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TECHNICAL UPDATE

ADMs, ADMs, ADMs

In the case *Re Symm & Company Ltd* [2020] EWHC 317 (Ch) the court concluded that an out of hours appointment notice filed electronically by the company's directors would not take effect until 10 am the next business day. However, if a QFCH had filed out of hours electronically then the appointment would take effect from when the electronic document had been filed.

Counting to 10!

In the case of *Re Statebourne Cryogenic Limited* [2020] EWHC 231 (Ch) the court considered the issue of whether a notice to appoint administrators had been filed within the 10 business day period or outside of the period. The issue arose due to the initial documentation being rejected due to the incorrect court being named on the documentation filed. The court concluded that the period of ten days commences on the date on which the notice of intention to appoint is filed with the court which contradicts the case of *Keyworker Homes*. The defect was however deemed to not invalidate the appointment as there was no substantial injustice caused.

Directors' duties in CVL & ADM

In the case of *Re Systems Building Services Group Ltd* [2020] EWHC 54 (Ch) the court held that directors' general duties under S171 to 178 CA06 survive the

company entering into administration or CVL and allowed an application by the company in liquidation for a declaration that the director was in breach of his duties and for consequential relief.

Retrospective ADM order

In the case of *London Capital and Finance Plc (In Administration) v London Oil & Gas Ltd (In Administration)* [2020] EWHC 35 (Ch) an application was made by the QFCH reappointing the previous administrators whose appointment had been brought into question by the director, who was the subject of a s236 IA86 application by the administrators. The court determined that the board minutes placing the company into administration had flaws because they did not provide for the specific appointment of the individual administrators but had specified the accountancy firm and did not delegate authority to provide for personal appointments. The minutes also did not enable the procedural requirements to appoint administrators to be carried out. However, the court chose to assume the administrators had been validly appointed so that the court could terminate the appointment under para 79 Sch B1 and then reappoint them without having to make a retrospective administration order. The court also dismissed the director's interest in making a new administration order since his interest was merely to defeat the existing s236 IA86 application.

Pension Bill 2020

The Lords Select Committee on 13 Feb 2020 has published its report on the Pension Bill which may be found [here](#). As advised previously the proposed legislation will have an impact on restructuring financially distressed groups with a UK defined pension scheme.

New Insolvency Legislation for Guernsey

The Companies (Guernsey) Law, 2008 (Insolvency) (Amendment) Ordinance, 2020 passed into law on 15 January 2020 bringing the island's insolvency legislation inline with the UK, the British Virgin Island and the Cayman Islands. The legislation may be found [here](#).

CGT on Residential property

The government from 6 April 2020 is changing the requirement to account for Capital Gains Tax on the sale of residential properties which may impact dealing with rental properties in bankruptcies. Further information may be found [here](#).

Guidance Note by High Court

The Chancellor of the High Court has issued a guidance note clarifying the procedure to be used in the Business & Property Courts regarding the appointment of an administrator when an

application is made electronically outside court hours. Considering there have been three cases on the validity of appointment this month alone, this is a timely publication. However, the guidance seems to be to follow the requirement of the rule for out of hours appointments and use a fax to serve on the court, or risk a determination by a judge who may require further submissions and who will determine the date and time of appointment which may not be when the court received the electronic documents. The guidance may be found [here](#).

Chancery Guide

The Chancery Guide was updated in February 2020 with the following: Ch. 1 (new wording for introduction); Ch. 2 (new contact details for Judges and Clerks); Ch. 14 (clarification re distribution of work before ICC Judges); Ch. 21 (change of details for transcript requests) and Ch. 25 (change of time for delivery of bundles in the ICC Court). The updated guide may be found [here](#).

New Companies House Form for Scottish VA

Companies House have produced a new form to be submitted when the court makes an order for a voluntary arrangement or moratorium in a Scottish case which may be found [here](#).

ICO-FCA-FSCS Joint warning

The ICO, FCA and FSCS have issued a joint warning to FCA regulated firms and IPs to be responsible when dealing with personal data. The statement may be found [here](#). The warning was issued due to the identification of IPs attempting to sell data to claims management companies (CMC) unlawfully. The normal consent provided by

individuals is highly unlikely to be wide enough to constitute consent to having their data shared with CMCs.

ICO Consultation on marketing

The ICO has published a consultation on the draft marketing code of practice which closes on 4 March. The reason this is of interest to IPs is that this may impact the ability to sell client lists if the only way to contact the client is via email. Information on the consultation may be found [here](#). You may therefore wish to raise the request of IPs being exempt in order to extract best value from an insolvent company. You can email your response to directmarketingcode@ico.org.uk or print and post to: Direct Marketing Code Consultation Team, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

New Insolvency Code of Ethics

The new Code of Ethics is now available and is due to come into force 1 May 2020. The final version with guidance from the RPBs may be accessed for IPA members [here](#) and for ICAEW members [here](#).

We will be recording a webinar to help clients understand the new Code of Ethics, the practical steps needed to comply and the recommended changes and introduction of documents to evidence compliance. Information about access to our webinars may be found [here](#).

AML & Reporting

There is a useful article on the ICAS website on the reporting requirements of IPs under The Money Laundering and Terrorist Financing (Amendment)

Regulations 2019 which may be found [here](#).

R3 New Website

R3 has launched a new website which inevitably means links have been lost to key documents. They have kindly identified the key documents moved and provided a way to obtain the new link via the document [here](#).

NEST: Pension provider update

R3 has provided an update from NEST on changes to their insolvent employer processes which may be found [here](#).

PPF as Creditor

The Pension Protection Fund (PPF) have recently provided information on where and how to make payment to them via an insolvency or restructuring process which is available [here](#).

IVA Benchmark Scheme Report

The IPA has produced its first benchmark report on its new Scheme, which was implemented in January 2019, to regulate Insolvency Practitioners who operate large volumes of personal insolvency cases which is available [here](#).

New Chief Executive of Insolvency Service

Dean Beale has been appointed as the new Chief Executive Officer of the Insolvency Service. He took up post on 2 December 2019. An announcement was made [here](#) on 7 Jan 2020.



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.