Book Review

Dealing with pensions. The practical impact of the Pensions Act 2004 on mergers, acquisitions, restructurings and insolvencies

Robin Ellison and Grant Jones

Spiramus, UK, 2006, ISBN 1 904905 06 4; xvii + 472pp; softback; £95

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I lighted with joy upon this book. I was conscious that mergers and acquisitions in the context of the Pensions Act was definitely an area where I needed guidance. I was also impressed that one of the authors was Robin Ellison, well known for his erudite yet humorous style.

The preface appeals to ‘anyone thinking of buying or selling a business or company, or involved with any corporate reconstruction’. The outline says ‘This book is intended to offer a guide to company directors and their advisers who are thinking of buying or selling or reconstructing the corporate arrangements of their business, and insolvency practitioners and others interested in insolvency’.

The book itself is a fairly slim volume for a work on pensions and is bound rather than looseleaf. This gives it advantages of portability, you can read it in the bath, but the disadvantage of being frozen in time with no possibility of update. Happily it states just on the second page the date up to which the law should be accurate — 18th May, 2006.

The book has 172 pages of text and 300 pages of appendices. The latter comprise various publications from the Regulator and Pension Protection Fund, selected sections from the Pensions Act 2004 (PA04), a few statutory instruments (SIs), two cases and a flowchart

showing whether a Financial Support Direction can be made. I find the selection of items for the appendices a little odd. Not all the sections of PA04 mentioned in the text are actually in the appendix. The selection of SIs is also a little perverse. There are quite a few SIs, such as the PPF (Entry Rules) Regs or the Financial Support Regs, which are discussed at length in the text but which do not feature in the appendix. Further, the acts and SIs used are the unamended texts as published, rather than consolidated texts such as are found in Perspective, Lexis and, hopefully, eventually the online Statute Law Database. Many of the amendments which are not incorporated definitely were made and in force long before the purported date at which the law was stated, May 2006. An example is the Civil Partnership Regs (SI 2005/2053) that were in force from December 2005 and amended, for example s.24 PA 2004. There were also 50 cases listed in the Tables of Authority as being referred to in the text, but only two make it to the appendix. Curiously the Table of Authorities omitted the SIs. One final grumble about the appendix is that the level of reproduction of some of the publications, such as the flowchart on page 212 or the Insolvency Event Notice on page 221, is of such poor quality as to be illegible. Given that many of these sources are available on the

web, and the authors seem happy to give URLs, this might have been a better solution.

The text itself was rather variable. I found the introduction a jolly romp through the history of pensions culminating in how we came to need/deserve the PA04. The next two chapters, funding and mergers and acquisitions, were useful overviews and things I found helpful were, for instance, the explanation of all the funding methods and well set out sections on TUPE and consultation. The chapter on Clearance was largely based on the guidance. The chapter on Insolvency, Solvency and Reconstruction 'presupposes some knowledge of insolvency', which seems a bit steep if the book is intended for company directors who are thinking of buying or selling their business. On the whole, however, it does give valuable information about general insolvency rules and the interplay between the Insolvency Act 1986 and the PA04. The last chapter, Liabilities, was the worst part of the book. It was turgid and seemed to be little more than writing out the statute and SIs, often without even changing the wording. On page 148, for instance, there is a very long paragraph writing out the definition of associate, which is little more than the text of the Insolvency Act 1986, but with the formatting removed.

Generally, I thought the book was a little like the Harry Potter works — as the book progressed it went from cakes and candles to cruciatus curses. The later chapters seemed much more involved in what the Pensions Act says rather than its practical application. Indeed they seemed to be little more than semantic analyses of the Pensions Act and attendant SIs. While some of the comments were relevant and of practical import, many of them just seemed to be a swipe at the draftsman. There were, for instance, several references to the fact that any power afforded to the trustees or insolvency practitioners have to be exercised in a reasonable way, but the Regulator and PPF can be as gung ho as they like. While interesting, this did not seem to have much practical application. Further, every few lines the authors found problems with the drafting, such as there is 'some ambiguity', 'we must assume' and my personal favourite, 'it has to be legitimately assumed that the draughtsman was making a

specific point here' (about the omission of a reference to 'contingent asset' from s.52(8)), which I interpreted as shorthand for 'he made a complete mess of this'. Anyone with the most fleeting of acquaintance with pensions legislation will have come across such anomalies (and seen them hotly defended). The authors even fell to suggesting better wording for some sections. However, I felt that for all the faults that the authors discovered, there was little practical advice on how to deal with such ambiguities safely. The book was riddled with polemic, mirroring Robin's well-known stand against the over-regulation of pensions. Indeed it might well have been called 'Pensions Act 2004: The Case for Change' (a phrase from page 134).

One thing that did concern me overall was the inaccuracy of the text. While the preface does crave indulgence for its imperfections, it does have the feel of a book that was perhaps a well-rounded text that was then updated and flung together for a deadline without consolidating the existing text. Throughout there are references to prescribed matters still awaiting regulations, which in fact had by May 2006 been in force for some time. Indeed some of the missing regulations are then set out in detail in the last chapter, but no updating is made of the earlier chapters. The text can also be a little obscure, such as the heading on page 133 that says 'The obligation of the PPF following a "scheme rescue"' and then talks about reconsideration, closed schemes and winding up. At the risk of nit-picking there are many typos. Some of course are not material and the reader may not even notice them, such as 'individuals' for 'individual'; but others are more significant, such as (d) for (b) when citing regulations, etc. Again, while I am very happy to see URLs freely given, accurate punctuation is vital in them.

I was hoping for a more robust explanation of the effect of the PA04 on actual situations. Worked examples would have been welcome. I look forward to a second expanded edition, and if a proofreader is required my rates are very reasonable.

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