



## Corporate Turnaround and Insolvency

January 2012

### Validity of out of court administration appointments - more judgments but no greater certainty

Schedule B1 to Insolvency Act requires, where a company or its directors seek an out of court appointment of an administrator, that notice be given in a prescribed form to the holder of a Qualifying Floating Charge and the four categories of people set out in Insolvency rule 2.20, which includes the company itself if the company is not the appointor. The prescribed form however is deficient where there is no QFC Holder and only works if amended, in which case it ceases to be in the prescribed form. This in turn raises the question of whether anyone, and if so who, should be given notice in circumstances where the prescribed form cannot be used.

The recent decisions in *Minmar and Hill v Stokes* created considerable uncertainty about this. *Minmar* indicated that where directors are making the appointment, notice of intention to appoint must be given to the company for the appointment to be valid. *Hill v Stokes* concluded that failing to give anyone other than persons falling within paragraph 26(1) (i.e. qualifying floating charge holders) notice of intention to appoint would not render the appointment invalid. Two further High Court judgments dealing with the same issue were handed down on Wednesday 21 December 2011 (*Virtualpurple Professional Services and National Westminster Bank plc v Msaada Group*). These took different approaches: *National Westminster Bank plc v Msaada Group* favouring the decision in *Minmar*, *Virtualpurple* favouring the *Hill v Stokes* decision. Neither judgment considered the other.

#### Practical impact of decision

Rather than providing the industry with some certainty, there is now less clarity as to the appropriate approach for validly appointing an administrator out of court where there is no qualifying floating charge holder. Until a decision is taken to a higher court, the current unsatisfactory situation will remain.

In the meantime, where an administration appointment is being contemplated and there is no qualifying floating charge holder, both the appointors and prospective administrators will be keen, where possible, to avoid an out of court appointment by the directors or the company due to risks of an appointment made through this route being invalid. This can be achieved by the company or its directors making an application to the court for an administration order. Although this will provide certainty as to the validity of the administrators' appointment, it is a more time consuming and expensive process than the out of court route. Another alternative, if time is pressing, is to proceed with the out of court appointment process and for the administrators, after their appointment, to make an application to the court for declaration that the administrators have been validly appointed. This also has cost implications and retains an element of risk as to the validity of the initial appointment.

#### Contact

For further information or advice relating to this topic please contact:



**Patrick Cook**  
Partner  
Head of Corporate Turnaround and  
Insolvency  
+44(0)117 307 6807  
patrick.cook@burgess-salmon.com



**Cara Sykes**  
Senior Associate  
Corporate Turnaround and  
Insolvency  
+44(0)117 902 7277  
cara.sykes@burgess-salmon.com

Burgess Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400  
Chancery Exchange, 10 Furnival Street, London EC4A 1AB Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

[www.burgess-salmon.com](http://www.burgess-salmon.com)

Burgess Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burgess Salmon LLP 2012. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting [marketing@burgess-salmon.com](mailto:marketing@burgess-salmon.com).