a Singapore businessman Mr Koon. Mr Koon provided over £309k for a property development project where he would be repaid

his original investment and obtain 60% of the net profits of the venture. The land was purchased and planning permission obtained, however one of the directors was diagnosed with a terminal illness and the other director Mr Parker allowed the planning permission to lapse. Mr Parker had himself been replaced as director by his father but for all intents and purposes continued acting as the director. Mr Parker then claimed he was owed £109k by the company and instructed solicitors to obtain a fixed and floating charge over the company's assets. The company paid for the legal fees incurred in obtaining this charge which Mr Parker purported were part of the debt secured by the charge. Mr Parker as the QFC then placed the company into administration. Mr Koon, as the majority creditor, rejected the administrators' proposals and sought to have the administrators cease to be in office or replaced. The judge determined that under para 81 Sch B1 he could cease the appointment of the administrators based on the improper motive of the QFC. The judge held that the security was susceptible to challenge but there was a conflict of interest in the administrators challenging the validity of security since they had been appointed by the QFC. The judge provided for the administrators' appointment to cease immediately and allowed Mr Koon to proceed with his petition which had been stayed by the administration.

### Bank's duty of care

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In the case of [Singularis Holdings Ltd \(in official liquidation\) \(a](#)

[company incorporated in the Cayman Islands\) v Daiwa Capital Markets Europe Ltd \[2019\] UKSC 50](#) the Supreme Court upheld the decision that a duty of care was owed by the bank as set out in the case of [Barclays Bank plc v Quincecare Ltd](#) and another [1992] 4 All ER 363. The distribution of c. £204 million to connected companies in the group with no justification for the company to make these payments should have alerted the bank. The defences put forward by the bank, which arose from its breach of duty by reason of illegality on the respondent's part, a lack of causation or a counterclaim available to the appellant because the payment instruction was itself a deceit, were dismissed.

### Employment Tribunal and Insurance

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In the case of [Watson v Hemingway Design Ltd \(In liquidation\) & Ors \(UKEAT/0007/19/JOJ\)](#) the main issue in this appeal is whether an employment tribunal has power to determine an insurance cover dispute between a claimant and the insurer of an insolvent respondent, where the insured's rights to insurance cover have vested in the claimant under the Third Parties (Rights Against Insurers) Act 2010 (of the 2010 Act). It was clarified that the employment tribunal was "the court" within the meaning of section 2(6)(the 2010 Act) and therefore had power to make declarations under the 2010 Act as to the liability of the insurer as well as of the insured. As an aside the judge also stated that the

arbitration clause would not apply to the Employment Tribunal.

### TUPE applies to workers, not just employees

In the case *Dewhurst v (1) Revisecatch Ltd t/a Ecourier (2) City Sprint (UK)* (Case Numbers: 2201909, 2201910, 2201911/2018) the individuals were cycle couriers working for City Sprint however City Sprint lost a contract and Ecouriers, the winners of the contract, took over their employment but failed to inform or consult under TUPE 2006. The Employment Tribunal determined that the definition of 'employee' in regulation 2(1) of TUPE 2006 covers not only 'employees' in the traditional sense, but also those who are 'workers' under limb b) of S230(3) of the Employment Rights Act 1996 and 'employees' under section 83(2) of the Equality Act 2010. This is a first instance decision.

### Is a CVA able to be revoked once it has terminated?

In the case *Re Regis UK Ltd (in administration) Williams and another v Carraway Guildford (Nominee A) Ltd and others*[2019] EWHC 3073 (Ch) various landlords had issued proceedings against the supervisors for material irregularity and unfair prejudice and sought to have the CVA revoked. The hearing was set for 2 December 2019. On 23 October 2019 the company entered administration and the CVA was terminated. The former supervisors applied to strike out the proceedings on the basis that the CVA could not be revoked since it had been terminated. The court held that there was no precedent to suggest a terminated CVA could not be revoked and dismissed the application for strike out allowing for these matters to be dealt with as part of the hearing on 2 December 2019, the outcome of which is awaited.

### Fifth Money Laundering Directive

The *Money Laundering and Terrorist Financing (Amendment) Regulations 2019* comes into force 10th January 2020 and may be found [here](#). amongst the key change seems to be the obligation to check the Persons with Significant Control with the registrar (i.e., Companies House) and report any discrepancies you identify. The ICAEW have a post about it which may be accessed [here](#), advising that the CCAB are working on updating their AML guidance.

### EU Withdrawal Agreement Bill

The European Union (Withdrawal Agreement) Bill referred to in the Queen's Speech is available [here](#) and has had its second reading. Specific to insolvency we have The Insolvency (Amendment) (EU Exit) (No.2) Regulations 2019 which adds to the original The Insolvency (Amendment) (EU Exit) Regulations 2019 both of which may be found [here](#) and [here](#).

### Scottish Insolvency queries

As previously advised the Insolvency Service published queries on the new Scottish insolvency legislation and the link now appears to work and is available [here](#).

### Reuse of company name

Dear IP 91 which may be accessed [here](#), brought to IPs' attention the updated guidance issued on gov.uk on 21 Nov 2019 available [here](#). Michelle, in her recent blog, covered the difficulties of applying the exemption legislation, as well as reviewing pre-pack sales generally which you may find [here](#).

### Code of Ethics

ICAS has issued their new code of ethics, but did not include the the insolvency specific section, effective from 1 January 2020 which is available [here](#). The ICAEW hosted a webinar on the proposed new Code of Ethics in December 2019 and suggested this including the Insolvency Code would be introduced in the first quarter 2020. The most recent draft with tracked changes is available [here](#) but is two years old.

### Disguised remuneration independent review

In September 2019, the Chancellor commissioned an independent review into the disguised remuneration loan charge. The review was to consider whether the policy is an appropriate response to the tax avoidance behaviour in question, and whether the changes the government had announced to support individuals to meet their tax liabilities had addressed any legitimate concerns raised. The government has now published its response which may be found [here](#). R3 has also published a technical alert on this issue which may be accessed [here](#). HMRC have also issued guidance which has a useful summary and is available [here](#).

### HM Land Registry Guides

HM Land Registry have updated the following three guides:

- Charitable incorporated organisations (PG14A) [here](#),
- Discharge of charges (PG13) [here](#), and
- Boundary agreements and determined boundaries (PG40s4) [here](#).



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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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