

Know the rules! Further changes to IR 2016 afoot

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UK insolvency law has seen a number of significant changes over recent years, including the introduction of the Insolvency Rules 2016 ("IR 2016") in April 2017. Further legislation has been expected in order to ensure that all of these changes apply consistently throughout the whole insolvency regime, after it became clear that IR 2016 did not apply to insolvent LLPs.

The latest changes come in the form of secondary legislation coming into force on 8 December 2017, being the snappily titled Insolvency (Miscellaneous Amendments) Regulations 2017 (the "Miscellaneous Amendments 2017") and the Insolvency (England and Wales) and Insolvency (Scotland) (Miscellaneous and Consequential Amendments) Rules 2017 (the "Miscellaneous and Consequential Amendments 2017"). It is hoped that the Miscellaneous Amendments 2017 and the Miscellaneous and Consequential Amendments 2017 will unify the insolvency regime and tie up the loose ends resulting from the introduction of IR 2016, as highlighted in our previous blog [Unfinished Business – Insolvency Rules 2016 and changes still to come](#).

The Miscellaneous Amendments 2017

The Miscellaneous Amendments 2017 aim to conform the insolvency regime for LLPs to that of insolvency procedures for companies, correcting the irregularity created when IR 2016 were originally brought into force. Whilst this amendment is welcome, it does not come without peculiarities. It appears that changes made by The Insolvency Amendment (EU 2015/848) Regulations 2017 which replace references in the IR 2016 to the Insolvency Regulation 2000 with references the Recast Insolvency Regulation, will not apply in relation to LLPs where the insolvency commences before 8 December 2017.

There does not appear to be any practical logic for this oddity. It seems that the framework for determining in which member state proceedings against an insolvent LLP should be initiated where the insolvency commences prior to 8 December 2017 will continue to be determined by the Insolvency Regulation 2000. This omission provides some uncertain complexities if, for example, a situation arises where main proceedings are commenced against a debtor in one member state and secondary proceedings are commenced in a different member state after 8 December 2017. The practical consequences of this irregularity remain to be seen.

The Miscellaneous and Consequential Amendments 2017

The purpose of the Miscellaneous and Consequential Amendments 2017 is to make minor corrections and clarifications following the introduction of IR 2016. The amendments are mainly self-evident and unsubstantial, but some of the more prominent amendments include:

- confirmation that the decision to form a creditors' or liquidation committee may be achieved by the use of the deemed consent procedure;
- clarification that a creditors' or liquidation committee is established at the point the officeholder sends notice of its membership to the registrar, the court or the official receiver, rather than the date at which the notice is delivered (allowing a committee meeting to be held immediately after the notice is put into the post box);
- the introduction of a new provision which aligns service requirements for a statutory demand out of the jurisdiction with provisions of the Civil Procedure Rules; and
- the introduction of a provision enabling the court to decline to file a bankruptcy petition if a creditor has not satisfied the requirement to bring the statutory demand to the debtor's attention.

Comment

The introduction of the Miscellaneous Amendments 2017 will be welcomed by insolvency practitioners, as, other than the oddity highlighted above, it brings together a complete regime in which insolvency procedures are the same for both LLPs and companies.

It remains to be seen whether the Miscellaneous and Consequential Amendments 2017 will tackle the uncertainties developed from IR 2016 head on. Only time will tell whether we now have a complete code of insolvency rules or whether future legislation will again be required to provide further corrections and clarifications to IR 2016 and subsequent legislation.

Sam O'Neill also contributed to this article.

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