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TECHNICAL UPDATE

Equity of Exoneration

In the case of [Armstrong \(as Trustee in Bankruptcy of Onyearu\) v Onyearu \[2017\] EWCA Civ 268](#) the court reviewed the principles of equity of exoneration and in particular whether the wife benefited from the husband's loan to support the business. The wife and husband had separate incomes with the husband paying the mortgage, which was in his sole name but the beneficial interest was held jointly, and the wife paid all other household bills and expenses. The husband experienced financial problems with his business and took out a loan secured over the property. The Trustee sought to realise the husband's interest in the property and the wife claimed equity of exoneration in respect of the loan. The Court held that an indirect benefit of the type relied upon in the present case was far from certain to accrue. Any benefit was subject to a double contingency: first, that the firm would survive and, secondly, that it would be profitable. Therefore the wife was entitled to expect that the repayment of the loan should come from her husband's share where possible.

Equitable Accounting

The case of [Davis \(As trustee in bankruptcy of Jackson\) v Jackson and another \[2017\] EWHC 698 \(Ch\)](#) reviewed the issue of equitable accounting and what should be taken into account. In this case the husband and wife had declared in a land registry TR1 transfer form for the property to

be held on trust for them as joint tenants. The husband had never lived at, or contributed to, the property and had subsequently been made bankrupt. The wife claimed that all payments made in respect of the property should be taken into consideration. The court held that only payments she had made under the mortgage(s) from the date the property had been purchased to the date upon which the property was sold should be taken into consideration. The court further ruled that there should be no credits in respect of other payments which the wife had made, and no debits in respect of her occupation of the property.

Disclaiming property

In the case of [Abdulla v Whelan \(As Trustee in Bankruptcy of Amin\) and others \[2017\] EWHC 605 \(Ch\)](#) the Official Receiver and the Trustee both disclaimed their interest in an underlease which was held jointly with the bankrupt and another party. However, it was accepted by the Trustee, after obtaining counsel's opinion that it did not end the legal estate in the underlease and the estate of the bankrupt still remains liable for the rent until the expiry of the term of the lease. However the bankrupt's spouse, who claimed to be a creditor, argued that the legal interest had been terminated and no rent was due from termination. The Trustee applied to court for directions on this issue and the court held that legal interest in the underlease remained and rent continues to be payable to the landlords.

Dear IP 76

The Insolvency Service (IS) worked very hard to issue responses to outstanding queries on the IS Blog, their many answers may be found [here](#) about the new rules. They also issued a new Dear IP before the pre election period, also known as Purdah commenced.

I have summarised some key points from the Dear IP below:

[Limited Liability Partnerships](#) - these are still being conducted under the 1986 Insolvency Rules.

[Voluntary Arrangements](#) - The IS believes that the 2016 rules are caught by T & Cs' definition of "the rules as amended" and they illustrate the likely consequences of this for Protocol IVAs. I am not convinced that their view is correct and would suggest IPs seek their own legal advice on this issue. The position for R3 T & Cs has not been clarified.

[Electronic and correspondence voting](#) - since R15.31(8) clearly states votes may not be changed once cast, the IS is suggesting for CVAs and IVAs that IPs invite creditors to submit proposed modifications in advance of formally voting so that these may be discussed with creditors and debtor/company.

[Deadlines for physical meetings](#) - the IS have stated that a request for a physical meeting must occur before the decision date, however this still does not stop a centrebind for deemed consent in S100 since objections will also lead to physical meeting.

'Propose' or 'intend': is there a difference?

In the case of *JCAM Commercial Real Estate Property XV Ltd v Davis Haulage Ltd* [2017] EWCA Civ 267 the Court of Appeal reviewed the decision on whether it was appropriate to issue four *notices of intentions to appoint* for the purpose of creating a moratorium so that creditors may consider a CVA proposal. A creditor, who was in the middle of possession proceedings, applied to have the fourth notice of intention to appoint removed to allow them to proceed with the possession proceedings. The court initially held that a director could propose to appoint an administrator without the intention of appointing. The Court of Appeal held that a notice of intention to appoint would be invalid if there was no intention to appoint an Administrator.

Exiting the EU

The government's white paper on Legislating for the United Kingdom's withdrawal from the European Union may be found [here](#). The paper deals with the government's approach to the Great Repeal Bill.

Revised Code of Ethics

The Joint Insolvency Committee (JIC) is consulting on a revised version of the Code of Ethics applicable to insolvency practitioners. A copy of the draft Code of Ethics with tracked changes may be found [here](#). The consultation closes 25 July 2017. Further information may be found on the ICAS website which seems to comprehensively cover the issue with an explanatory note, consultation questionnaire, draft code and draft code with tracked changes and may be found [here](#).

VAT 700/56 updated

HMRC have updated VAT Notice 700/56 insolvency and the details of the changes may be found in part 1.1 of the notice. The notice may be found [here](#).

Insolvency Service Guidance

The Guidance on personal debt relief options, company liquidation, investigation and enforcement have been updated in light of the new insolvency rules going live on 6 April 2017 and new guides may be found [here](#).

E-portal

This seems to not be quite ready for Administrations, work arounds are being recommended by the court to be able to file the relevant papers. The updated practice direction 510 has also yet to be updated and when it does, it may have implications for the out of hours process for appointing administrators r3.20.

Fraud Compensation Levy

The PPF confirmed plans to raise a Fraud Compensation levy in 2017/2018 of 25p per member due to notification of potential claims to be made. Further information may be found [here](#).

Resources for the New Rules

The new insolvency rules have come into force and these apply to old and new cases. You will need compliant document packs, checklists and possibly technical support. We also offer webinars and you will have access to all those recorded to date. Further information about our services may be found [here](#).

Dear IP 76- ctd

Request for a physical meeting para 52(1)(b) - this is not seeking a decision so creditors have 8 business days to requisition a decision not 5.

Do creditors notices have to comply with standard contents - not if the departure is immaterial R1.9(1)(b).

R1.45 - whilst r1.45(4) refers to office holder and office holder has a specific definition, if the director who is delivering documents has used email with his creditors, it would be a nonsense to suggest he would not be able to email.

Delivery of documents for a s100 decision: the IS have stated that they do not think the director has the right to use a website to deliver documents under the rules, so this means a SOA must be delivered by post or email.

Progress reports and extensions of administrations - IS is suggesting that where an ADM reporting date has been changed due to an extension this does not need to change again.

Calculation of unconnected creditors in voluntary arrangements - we now have a formula: value of unconnected parties against/value of unconnected parties who have sent written claim

Delivery to overseas creditors - the IS is recommending email or post but if by post ensuring sufficient notice is given if at all possible.

Virtual Meeting - the IS have confirmed that providing a contact number or email address for creditors to obtain access information is sufficient to meet R15.5 requirements.

Michelle has covered these issues and the IS blog responses in much greater detail [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.