The Insolvency Service

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DEAR INSOLVENCY PRACTITIONER
Issue 91 – December 2019

Message from Angela Crossley
Head of Insolvency Practitioner Regulation

Dear Reader

Attached is the latest edition of Dear IP.

I would like to wish all our readers a Merry Christmas and Happy New Year.

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32) Block Transfer of cases

By virtue of Rule 12.37(6) Insolvency Rules 2016 notice must be sent to the Secretary of State of all block transfer applications. Insolvency Practitioner Regulation Section (IPRS), as oversight regulator, considers the application and makes any relevant regulatory checks with the Recognised Professional Bodies.

It has been noted that there have been some delays in actioning recent cases, as a result of the notice of the application being sent to incorrect departments within the Insolvency Service, insufficient information being provided, and in some cases, no prior notice being sent at all.

The following documentation should be provided when notifying IPRS of an intended block transfer application:

- Application Notice
- Witness Statements including authority and consent to act
- Draft Order
- Schedule of cases to be transferred

Notice should be sent to IPregulation.section@insolvency.gov.uk

Where notice is not received, IPRS will inform the relevant authorising body of the breach of the Insolvency Rules.

Insolvency Practitioners are also reminded of the need for consideration of Rule 12.38(4), which states that, except for administration cases, the Court should have regard for the following factors when making an order as to the costs of making the application:

- the reasons for the making of the application;
- the number of cases to which the application relates;
- the value of assets comprised in those cases; and
- the nature and extent of the costs involved.

IPRS will bring to the Courts' attention any costs contained in the application for consideration by the Judge.

Enquiries regarding this article may be sent to IPregulation.section@insolvency.gov.uk

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79) Unclaimed Creditor Upload

Estate Accounts and Scanning process requests from Insolvency Practitioners to hold funds that have not been claimed by creditors in Voluntary liquidation and Administration cases.

In order to assist with the timely processing of these unclaimed funds, any requests that contain over 30 creditors per case can now be listed on a spreadsheet and emailed to the customerservices.EAS@insolvency.gov.uk inbox. The CAU103/104 must still be submitted by post as an original signature is required. For details on how to do this please refer to the following links:

https://www.gov.uk/government/publications/insolvency-practitioners-creditors-and-members-voluntary-liquidation-schedule-of-funds

https://www.gov.uk/government/publications/insolvency-practitioners-administration-and-administrative-receivership-schedule-of-funds

Enquiries regarding this article may be sent to: CustomerServices.EAS@insolvency.gov.uk

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65) Amendments to the Insolvency Practitioner Upload Service

We've listened to your feedback and made amendments to the **Insolvency Practitioner Upload Service** (IPUS).

When you upload an RP14 or RP14A, you can now select an option to receive an email confirming the information has been uploaded successfully. This means you will no longer need to rely on the message displayed on the screen as confirmation your information has uploaded. The email will also contain a unique reference number, which can be used to trace the upload.

We've also updated the IP Upload Common Issues guidance to include additional information. We've added information about common errors that are causing templates to upload incorrectly. This includes:

- an incorrect company registration number (CRN) being used, or a number being used that does not relate to the case
- an incorrect case reference (CN) number being used, or a number that does not relate to the case

We ask that you use IP software to upload forms RP14 and RP14A, where possible, as this reduces the risk of upload errors occurring.

If you choose to use the old style excel templates, you should use a clean template each time. Please avoid cutting and pasting, or overwriting, from a previous spreadsheet, as this increases the risk of upload errors.

You can find clean RP14 and RP14A templates on Gov.Uk or via the following links:

RP14 template

RP14A template

Enquiries regarding this article may be sent to: IPHelpdesk@insolvency.gov.uk

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65) EU Exit statutory instrument ("No Deal"): The Insolvency (Amendment)(EU Exit)(No.2) Regulations 2019

We previously informed you in November 2018 that we had laid The Insolvency (Amendment) (EU Exit) Regulations 2019, which dealt with the impact of leaving the EU in a no deal scenario on cross-border and employment rights insolvency cases. The Regulations were made on 30 January 2019 ahead of the proposed exit day of 29 March.

As the date for leaving the EU has since been extended, the Government has brought forward a further statutory instrument, The Insolvency (Amendment) (EU Exit) (No.2) Regulations 2019 ("the October Regulations"), to account for changes to Scottish insolvency law and new EU law that has come into effect since 29 March. The October Regulations have now passed debate in both the House of Lords and the House of Commons and will come into effect on exit day in the event of the UK leaving the EU without a Withdrawal Agreement.

As explained in the previous special edition of Dear IP, if the UK leaves the EU without a Withdrawal Agreement, automatic recognition of UK insolvency proceedings in EU Member States will cease. The Insolvency (Amendment) EU Exit Regulations 2019, passed by Parliament in January, will remove all the substantive provisions in the EU Insolvency Regulation, as they rely on reciprocation from EU Member States to operate effectively.

The October Regulations ensure that these rules apply consistently across the UK, by updating the modernised Scottish Insolvency Rules that came into force after 29 March 2019.

The new Regulations remove references in the Scottish legislation related to the EU Insolvency Regulation, and so ensure that if we leave without a Withdrawal Agreement, Scottish insolvency law will still operate correctly and consistently in line with the changes made by the previous Regulations.

The October Regulations also revoke article 25 of the EU Insolvency Regulation, which came into force in June 2019 and relates to the requirement for Members States to make arrangements for the interconnection of insolvency registers across the EU. If the UK is not fully participating in the system of mutual recognition and cooperation on insolvency matters, it will be inappropriate for the UK to incur the necessary costs required.

As highlighted in the Technical Notice "Handling civil legal cases that involve EU countries if there's no Brexit deal", insolvency practitioners who are dealing with cross-border cases may wish to take professional advice on the

prospects of successfully obtaining recognition for their UK insolvencies in particular EU countries after exit.

Enquiries regarding this article may be sent to: Policy.Unit@insolvency.gov.uk

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18) Re-use of a company name. Changes to published guidance regarding rule 22.4 and consequential to the commencement of the Insolvency (Scotland) (Receivership and Winding Up) Rules 2018

We have previously advised insolvency practitioners of the availability of guidance on GOV.UK in respect of re-use of company names which provides easy reference to the Insolvency Service's position and to which clients may be directed. This document can also be found on the Insolvency Service home page on GOV.UK by clicking on 'Investigations and Enforcement'.

To assist readers, and as a result of actual issues that have arisen, we have revised and added further clarification of our interpretation of the exception to section 216 available in rule 22.4 (where the business, or substantially the whole of it, is acquired from the liquidated company). Whilst compliance is a matter for the director, in many cases they will rely on any advice given to them by the insolvency practitioner; practitioners may wish to familiarise themselves in particular with the points made in paragraph 4.1 of the revised guidance.

In addition, the Insolvency (Scotland) (Receivership and Winding Up) Rules 2018, Part 12 (Permission to act as a director etc. of company with a prohibited name (Section 216)) came into force on 6 April 2019.

The main change is that the Scottish rules have now been brought into line with the England and Wales rule 22.2 requiring that notice of the application be sent to the Secretary of State at least 14 days before the hearing. The Secretary of State may appear at the hearing and/ or make representations.

Our Compliance and Targeting Team deal with all section 216(3) applications in England, Wales and Scotland on behalf of the Secretary of State. Further information can be found in our guidance re-use of company names.

Any enquiries regarding this article may be sent to compliance.targeting@insolvency.gov.uk

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