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Enforcement of Third-Party Releases in Chapter 15

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Introduction

Schemes of Arrangement (Schemes) under Pt 26 of the Companies Act 2006 of England and Wales or similar laws of former British Commonwealth countries regularly include provisions for the release by creditors—whether or not they accepted the Scheme or consented to the release—of an array of persons in addition to the Scheme debtor. The release is complemented by injunctive protection of the released persons against actions by creditors. In US parlance, these non-consensual release and injunction provisions are denominated "third-party non-debtor releases" (TPRs).[1] In a majority of federal judicial circuits, TPRs in cases under the reorganisation or liquidation chapters of the US Bankruptcy Code (11 U.S.C. § 101 – § 1532) are limited to "rare" or "unique" cases and are difficult to obtain.[2] Several circuits prohibit TPRs in domestic cases.[3] In contrast, recognition of Schemes and additional relief enforcing TPRs has regularly been granted in cases under Ch.15 of the Bankruptcy Code filed in circuits that do not prohibit TPRs. In some cases, orders specifically addressed the TPRs, while in others, orders broadly enforced the terms of a Scheme which contained the TPRs.[4]

Enforcement of TPRs in Ch.15 cases has been based on principles of comity to the foreign court—examining the general fairness of the foreign proceeding and not applying the rigorous standards imposed in domestic cases.[5] No serious opposition to enforcement of the TPRs was mounted in any of the Scheme-recognition Ch.15 cases.[6] Should there be opposition, the likelihood of enforcement of the TPRs would be significantly enhanced if the record of the Scheme contained facts that would support domestic-case TPRs.

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Legal Taxonomy

Each article and case commentary in this volume has been allocated keywords from the Legal Taxonomy. This provides a standard for the description of subject matter in print publications and online services. Suggestions to *sweetandmaxwell.taxonomy@tr.com*.

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Third-party releases in Chapter 15 cases

In the Ch.15 context, the two reported decisions enforcing TPRs—*Metcalfe* and *Sino-Forest*—did so by granting comity to TPRs that were approved in foreign proceedings.[7] Neither of these cases involved Schemes. *Metcalfe* emanated from proceedings under Canada's Companies' Creditors Arrangement Act, R.S.C.1985, c. C-36, as amended (the CCAA). The debtors were non-bank issuers of asset-backed commercial paper (ABCP) who faced obligations of some CAD $3.2 billion and a frozen market that prevented extension of the debtors' short-term obligations. The entire Canadian ABCP market was restructured in a comprehensive proceeding and all market participants were beneficiaries of TPRs.[8] The releases were required by the financial institutions which had sold the assets (mortgages and CDOs) that backed the commercial paper as a condition to their participation in the restructuring. These "Asset Providers" were critical participants in the restructuring, providing among other things discount margin funding and entering into new credit default swaps.[9] Certain investors in ABCP objected to the releases in the Canadian court, complaining that they were being deprived of the right to bring claims in the US against major international financial institutions that played roles in the Canadian ABCP market.

In the Ch.15 case, Metcalfe's foreign representative asserted that the TPRs met the standard established by the US Court of Appeals for the Second Circuit for such releases in plenary domestic US cases.[10] Judge Glenn was not certain that they met the standard for TPRs in domestic cases but stated that a different standard applied in Ch.15:

> "This Court is not being asked to approve such provisions in a plenary case; rather, the Court is being asked to order enforcement of provisions approved by the Canadian courts. The correct inquiry, therefore, is whether the foreign orders should be enforced in the United States in this chapter 15 case. As explained below, principles of enforcement of foreign judgments and comity in chapter 15 cases strongly counsel approval of enforcement in the United States of the third-party non-debtor release and injunction provisions included in the Canadian Orders, even if those provisions could not be entered in a plenary chapter 11 case.[11]
>
> "While recognition of the foreign proceeding turns on the objective criteria under § 1517, 'relief [post-recognition] is largely discretionary and turns on subjective factors that embody principles of comity.' *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 333 (S.D.N.Y. 2008) (citing §§ 1507, 1521, and 1525). 'Once a case is recognized as a foreign main proceeding, chapter 15 specifically contemplates that the court will exercise its discretion consistent with principles of comity.' *Atlas Shipping*, 404 B.R. at 738 …"[12]

The court noted that comity had regularly been granted to Canadian bankruptcy proceedings because:

> "The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. … 'More importantly, Canada is a sister common law jurisdiction with procedures akin to our own, and thus there need be no concern over the adequacy of the procedural safeguards of Canadian proceedings.'" (Quoting *Cornfeld v. Investors Overseas Servs., Ltd.*, 471 F. Supp. 1255, 1259 (S.D.N.Y.1979).)

Sino-Forest was another Canadian CCAA case but it arose after the Fifth Circuit (which generally prohibits TPRs in domestic cases)[13] had issued its opinion in *Vitro* denying enforcement of third-party releases.[14] Sino-Forest's foreign representative sought recognition of the CCAA proceeding and enforcement of orders approving a restructuring plan and settling class action claims against the debtor and other defendants. Among the defendants was Ernst & Young, Sino-Forest's auditor and a contributor under the settlement of CAD $117 million. Certain claimants opposed the third-party release that benefited E&Y but the Canadian court rejected the objections based on a test it had formulated in the context of the ABCP settlement discussed in *Metcalfe*:

> "In *ATB Financial*, a decision rendered in connection with the restructuring of the Canadian asset-backed commercial paper market, the Court of Appeal for Ontario held that third-party releases are permissible in CCAA restructurings where there is 'a reasonable connection between the third party claim being compromised in the plan and the restructuring achieved by the plan to warrant inclusion of the third party release in the plan.'"[15]

An attempt to appeal the Ontario court's ruling in *Sino-Forest* was dismissed. Judge Glenn said the *Sino-Forest* case was nearly identical to *Metcalfe* and he repeated in condensed form much of his *Metcalfe* analysis. He went on to conclude that "[t]he Fifth Circuit's decision in *Vitro* does not dictate a different result".[16]

The standard for TPRs in UK Schemes appears similar to the Canadian standard articulated in *ATB Financial*, above, and is not as demanding as the standard in plenary US cases. The UK standard is described in the declaration of English law submitted in support of recognition and additional relief in the Ch.15 case of *Codere Finance (UK) Limited*:

> "16. It is now well established that, as a matter of jurisdiction, a company, through an English scheme of arrangement, may require its creditors to release claims against third parties as part of the compromise or arrangement provided for by the scheme. The UK Court will, however, only sanction a scheme which releases claims against third parties where it is satisfied that the release of rights against third parties is necessary in order to give effect to the arrangement proposed for the disposition of the debts and liabilities of the company.
>
> 17. A scheme which varies or releases Scheme Creditors' claims against the company on terms which require such Scheme Creditors to bring into account, and release, rights of action against third parties designed to recover the same loss is now commonplace in English schemes of arrangement. Such a release ensures, among other things, that the company is free from claims for indemnities that might otherwise be brought against it by the co-obligors or guarantors in due course, which claims would undermine the arrangement provided for in the scheme in respect of direct claims against the company. Equally, it is commonplace that schemes of arrangement provide for the release of any claims against third parties that may arise from the steps taken to put in place the restructuring.
>
> 18. In this instance, the Scheme contemplates (through deeds of release, and in addition to the cancellation of the Existing Notes in accordance with the terms of the Scheme) that Scheme Creditors will release particular limited types of claims against a variety

of third parties, which claims arise (in broad terms) either (i) under or in relation to any of the Existing Notes Finance Documents (as defined in the Scheme, and on the terms set out in more detail therein) or (ii) under or in relation to the Lock-Up Agreement, the Restructuring and the Restructuring Documents (as defined in the Scheme, and on the terms set out in more detail therein). These releases (which include claims pursuant to guarantees against third parties and claims which would be the subject of indemnities given by the Holdco under the Lock-Up Agreement) are considered to be necessary in order for the Scheme to operate because, in summary:

(a) any claims under or in relation to the Existing Notes Finance Documents (including, but not limited to, claims against the guarantors) are claims arising in respect of the historic financing relationships that the Restructuring contemplated by the Scheme is intended to compromise. The continued existence of any such claims would be inconsistent with the Restructuring contemplated by the Scheme, and could adversely affect the Group (as defined in the Scheme) in the future (and thus the value of the consideration conferred pursuant to the Scheme on Scheme Creditors); and

(b) any claims under or in relation to the Lock-Up Agreement, the Restructuring and the Restructuring Documents are claims which would arise solely as a consequence of, and out of, the Restructuring contemplated and implemented by the Scheme. The continued existence of such claims would be inconsistent with the success of the Restructuring contemplated by the Scheme and approved by the required majority of creditors."[17]

Third-party releases in plenary US cases

New York and Delaware are the most common venue choices for seeking Ch.15 recognition of Schemes. Decisional case law of the Second Circuit (which includes New York) and Third Circuit (which includes Delaware) governs decisions of the bankruptcy courts within those circuits. The Second and Third Circuits permit third-party releases in domestic bankruptcy cases only in limited circumstances. The *Metcalfe* court notes that the Second Circuit case law "places narrow constraints on bankruptcy court approval of third-party nondebtor release and injunction provisions" but that "the use of such provisions is not entirely precluded".[18]

Creditors appealed from the district court's affirmation of the bankruptcy court's order confirming Metromedia's Ch.11 plan. Creditors asserted that TPRs contained in the plan were improper. Two similar releases barred claims against Metromedia personnel while a third barred claims against a trust which settled substantial claims against the debtor and invested in the reorganized debtor. While the Second Circuit ultimately denied the appeal on grounds of equitable mootness (because the plan had been substantially implemented and effective relief would be impractical and inequitable), it criticised the lack of findings supporting the TPRs:

> "We have previously held that '[i]n bankruptcy cases, a court may enjoin a creditor from suing a third party, provided the injunction plays an important part in the debtor's reorganization plan. *SEC v. Drexel Burnham Lambert Group, Inc. (In re Drexel Burnham Lambert Group, Inc.)*, 960 F.2d 285, 293 (2d Cir. 1992). While none of our cases explains when a nondebtor release is 'important' to a debtor's plan, it is clear that such a release is proper only in rare cases. [citations omitted]."[19]

The court noted that there is no specific Bankruptcy Code authorisation for such releases, other than in asbestos cases when specific conditions are satisfied, and nondebtor releases lend themselves to abuse, providing the equivalent of a bankruptcy discharge to a party that has not been the subject of a bankruptcy. While various factors have led to approval of third-party releases,

> "this is not a matter of factors and prongs. No case has tolerated nondebtor releases absent the finding of circumstances that may be characterized as unique."[20]

The court concluded:

> "The bankruptcy court's findings were insufficient. A nondebtor release in a plan of reorganization should not be approved absent the finding that truly unusual circumstances render the release terms important to success of the plan, focusing on the considerations discussed above, see supra at 142 – 143. Cf. *Dow Corning*, 280 F.3d at 658 (requiring bankruptcy court to make 'specific factual findings that support its conclusions' before authorizing nondebtor releases)."[21]

A more recent Second Circuit decision may further limit the circumstances in which third-party releases can be granted on jurisdictional grounds, stating that

> "[a] bankruptcy court only has jurisdiction to enjoin third party non-debtor claims that directly affect the *res* of the bankruptcy estate".[22]

The Third Circuit addressed the validity of a provision in the confirmed reorganisation plan of Continental Airlines that released and permanently enjoined actions against the directors and officers of the debtor.[23] After reviewing the law in other circuits, the court declined to adopt its own clear rule because the record was insufficient to support the releases under any standard:

> "Plaintiffs do not ask us to establish a blanket rule prohibiting all non-consensual releases and permanent injunctions of non-debtor obligations. Given the manner in which the issue has been presented to us, we need not establish our own rule regarding the conditions under which non-debtor releases and permanent injunctions are appropriate or permissible. Establishing a rule would provide guidance prospectively, but would be ill-advised when we can rule on Plaintiffs' appeal without doing so. Considering the instant appeal in the context of the case law we have reviewed, we conclude that the provision in the Continental Debtors' plan releasing and permanently enjoining Plaintiffs' lawsuits against the non-debtor D&O defendants does not pass muster under even the most flexible tests for the validity of non-debtor releases. The hallmarks of permissible non-consensual

releases - fairness, necessity to the reorganization, and specific factual findings to support these conclusions - are all absent here. [footnotes omitted]"[24]

Bankruptcy judges within the Third Circuit are divided on whether Continental permits non-consensual third-party releases in domestic cases.[25] The issue is on appeal to the District of Delaware after the Third Circuit declined to accept a direct appeal of the order confirming a reorganisation plan that released the debtor's pre-petition lenders and other related parties in *In re Millenium Lab Holdings II, LLC*.[26]

Several additional circuit courts that have allowed TPRs have propounded imposing lists of factors to be addressed on the road to approving the TPRs.[27] However, the courts have generally indicated that the bankruptcy courts should have discretion to determine which factors are relevant to a particular case.

Conclusion

The Scheme equivalent of what we call "the record" in the US, the evidentiary materials upon which the court sanctions the Scheme, should include evidence that would support TPRs in a domestic US case. The most likely factors to be found in the Scheme context are fairness, general necessity to the restructuring, specific elimination of indirect claims based on released parties' (including guarantors') rights to indemnity or contribution from the debtor and possibly, with respect to certain released parties, substantial economic contribution to the restructuring. There must be specific factual findings in support of the pertinent factors. The factors and the underlying facts can be addressed in the witness statement in support of convening the Scheme and can be suggested for inclusion in the judgment sanctioning the Scheme. They can be repeated in the package of Ch.15 pleadings, in either or both of the verified petition or declaration in support. Such a record will enhance the likelihood that opposition to enforcement of TPRs will fail and will also provide stronger support for expert advice that a US bankruptcy court will likely grant such relief.

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[1] Courts generally permit third-party releases if the releasing creditor consents. See, e.g., *In re Abeinsa Holding, Inc., et al*, 562 B.R. 265, 2016 WL 7243517 at *15 (Bankr. D. Del. Dec. 14, 2016).

[2] See W. P. Weintraub and K. Jarashow, "Permissibility of Third-Party Releases in Non-Asbestos Cases" (2016) 32 Rev. of Banking and Financial Services 127.

[3] This article does not discuss TPRs in cases involving claims for injury or damage from asbestos. Section 524(g) of the Bankruptcy Code permits TPRs in asbestos cases on satisfaction of certain specified conditions.

[4] See *In re Magyar Telecom B.V.*, 2013 WL 10399944 (Bankr. S.D.N.Y., Dec. 11, 2013); *In re Hellas Telecommunications (Luxembourg) V*, No.10-13651, Docket No.38, (Bankr. D. Del., Dec. 13, 2010); *In re hibu Inc., et al*, No.14-70323 (Bankr. E.D.N.Y., Feb. 27, 2014); *In re New World Resources, N.V.*, No.14-12226 (Bankr. S.D.N.Y., Sept. 9, 2014); *In re Codere Finance (UK) Limited*, No.15-13017 (Bankr. S.D.N.Y., Dec. 22, 2015).

[5] The seminal US description of comity appears in the Supreme Court's decision in *Hilton v. Guyot*, 159 U.S. 113, 166 (1895): a foreign court's orders should be enforced "if a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting…"

[6] Often, objections to TPRs and other provisions protecting non-debtors (e.g. exculpation of parties involved in the reorganisation plan process) comes from the Office of United States Trustee, a component of the US Department of Justice charged with overseeing the administrative aspects of bankruptcy cases. A recent example of the US Trustee's zealous oppostion to TPRs was reported in an article on the hearing to confirm the *Nortel* Ch.11 plan. See M. Chiappardi, *Nortel Judge Threatens to Remove US Trustee Atty by Force*, Law 360, 24 January 2017, available at *https://www.law360.com/articles/884488/nortel-judge-threatens-to-remove-us-trustee-atty-by-force* [Accessed 20 February 2017].

[7] *In re Metcalfe & Mansfield Alt. Invs.*, 421 B.R. 685, 700 (S.D.N.Y. 2010); *In re Sino-Forest Corp.*, 501 B.R. 655, 666 (Bankr. S.D.N.Y. 2013). Both decisions were issued by Hon. Martin Glenn.

[8] Released Parties included the Asset Providers, the Sponsors, the Issuer Trustees, the Conduits, and the Investors Committee. *Metcalfe* at 692.

[9] *Metcalfe* at 692.

[10] The Southern District of New York is within the Second Circuit. Decisions by a US circuit court of appeals is binding on the inferior courts within the circuit, including the US District Courts and Bankruptcy Courts. A chart of the US judicial circuits is attached.

[11] *Metcalfe*, 412 B.R. 685, 696.

[12] *Metcalfe* at 497.

[13] Even the Fifth Circuit permits consensual third-party releases and has suggested it might permit TPRs in cases, similar to the asbestos cases, where the creditors' claims are channeled to recoveries from separate assets. *In re Zale Corp*, 62 F.3d 746, 761 (5th Cir. 1995).

[14] *In re Vitro, S.A.B. de C.V.*, 701 F.3d 1031 (5th Cir. 2011) (cert dismissed) (the bankruptcy court declined to enforce a Mexican *concurso* (similar to a Scheme) where the plan extinguished creditors' claims against non-debtor guarantors; i.e. granted TPRs. The Fifth Circuit noted: "This court has previously foreclosed the type of relief sought here [TPRs] in the context of a United States bankruptcy proceeding. We acknowledge, however, that our view on this subject is not universally shared by our sister circuits… Other circuits agree. See *In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995) ('This court has repeatedly held, without exception, that § 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors.'); *In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 600–02 (10th Cir. 1990); *In re Jet Fla. Sys., Inc.*, 883 F.2d 970, 972–73 (11th Cir. 1989). Those circuits not in agreement nevertheless prohibit such releases in all but the rarest of cases." 701 F.3d 1031, 1061. The Fifth Circuit ruled that TPRs were not encompassed within the additional relief permitted by §1521 and could at best be permitted as additional assistance under § 1507; the Fifth Circuit hinted that it could possibly have been swayed to grant comity to the TPRs had Vitro proved the existence of the extraordinary circumstances required by those circuits that permit TPRs—but Vitro did not. *Vitro* at 1066–1067. The Fifth Circuit erroneously included the Eleventh Circuit in its list of circuits that prohibit TPRs. See *In re Seaside Engineering & Surveying, Inc.*, 780 F. 3d 1070 (11th Cir. 2015) ("We also agree, however, with the majority view that such bar orders [TPRs] ought not to be issued lightly, and should be reserved for those unusual cases in which such an order is necessary for the success of the reorganization, and only in situations in which such an order is fair and equitable under all the facts and circumstances. The inquiry is fact intensive in the extreme." *Vitro* at 1078–1079. Identifying a venue for Ch.15 cases other than in the Fifth, Ninth and Tenth Circuits is critical if TPRs are implicated.

[15] *In re Sino-Forest Corp.*, 501 B.R. 655, 660. See also W. W. MacLeod and A. Foster, *Third-Party Releases in CCAA Plans of Compromise and Arrangement*, Lexology, 17 January 2017, available at *http://www.lexology.com/library/detail.aspx?g=8794049 1-354c-4bc5-8ded-2a8aa70a71f9* [Accessed 20 February 2017].

[16] *In re Sino-Forest Corp.* at 665.

[17] *In re Codere Finance (UK) Limited*, No.15-13017, Doc. 4 (Bankr. S.D.N.Y., Nov. 15, 2015).

[18] *Metcalfe & Mansfield*, 421 B.R. at 697, citing *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005). The Bankruptcy Code has specific provisions for enjoining non-debtor claims in cases involving asbestos exposure and those provisions and cases construing them are not within the scope of this memorandum. See 11 U.S.C. § 524(g).

[19] *In re Metromedia Fiber Network, Inc.* at 141.

[20] "Courts have approved nondebtor releases when: the estate received substantial consideration, e.g., *Drexel Burnham*, 960 F.2d at 293; the enjoined claims were 'channeled' to a settlement fund rather than extinguished, *MacArthur Co. v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 837 F.2d 89, 93–94 (2d Cir. 1988); *Menard-Sanford v. Mabey (In re A.H. Robins Co.)*, 880 F.2d 694, 701 (4th Cir. 1989); the enjoined claims would indirectly impact the debtor's reorganization 'by way of indemnity or contribution,' id.; and the plan otherwise provided for the full payment of the enjoined claims, id. Nondebtor releases may also be tolerated if the affected creditors consent. See *In re Specialty Equip. Cos.*, 3 F.3d 1043, 1047 (7th Cir. 1993)." *In re Metromedia Fiber Network, Inc.* at 142.

[21] *In re Metromedia Fiber Network, Inc.* at 143.

[22] *In re Johns-Manville*, 60 F. 3d 135 (2d Cir. 2010).

[23] *In re Continental Airlines*, 203 F. 3d 203 (3d Cir. 2000).

[24] *In re Continental Airlines* at 213–214.

[25] See *In re Washington Mutual, Inc.*, 442 B.R.314 (Bankr. D. Del. 2011) (holding that the court did not have power to grant a third party release absent the consent of the releasing party).

[26] *In re Millenium Lab Holdings II, LLC.* No.15-12284, 2016 WL 155500 (Bankr. D. Del. Jan. 12, 2016). Argument was heard on October 7, 2016 in *Opt-Out Lenders v. Millenium Lab Holdings, II, LLC*, Civil Action No.16-110 (D. Del. 2016).

[27] See, e.g. *In re Dow Corning Corp.*, 280 F. 3d 648, 658 (6th Cir. 2002) ("We hold that when the following seven factors are present, the bankruptcy court may enjoin

a non-consenting creditor's claims against a non-debtor: (1) There is an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate; (2) The non-debtor has contributed substantial assets to the reorganization; (3) The injunction is essential to reorganization, namely, the reorganization hinges on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor; (4) The impacted class, or classes, has overwhelmingly voted to accept the plan; (5) The plan provides a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction; (6) The plan provides an opportunity for those claimants who choose not to settle to recover in full and; (7) The bankruptcy court made a record of specific factual findings that support its conclusions."); *In re Seaside Engineering & Surveying, Inc*., 780 F.3d 1070, 1079 (11th Cir. 2015) ("Like the Fourth Circuit in *Behrmann v. National Heritage Foundation*, 663 F.3d 704, 712 (2011), we commend for the consideration of bankruptcy courts the factors set forth by the Sixth Circuit in *Dow Corning Corp*., 280 F.3d at 658 … Again, we agree with the Fourth Circuit in Behrmann that bankruptcy courts should have discretion to determine which of the Dow Corning factors will be relevant in each case. 663 F.3d at 712. The factors should be considered a nonexclusive list of considerations, and should be applied flexibly, always keeping in mind that such bar orders should be used 'cautiously and infrequently,' id. at 712, and only where essential, fair, and equitable. *Munford*, 97 F.3d at 455. [a prior 11th Circuit decision approving a TPR; 97 F.3d 449, 1996])."

Insolvency Rules 2016: The Transitional Provisions

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Insolvency proceedings; Rules; Transitional provisions

Aims of the Insolvency Rules 2016 (IR 2016)

The IR 2016 have the following express purposes:

1. to consolidate the Insolvency Rules 1986 (IR 1986) with the 28 amending instruments made since the IR 1986 came into force;
2. to restructure and update the language of the IR 1986 (a particular example given is to make it gender neutral); and
3. to give effect to the policy changes and changes to the Insolvency Act 1986 (IA 1986) effected by the Small Business, Enterprise and Employment Act 2015 (SBEEA 2015) and the Deregulation Act 2015.

If the introduction of the Civil Procedure Rules which came into being back in April 1999 is anything to go by (where chaos and panic reigned!), there will inevitably be a bedding down period of these new Rules. It is also inevitable that many questions will be raised as to whether IR 1986 should continue to apply to certain situations or scenarios or whether the application of the IR 2016 is the appropriate way forward. Unless the provisions are specific, there is always going to be room for interpretation and as long as common sense prevails, we should be fine!

By way of a reminder, the Table below shows the structure of the IR 2016.

Part number	*Title*
Part 1	Interpretation, Time and Rules about Documents
Part 2	CVAs
Part 3	Administration
Part 4	Receivership
Part 5	MVL
Part 6	CVL
Part 7	Winding up by the court
Part 8	IVAs
Part 9	Debt Relief Orders
Part 10	Bankruptcy
Part 11	Bankruptcy/Debt Relief Restrictions Orders and Undertakings and Insolvency Registers
Part 12	Court Procedure & Practice
Part 13	Official Receivers
Part 14	Claims and distributions
Part 15	Decision making
Part 16	Proxies and corporate representation
Part 17	Creditors' and liquidation committees
Part 18	Progress reports and remuneration
Part 19	Disclaimer in winding up and bankruptcy
Part 20	Persons at risk of violence
Part 21	The EC Regulation on Insolvency Proceedings
Part 22	Permission to act as director of company with a prohibited name (s.216, IA 1986)

Forms

Position under the IR 2016

Under the IR 2016, the use of statutory forms has been abolished. Instead, Pt 1 sets out what should be included in various documents or notices to be delivered or served and these documents are identified in separate sections of Pt 1. By way of example, r.1.35 sets out the contents of application notices, r.7.5 sets out the prescribed contents of a creditors winding up petition and r.10.7 sets out the prescribed contents of a bankruptcy petition. The order in which the prescribed information is to appear is defined in r.1.8, and r.1.9 sets out the allowed variations from the prescribed contents (except in statutory demands) if the circumstances require.

Please note: various forms from Sch.4 IR 1986 can continue to be used post 6 April 2016 (see below). For the avoidance of doubt, the forms set out in Sch.4 relate to company voluntary arrangements, administration, administrative receivership, liquidation, individual voluntary arrangements, bankruptcy, insolvency court procedure and practice, and the insolvency of overseas companies with UK establishments.

A form from Sch.4 to the IR 1986 may be used on or after 6 April 2017 if (para.5, Sch.2 IR 2016 sets out the detail):

1. The form relates to a Statement of Affairs where the insolvency has commenced before 6 April 2017—applicable to liquidations, administrations and administrative receivership, as well as to bankruptcy.
2. The form relates to meetings in the following circumstances: