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TECHNICAL UPDATE

S363 & court's power to determine IP's legal costs

In the case of *Ardawa v Uppal and another* [2019] EWHC 1663 (Ch) the court considered the issue of appeal costs of the debtor, the petitioning creditor and the IP's solicitors. The court held that the petitioning creditor would have the costs she could recover reduced, to take into account her conduct and certain aspects of her claim. The fact that the trustee's costs of legal proceedings were payable out of the estate determined the source from which the fund would come. It did not remove the normal role of the court regarding the costs of legal proceedings conducted before it. The court relied on S363 IA 86 to support its contention that it could determine the issue of the IP's solicitor's costs and was not prevented from assessing them despite the IP contending that they were an expense of the bankruptcy under R10.148 and that any challenge was governed by R18.35.

Adjudication & CVA

In the case *Indigo Projects London Ltd v Razin* [2019] EWHC 1205 (TCC) (17 May 2019) the TCC has declined to enforce an adjudicator's decision due to Indigo's company voluntary arrangement (CVA), finding that to do so would interfere with the CVA supervisors' accounting exercise to calculate the balance due between Indigo and its creditors. This was because the payment to Indigo ordered by the adjudicator might have to be repaid, and the

operation of set-off arrangements in the CVA would inevitably lead to a loss to the Razins. One of the distinguishing features of the case is that Indigo's CVA was entered into after the adjudicator's decision and after the enforcement application had been made. However, the judge felt that because the adjudicator's decision related to a payment that was, in effect, an interim payment in circumstances where the Razins had not submitted a pay less notice (known as a "smash and grab" adjudication), the adjudicator had not carried out a determination of the parties' claims and cross-claims. This was something the CVA supervisors would do for the first time as part of the CVA.

MVL & Associations

In the case of *Qureshi (in her capacity as liquidator of Edgware Constitutional Club Ltd) v Association of Conservative Clubs Ltd* [2019] EWHC 1165 (Ch) the question in issue was whether the current members of an incorporated club can decide to sell off the club's assets, wind up the club's operations and distribute the club's hefty surplus amongst themselves. The alternative, especially if the club is part of a network of similar clubs engaged in the same endeavours, is that the accumulated funds must remain dedicated to achieving these clubs' broad social and philosophical objects. The court held that the correct approach depends on the application of statute, the general law and the liquidating club's own

constitutional rules. In this case the court held that the liquidator was validly appointed and distributions to the members was also valid and funds did not need to be returned to the Association.

Capacity of litigant

In the case of *Access Flooring Services (Special Works) Ltd and others v Pither (a protected party by his litigation friend) and another* [2019] EWHC 1243 (Ch) the court addressed the issue of a director's capacity to litigate due to a psychiatric illness issue that had arisen. The court in this case appointed a litigation friend and the claim proceeded to trial. At the trial it was clear that there were gaps in the evidence presented on behalf of the director and the court determined that it was not appropriate to draw adverse inferences from the lack of witness statement. However, there was an obligation on the director to maintain records which explained payments made and inferences could be drawn from the lack of records and notes.

Financial Support Directions

In the case of *Granada UK Rental & Retail Ltd and others v The Pensions Regulator and another* [2019] EWCA Civ 1032 the Court of Appeal upheld the decision of the Upper Tribunal and confirmed it was reasonable to impose financial support directions on five companies in the group and that it was able to consider events which occurred prior to the

Pensions Act 2004 came into force.

HMRC & Preferential status

HMRC has issued a policy paper together with draft legislation on the implementation of HMRC being a preferential creditor for implementation April 2020. These documents are available [here](#).

Draft Finance Bill 2020

The Draft [Finance Bill 2020](#) details key insolvency measures, and in particular, powers to deal with tax abuse in insolvency. Draft legislation is available [here](#) and the policy document is available [here](#).

SBEE amendments

The [Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2019](#) came into force on 23 July 2019 and make a minor amendment to the Insolvent Partnership Order 1994. A copy is available [here](#).

Scottish legislation

The [Insolvency \(Scotland\) Rules 2018 \(Miscellaneous Amendments\) Rules 2019](#) came into force on 23 July 2019. The legislation may be found [here](#).

New Insolvency Law Dubai

The Dubai International Financial Centre enacted new insolvency law from 30 May 2019. Further information may be found [here](#).

EU Insolvency Register

The Official Journal of Implementing Regulation sets out the technical specification for interconnected insolvency

registers in the EU, as mandated by the Recast Insolvency Regulation. The interconnected system is due to be operational by [30 June 2021](#). Further information may be found [here](#).

EU adopts new rules on early restructuring

The European Commission has announced new rules making early restructuring procedures to prevent insolvency for viable businesses available throughout the EU. The directive intends to develop a new culture of preventive restructurings. Member States must implement provisions to comply with most provisions within two years from when it comes into force. Further information may be found [here](#).

Fifth Money Laundering Directive

The Transposition of the Fifth Money Laundering Directive consultation is available [here](#). The consultation closed in June, however, the extent to which this is adopted will depend on Brexit.

“Signed as a Deed” no longer acceptable

HM Land Registry issued Practice Guide 8 on 20 June 2019 which clarifies the wording required where deeds are to be executed by corporate bodies. Further information may be found [here](#).

Beneficial Ownership Register

The governments of Jersey, Guernsey and the Isle of Man jointly announced on 19 June 2019 a series of steps regarding each jurisdiction's central register of beneficial ownership information of companies and how they will

move towards developing international standards of accessibility and transparency in the coming years. Further information may be found [here](#).

MVL to CVL ICAEW guidance

The ICAEW has issued guidance on its [blog](#) about the issues surrounding MVL to CVL conversions and EBTs which is available [here](#).

ICAEW & ICAS Monitoring Reports

The ICAEW and ICAS published reports on insolvency monitoring and common compliance issues they are finding, they may be found [here](#) and [here](#).

PPF Guidance

The PPF has issued Guidance Note 8 which deals with ‘Situations involving new or successor schemes’ and is available [here](#).

Pre Pack Pool 2018 Report

The Pre Pack Pool (PPP) has published its report for 2018 which is available [here](#).

IPA IT Security Policy

The IPA handbook has been updated to include an IT Security Policy Guidance for members which may be found at section 5.4 in their printed handbook. Unfortunately there are still no New Rules compliance review checklists available.

FCA Final Report on RBS

The FCA published its final report in relation to RBS GRG on 13 June 2019 which is available [here](#).



Joanne Harris has 21 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.