



Legislative changes in effect today: what IPs need to know

Removal of requirement for sanction

Previously under section 165 IA 86, liquidators in a voluntary winding up would have to seek sanction of the company (in members' voluntary liquidation) or of the court or liquidation committee (in creditors' voluntary liquidation) in order to exercise their powers to pay debts, compromise claims etc. SBEEA removes this requirement so that liquidators can exercise those powers freely. This will aid expeditious winding up of companies. Equivalent provisions have also been put into place for trustees in bankruptcy.

Shadow directors

Until now, directors' duties under the Companies Act 2006 (CA 06) have only applied to shadow directors "where, and to the extent that, the corresponding common law rules or equitable principles so apply" (section 170(5) CA 06). What this means in practice has not always been clear, so SBEEA has replaced this section 170(5) CA 06 and stated that general directors' duties apply to shadow directors where and to the extent that they are capable of applying. Importantly, this will mean that shadow directors can be personally liable for losses by the company.

Administration provisions

The 2014 Graham Report made some key recommendations for the insolvency industry, particularly with reference to pre-pack administrations. Many of Theresa Graham's recommendations, such as the creation of an independent body (the so-called "Pre-Pack Pool") for review of proposed pre-packs by directors, are already being established on a voluntary basis, but SBEEA enhances these recommendations:

- The Secretary of State now has the power to prohibit or impose conditions on sales between connected persons (such as directors) where a company is in administration (paragraph 60 Schedule B1 to IA 86). This will provide greater confidence to unsecured creditors that a sale by an administrator to a connected person represents the best outcome for them
- An administration can now be extended by the consent of creditors for one year (up from six months) (paragraph 76(2)(b) Schedule B1 IA 86), and administrators will not have to seek the court's permission to make distributions to unsecured creditors where there is a prescribed part available (paragraph 65(3) Schedule B1 IA 86). It will now only be possible for a company to move from an administration to a creditors' voluntary liquidation (CVL) where there is to be a distribution to unsecured creditors which is not a prescribed part distribution (paragraph 83(1)(b) and (2)(b) Schedule B1 IA 86). Each of these amendments will give greater flexibility to administrators, enabling them to tailor their exercising of powers to the specific commercial issues of the company in administration.

Any comments or queries?

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The DA inserts a new paragraph 25A into Schedule B1 to IA 1986 to enable a company or its directors to appoint an administrator despite the presentation of a winding-up petition, if the petition was presented during an interim moratorium. This qualifies the prohibition for such an appointment arising otherwise when a winding-up petition has been presented and not yet disposed of under paragraph 25(a) of Schedule B1.

Power to create rules in relation to small debts

Creditors who are only owed a small debt (and where the office-holder has clear and undisputed evidence that the debt is due) will not have to submit a proof of debt in order to be paid (Schedule 8 to IA 86, new paragraph 13A). SBEEA initially classifies a 'small debt' as one less than £1,000, but this will be clarified by the forthcoming Insolvency Rules.

Voluntary arrangements

- Previously under section 262(3)(a) IA 86, a creditor could challenge the decision of creditors in relation to an individual voluntary arrangement (IVA) proposal during a period of 28 days following the report of creditors being made to the court. SBEEA amends this to include an alternative provision – creditors may also challenge an IVA proposal during a period of 28 days beginning on the day the creditors decided whether to approve the proposal. In the same vein as those amendments to administrations outlined above, this will aid the transparency of insolvency procedures for creditors.
- In addition, SBEEA abolishes fast track voluntary arrangements (FTVAs) under sections 263A-G IA 86 in view of there having been only four FTVAs have been approved in the last four years.

Progress reports in voluntary winding-up

Previously under sections 92A and 104A IA 86, a liquidator only had to submit a progress report to a company and its creditors at year end during a winding up if it continued for more than one year. SBEEA removes this variable and now liquidators must submit a progress report at the end of a year regardless of the winding up's duration. As with the amendments to administration procedure, these changes optimise the transparency of insolvency proceedings for creditors.