RULE OF LAW

David Kerr MCICM on the first new rules to affect insolvency law in 30 years

IT'S all change from 6 April this year, when the Insolvency Rules 2016 take effect. This represents the first major overhaul of insolvency law in England and Wales in 30 years, and it brings some important new processes. Creditors need to become familiar with aspects of the new rules as they will affect their rights in most insolvency cases, including those already underway. Rule changes in Scotland will be implemented on a different timetable.

Out go creditors' meetings and in come other decision making processes, deemed consent and a host of other measures designed to bring the rules up-to-date, streamline the statutory provisions and in theory aid creditor involvement, but which could catch out the unwary. Bear in mind that it is only the secondary legislation that is changing, so where provisions (such as those relating to creditors' claims in bankruptcy) are contained in the primary legislation (Insolvency Act 1986), the new Rules will not apply. Where the new rules do apply, they bite on all current cases as well as new ones commencing in April and beyond.

VOTING

An Insolvency Practitioner cannot convene a physical meeting of creditors unless requested to do so by ten percent of the creditors in a case (percentage by number or value) or by at least ten of the creditors. Where the IP writes to creditors with a proposal, other than in respect of fees, creditors will be deemed to have agreed unless ten percent (by value) object. So, if you fail to respond to these communications, be aware that you may effectively have consented.

In bankruptcy and compulsory (court) winding-up cases, the Official Receiver will not ordinarily convene a meeting of creditors and may retain custody of the case unless 25 percent (by value) of the creditors require a meeting to be held to consider appointing an IP as trustee.

There may be opportunities to engage through correspondence, electronic voting or other forms of virtual meeting. These may make it easier to take part.

Final meetings in liquidation and bankruptcy have been abolished, though there will still be final reports.

EMAIL AND OPT OUT

IPs may use email for communications with creditors in new cases post-April, where you agree or are deemed to have agreed by virtue of having conducted email communications with the insolvent company or individual pre-insolvency. Look out too for emails or letters that advise creditors that future notices will be published on a website without any alert being sent.

If you don't want to receive future notices or emails from an IP in a particular case then you can opt out.

CLAIMS

Creditors with small claims (under £1,000) may be advised that their claims are deemed to be agreed without the need for any formal process. Where creditors receive such a notice, they should respond to inform the IP within the timeframe specified if they believe the amount shown is incorrect.

These provisions will take some time to bed in, as IPs have to familiarise themselves with the new rules, and a number of organisations including the IPA will be providing training on the new rules. Creditors interested in learning about the new provisions may find more information on insolvency-practitioners.org.uk.

David Kerr MCICM is the Chief Executive of the Insolvency Practitioners Association (IPA).

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