Briefing

Corporate Turnaround and Insolvency

BURGES SALMON

Odds and ends – PPF guidance on pre-packs, schemes of arrangement and review of Bills of Sale

This month's summary of "also ran" update items forms a fairly eclectic mix, however some useful items can be pulled out of them.

PPF guidance to Insolvency Practitioners on pre-pack

First up, the Pension Protection Fund's Restructuring & Insolvency team issued a **Guidance Note** on its approach to pre-packaged administrations involving final salary pension schemes in July 2015.

In that note the PPF raises the main concern that pre-packs are used to "dump" pension scheme whilst the business is continued by a company either controlled by - or with strong links to – the previous owners or managers of the company.

Particular areas of concern voiced by the PPF are that: (i) the pre-pack "pool" recommended by the **Graham Review** is not yet in place, and in any event is not mandatory; (ii) "out of court" administrations involve no say on that part of creditors; and (iii) administrators who go on to become a subsequent liquidator or CVA supervisor lack the independence to objectively review what has gone before. The upshot is that the is little in the way of effective scrutiny in pre-pack cases.

As a result, the PPF has announced that in all pre-pack cases, it will review the extent to which the PPF and creditors have been consulted prior to appointed, and use its voting power to appoint a different IP as subsequent liquidator or CVA supervisor where concerns about lack of PPF engagement exist.

Practitioners would be well advised to consult the PPF openly and early as a result. Should you have any queries about such situations, **Clive Pugh** of our Pensions team is your best point of contact.

Schemes of arrangement – interaction with the Insolvency Regulation (or not)

The next item is just a quick note that the case of In the matter of Van Gansewinkel Groep BV and 5 others [2015] EWHC 2151, the High Court has again sanctioned scheme of arrangement for foreign entities, this time for a group comprising five Dutch and one Belgium company. In all cases, the companies' centre of main interests was outside England and Wales, and none of them had an establishment here. The issue of "sufficient connection" with the United Kingdom was dealt with through English law governing provisions in the finance documents.

When looking at whether the court had power to sanction the scheme, it was considered that although the Insolvency Regulation prevented a company from being wound up in the UK unless its COMI (or an establishment) was present here, the jurisdiction of the courts to sanction schemes did not rely on such transient considerations.

Accordingly it seems that Schemes will remain the restructuring tool of choice in larger cases, perhaps even more so considering that the "group coordination" mechanism provided for under the revised Insolvency Regulation provides for voluntary opt-in by each company/jurisdiction involved.

Review of Bills of Sale – a new era for personal security?

Lastly, many practitioners will be aware that for "chattel" assets (i.e. physical goods outside land, ships and aircraft), the only form of security registration available to lenders is currently the anachronistic "Bills of Sale" legislation, which provides for highly prescribed and non-negotiable forms of documents, which have to be periodically registered at the High Court.

At long last, the Law Commission has announced a **consultation paper** on reforming bills of sale, which closes on 9 December 2015. The suggested outcome, as summarised in the useful **executive summary** document, is that the current system be scrapped and replaced by a new "goods mortgage", with certain prescribed contents, and a streamlined registration system. Such developments are to be welcomed and we will continue to watch and report on this.

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