

**Topic: How do you obtain sufficient evidence of fraud in company insolvency situations (particularly pre-packs) where the insolvency practitioner may not wish to investigate impropriety too deeply?**

**Claims under the Insolvency Act 1986**

- Section 212 – breach of duty (does not extend to claims against current liquidators: Fakhry v Pagden [2020] EWCA Civ 1207 at [20])
- Section 423 – transactions defrauding creditors
- Paragraph 74 of Sch. B1- unfair harm
- Paragraph 75 of Sch B1- breach of duty by an administrator or former administrator

**Investigative powers of the officeholder under the Insolvency Act 1986**

- Section 234- delivery up of books, papers or records to which the company appears to be entitled
- Section 235- persons who are obliged to cooperate with the officeholder in providing information
- Section 236 – powers of the court to order private examinations and production of documents
- Section 133 – power of court to order a public examination, whether in a compulsory liquidation or a voluntary liquidation (section 108 and Bishopsgate Investment Management Ltd v Maxwell [1993] Ch 1. At 26)

**Obligations of an administrator where there is a pre-pack sale**

- Statement of Insolvency Practice 16
- Administration (Restriction on Disposal etc. to Connected Persons) Regulations 2021/427

**Removal by the court of the officeholder and appointment of a new officeholder**

- Administration: paras. 88, 63 and/or 91 and/or 95 of Sch B1
- Compulsory liquidation: section 172(2) and sections 168(3) and (5) of the Insolvency Act 1986
- Voluntary liquidation: section 108 of the Insolvency Act 1986

**Pre-pack cases on removal of the officeholder**

- Clydesdale Financial Services Ltd v Smailes [2009] BCC 810
- Ve Vegas Investors IV LLC v Shinner [2018] EWHC 186 (Ch)
- Re Fox Street Village Ltd [2020] EWHC 2541 (Ch)

**Other cases**

- Sisu Capital Fund Ltd v Tucker [2005] EWHC 2170 (Ch)
- Zinc Hotels (Investment) Ltd v Beveridge [2018] EWHC 1936 (Ch)
- Re Meem SL EWHC 2688
- Re Buildhead Ltd (No.2) [2005] BCC 138
- Shephard v Lamey [2001] BPIR 939

### **Ending Administration**

- Para. 55 of Sch. B1 and Re BRT (UK) Ltd [2012] EWHC 2398 (Ch)
- Para. 79 of Sch B1, Re Graico Property Ltd [2016] EWHC 2827 (Ch) and Re Fox Street Village Ltd [2020] EWHC 2541 (Ch)
- Para. 81, Re CA&T Developments Ltd; Koon v Bowes [2019] EWHC 3455 (Ch), Thomas v Frogmore [2018] BCC 67 and Re Frep (Knowle) Ltd [2017] EWHC 25 (Ch)

### **Applications for directions**

- Section 112(1) of the Insolvency Act 1986 (voluntary liquidation)
- Section 168(3) of the Insolvency Act 1986 (compulsory liquidation)
- Para. 63 of Sch., B1 (administration) and Re Mirror Group Holdings Ltd [1993] BCLC 538 at 543 on the standing of a creditor, which should equally apply to section 168(3)

### **Evidence gathering by a creditor**

- Discretion of liquidator to provide information and documents@ ACLI Metals (London) Ltd [1989] BCC 749
- Section 155 of the Insolvency Act 1986, Northern Brazilian Sugar Factories (1887) 37 Ch D 83, Re W&A Glaser Ltd [1994] BCC 1990 and Re Movietx Ltd [1992] 1 WLR 303
- Creditors' and Liquidation Committees:
  - Section 101 of the Insolvency Act 1986 (creditors' voluntary liquidation)
  - Section 141 of the Insolvency Act 1986 (compulsory liquidation)
  - Para. 57 of Sch. B1 (administration)
  - Part 17 of the Insolvency (England and Wales) Rules 2016
  - Southern Cross Airlines Holdings Ltd v Arthur Anderson & Co. (1998) 16 ACLC 485, 462
- Norwich Pharmacal, Bankers' Trust and pre-action disclosure under CPR 3.16.