

Insolvency Practitioners: Appointment, Duties, Powers and Liability

Hugh Sims QC and others (1st edition) (2020)

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There have been some corporate insolvency law textbooks, and to some degree company law textbooks, that have discussed the duties and roles of the insolvency practitioner (IP), but none have engaged with the issues in such critical fashion as the authors of this text have. The first thing to note is that the book has been written from a practitioner's perspective and, as such, it approaches the subject matter in a highly practical and decisive manner. This has two key advantages. First, the key questions that arise from application of legal principles are identified and meticulously scrutinised; in other words, the contentious issues are not side-lined, but are dealt with head on. Second, the functional value that can be extracted from the practical analysis ensures that the importance of the book is broad and will be of interest beyond practitioners and judges, to include academics and students new to the captivating world of insolvency.

The authors, all of whom are legal practitioners who specialise in commercial and insolvency law, have filled a gap in the market and it is pleasing to see that, even though the idea for the book first materialised some 10 years ago, it is often the case that works worth pursuing do take quite a few dog years to be conceived. An advantage of this approach is that ideas can be properly developed and fine-tuned when new case law or legislation occurs, which is what has happened in this case. As example, significant recent case law to feature in this work includes *Lehman Brothers International (Europe)(in administration)* [2020] EWCA Civ 321; *Lehman Brothers Australia* [2020] EWCA Civ 321; and, where urgent request for directions in a CVA are required, see *Re Debenhams Retail Ltd* [2020] EWHC 721 (Ch); *Re Carluccio's Ltd* [2020] EWHC 886 (Ch).

To commence with an overview of this book, the introduction provides a useful outline of the insolvency regimes and the key legislative framework that will be referred to throughout the book. Pending and future developments are discussed, which includes Brexit, the impact of COVID-19 and the Corporate Insolvency and Governance Act 2020 (CIGA 2020). In regard to CIGA 2020, reference is made to how the new moratorium and restructuring process will differ to the current system in the first part of the book. The true impact of COVID-19 and subsequent extensions to CIGA 2020 were unknown at the time of the book's publication. Thus, it remains to be seen whether the legislation will further the 'transatlantic drift' currently experienced in the United Kingdom, as the legislation appears to move towards the American Chapter 11 model.

Part I consists of two parts: the qualification and appointment of IPs. The authorisation of IPs begins with an historical overview before reviewing what is required for an IP to be

qualified. The first section also considers the role of recognised professional bodies, before considering complaints and sanctions in the second sub-section. The appointment chapter also considers termination and removal and is focused on the application of case law and relevant statutory provisions. The approach taken is methodological, which provides an informative read, yet it also refers to academic literature to ensure a wider appeal and to acknowledge the discussions that have taken place around the main topics.

Part II considers the duties and powers of office-holders, specifically the standard of skill and care expected of the IPs, along with general duties, accounting and disclosure requirements, how to value creditor claims, and how duties may differ according to the type of IP. The chapter on powers includes a discussion on commercial decisions, as well as the wider issue of decision-making and delegation. In certain circumstances, it remains a point of contention between creditors and IPs as to what decisions can be made by the IP. Since there are naturally winners and losers in insolvency, it is often considered a by-product of such proceedings that not everyone will be happy with the outcome. While some creditors may accept commercial based decisions, a topic that often causes complaints is the level of remuneration claimed by the IP. This is examined towards the end of the chapter and, while the authors prefer to provide legal justification that is supported by case law and statutory provisions, rather than an opinion on the matter, the subheading: the right to charge for work done may provide a viewpoint.

The final part of book reaches the crux of the matter, namely office-holder liability. It is this section that is of such prominence, as it considers breaches of duty, remedies for breach of IP's duty, and notes defences that may be available. The first of these chapters recognises that breaches do occur and it is necessary that the claimant in such matters is able to establish the causative link to losses sustained by reason of that breach of duty. This is where most of the difficulties arise and the chapter on remedies does well to explain the issues by reference to key case law, which is examined as concisely as expected from such skilled practitioners as the authors are. The section is complete with defences to breaches, which examines applications to court for directions, contributory negligence, relief from liability and indemnity to name but a few.

This book is a real achievement, and will no doubt make a splendid addition to any student of insolvency law. Given the practical nature of the work, it will make invaluable contributions to all those that operate before the Business and Property Courts, assisting IPs, lawyers and judges.

NB. For those who are interested in obtaining a copy of this book, the eBook version is priced from GBP 20/USD 26 from Google Play, ebooks.com and other eBook vendors, while in print the book can be ordered from the Edward Elgar Publishing website.

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