

## SCOTTISH CORPORATE RESTRUCTURING + INSOLVENCY UPDATE

February 2017

### Welcome to the latest issue of the Shepherd and Wedderburn Scottish CRI Update.

Since the last edition, political uncertainty has dominated the headlines, with the fallout from Brexit continuing, leadership changes in the USA and further elections soon to take place across Europe. The legal landscape in Scotland has also continued to change. A number of important cases have been decided, not least the *Hooley* decision in which the Scottish courts considered the competition between a Scottish administration of a Scottish company against an earlier Indian liquidation of the same company. I look at the case in more detail below.

We also consider the latest steps to modernising the Scottish insolvency rules, and how the changes compare with the imminent amendments to the insolvency rules in England and Wales.

PPI v set-off remains a live issue both north and south of the border, and we consider the latest English and Scottish court decisions on the matter. Finally, a recent decision in Edinburgh served as a stark reminder to all landlords that they must comply with tenancy deposit requirements. Our team consider the issues below.

As always, feel free to get in touch with your usual Shepherd and Wedderburn CRI contact if any of the issues discussed below are likely to impact on you. Happy reading!

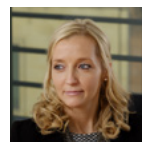


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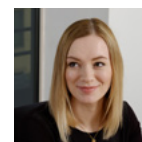
### Transformation of the Scottish insolvency regime

Allana Sweeney and Lucy Mulreany take a look at the latest steps in the modernisation of the Scottish insolvency rules, particularly in light of the pending changes to the equivalent rules in England and Wales.

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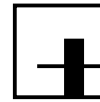
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A need for further amendments has been identified as a precursor to the introduction of the proposed new Insolvency Rules in Scotland and to further align insolvency legislation across Scotland, England and Wales. ”



### A Scottish take on modified universalism and charges over foreign assets?

This article considers the recent Scottish decision in *Hooley*, where a Scottish court considered a Scottish administration of a Scottish company to prevail over an earlier liquidation of the same company at the Indian location of its business and assets.

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The “formal” approach taken to effectiveness and enforceability of a floating charge over foreign assets when appointing administrators out of court is most welcome – and probably something of a relief to practitioners who will largely have assumed this approach should be followed. ”

### Protected Trust Deeds and PPI: Part III

The question of who is entitled to payment of compensation for PPI where a debtor has been discharged from his/her Protected Trust Deed has given rise to conflicting judicial decisions in Scotland. In a previous article, we highlighted the uncertainty created following the decisions in *Donnelly v The Royal Bank of Scotland and Dooneen Limited, t/a McGinnes Associates*; and *Douglas Davidson v David Mond*. This uncertainty has continued, with both cases being appealed, and has also spread south of the border with the expected appeal decision in *Green v Wright*. Andrew Scott provides an update on the position north and south of the border.

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Creditors who are asked to accede to a PTD need to be aware of these recent decisions and we may see more creditors deciding to object to a PTD given the greater protections that are available through formal sequestration. ”

### The Scottish Tenancy Deposit Scheme: beware your obligations

Serena Weir reviews a recent decision of Edinburgh Sheriff Court which serves as a warning to landlords that ignoring their obligations under the Tenancy Deposit Schemes (Scotland) Regulations 2011 could come at a cost.

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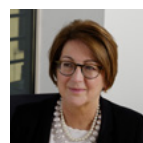


Landlords must bear in mind that breach of the Regulations is a strict liability offence - landlords cannot plead ignorance of their obligations to avoid paying. ”

### Calling Up: Five things you should know

Enforcement (known as Calling Up) of a standard security over real estate is a uniquely Scottish process. In the right circumstances it can be highly effective to enable a fixed security holder gain possession of land/property, collect rents and/or sell the secured property via enforcement of the standard security. Yvonne Brady and John Gallacher outline five things about the calling up process you need to know.

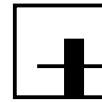
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## About our Corporate Restructuring and Insolvency team

Shepherd and Wedderburn has one of the largest and most established corporate restructuring and insolvency teams in Scotland. All partners within the core team are ranked within their field by the legal directories and the team is led by Scotland's Star Individual, Yvonne Brady (Chambers 2013, 2014, 2015 & 2016), placing the team in an unrivalled position within the market.

We act for a range of banks, insolvency practitioners and businesses on all issues arising in the restructuring and insolvency sector. We are the preferred provider for a number of our bank and insolvency practitioner clients, which include major banks and accountancy firms (including Lloyds Bank, Santander, Clydesdale Bank, KPMG, EY, PwC and Deloitte), as well as investment funds. We are also the partner of choice on cross-border matters for many leading English and foreign law firms. They choose to instruct us in relation to difficult, sensitive, high quality and high value matters

Our lawyers are known for their pragmatic, commercial approach, speed of response and first class strategic advice in complex projects.

For more information get in touch with any of the below contacts.

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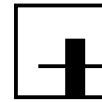
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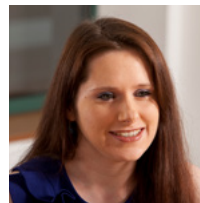
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