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A paperless revolution: electronic working for insolvency proceedings in London

KEY POINTS

- The CE-File system made electronic working mandatory for insolvency proceedings in London, with effect from 25 April 2017.
- Insolvency filings outside London can continue to be made on paper.
- Potential users should create a CE-File account and familiarise themselves with the system as soon as possible.
- While the system will bring users increased flexibility, including the ability to make filings out of court working hours, the practical necessity (for anyone other than the very bullish) to wait for confirmation of acceptance, may mean that, particularly for administration appointments, the system is seldom used out of hours.
- At the time of writing, ministerial approval and the publication of an update to Practice Direction 51O (the electronic working pilot scheme) has been delayed by the general election. Readers should familiarise themselves with that new practice direction in due course.

Electronic working using the HMCTS CE-File software (CE-File) was piloted in the Royal Court of Justice at the Rolls Building, London (Rolls Building) from 16 November 2015. The Rolls Building courts are the Chancery Division of the High Court, the Commercial Court, the Technology and Construction Court, the Mercantile Court and the Admiralty Court. With effect from 25 April 2017, the use of electronic working became compulsory in the Rolls Building, including for insolvency proceedings. Although the rules prescribing where bankruptcy proceedings should be filed are quite nuanced, as a general rule, liquidation and administration proceedings (save where insolvency proceedings are already on foot) can always be opened in the Rolls Building. It is no longer possible to issue claims or applications or file documents on paper in the Rolls Building.

Guidance for electronic working is currently provided in Practice Direction 51O (PD 51O). It was anticipated that a new, updated practice direction would be introduced with effect from 25 April 2017, but this has, at the time of writing, been delayed by the forthcoming general election, and at this stage it is unclear when the new

practice direction will be published. In the meantime, PD 51O continues to apply.

AVAILABILITY

CE-File is available 24 hours a day, every day, all year round, including during out of normal court office opening hours and on weekends and bank holidays, except where there is planned (or unplanned) down-time (PD 5.10.2.1). It is anticipated that an email address for submissions will be provided during any down-time.

REGISTRATION AND PAYMENT

Each person wishing to use CE-File must register an account. Name, email address and password must be provided, and HMCTS may require users to follow other security steps (PD 51O.17). Any court fees can be paid using the HMCTS online method, by credit or debit card, or by any other online method. Users wishing to use the HMCTS online method (essentially, a firm/organisation payment on account system) should note that this can take seven days to become operational.

Certain payments in insolvency proceedings, such as the Official Receiver's deposit for a winding up petition, cannot be

made via CE-File. It is anticipated that the new Practice Direction will provide that such payments should be made by cheque.

SUBMISSION REQUIREMENTS

Documents must be submitted in Word (for draft orders) and PDF in all other cases (PD 51O.5.1) (and not exceed 10 megabytes or such other limit that may be specified by HMCTS). The person filing a document will receive an automated notification acknowledging that the document has been submitted (PD 51O.5.3(1)). The document will then be reviewed by court staff prior to being accepted. Checks will be the same as those currently carried out by counter staff. The court will also check whether there is an outstanding administration or winding up petition pending. The author understands that, as regards notices of intention to appoint and notices of appointment, court staff have been instructed not to reject a notice without speaking to the person making the appointment in order to resolve any apparent issues with the submission.

The person submitting a document will receive an automated notification via the CE-File account acknowledging that the document has been accepted (PD 51O.5.4(4)). This will require users to check their accounts (rather than waiting for an email) to confirm acceptance.

Where payment of a court fee is required, the date and time of filing will be deemed (subject to subsequent acceptance) to be the date and time at which payment of the court fee is made (in this case, payment and submission go hand in hand). Where payment of a court fee is not required, the date and time of filing will be deemed (subject to subsequent acceptance) to be the date and time the submission is made.

Feature

Biog box

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Submissions will be categorised into two classes: originating forms and other forms. Originating forms include a notice of intention to appoint, a notice of appointment, a petition and an application. The author understands that originating forms will be given priority over other forms, that a notice of intention to appoint and a notice of appointment will be given priority over a petition and an application, and that a petition will be given priority over an application. The target time for accepting originating forms (within working hours (10.00am to 4.30pm)) is 90 minutes. The target time for accepting other documents (within working hours) is three hours. It follows that those users wishing to receive confirmation of acceptance on the same working day should not submit documents after 3.00pm (and would be advised to do so as soon as possible on that working day). Users are further advised to notify the court by telephone of the submission of any urgent filings.

PARTICULAR ISSUES

Delay between submission and acceptance

Users may wish to wait to receive confirmation of acceptance before taking any material steps predicated on the filing subsequently being accepted. For insolvency officers wishing to assert the imposition of a moratorium, make announcements, communicate with employees and stakeholders, occupy premises, or to effect pre-packaged sales, this could be frustrating. Confusion may also be created for company directors, wishing to know whether their duties and responsibilities remain operative.

By way of illustration, and based on the target times described above, a notice of appointment submitted via CE-File at 4.30pm on a Friday would not be accepted until between 10.00am and 11.30am on the Monday. The common practice of making administration appointments just before close of business on a Friday (often minimising press and supplier attention and allowing office holders to go onsite relatively discreetly over the weekend) may become less frequent.

Practitioners wishing to obtain immediate confirmation of their appointments may wish to consider filing in one of the District Registries.

Notices of appointment

Where a notice of appointment follows a notice of intention to appoint, rr 3.17(h)(i), 3.21(1)(f)(i) and 3.24(i) of the Insolvency Rules 2016 provide that the form must include a statement that the notice(s) of intention to appoint has been 'filed with the court'. It is anticipated that the new practice direction will confirm that where a notice of intention to appoint has been submitted through CE-File but not yet accepted, the court will treat it as being filed. This will enable users to submit a notice of appointment immediately after filing a notice of intention to appoint.

Out of hours filing under Rule 3.20 of the Insolvency Rules 2016

Under r 3.20 of the Insolvency Rules 2016 a qualifying floating charge holder (QFCH) may file a notice of appointment with the court 'when (but only when) the court is closed'. The QFCH does this by filing the appointment documents via a designated facsimile number or email address. On the next business day the appointor must take three copies of the notice of appointment, with a transmission report or hard copy email, to the court. A failure to comply would result in the appointment ceasing to have effect (r 3.22(2)(b) of the Insolvency Rules 2016).

It is anticipated that the new practice direction will provide that for the purposes of the Rolls Building and r 3.20 of the Insolvency Rules 2016, the court will be deemed to remain open at all times. Therefore, insofar as filings in London are concerned, r 3.20 of the Insolvency Rules 2016 will become redundant. This is unfortunate. Given the uncertainty which will be created in the 'limbo' period between submission (which can be made at any time) and acceptance (which can only be made during court working hours), QFCHs (and their advisers) may have preferred the ability to continue using r 3.20

of the Insolvency Rules 2016 to make an immediate appointment out of hours (which is not subject to subsequent confirmation of acceptance, only compliance with specified conditions subsequent). It will of course remain open to a QFCH to make a r 3.20 appointment in a District Registry.

Inspection of CE-File/office copies

Rule 12.39 of the Insolvency Rules 2016 (which allows specified persons to inspect the court file) will apply to documents filed via CE-File. Users that are granted access will be able to download documents from CE-File. Those documents will not be stamped, and so users needing an office copy are advised to print and take those documents to court for stamping.

CONCLUSION

While the flexibility provided by CE-File must be welcomed, naturally there will be a period in which any wrinkles will have to be ironed-out. The new practice direction will, it is hoped, provide additional clarity. While this article will be of particular interest to practitioners commonly filing insolvency proceedings in London, it is of course possible that electronic working will be rolled out in the District Registries in due course. Moreover, appointors who might ordinarily have filed administration appointment documents on paper in a District Registry might instead prefer to make use of the flexibility afforded by CE-File. ■

Further reading

- LexisPSL Restructuring and Insolvency: News: E-filing at the Rolls Building: some practical considerations for R&I lawyers
- LexisPSL Restructuring and Insolvency: Practice note: Winding-up and administration searches for companies at the Central Registry
- RANDI Blog, 21 September 2015: Guidance issued on electronic filing in Bankruptcy and Companies Court: statement issued by Chief Registrar Baister