ISSUE NO 120

2020

R3 TECHNICAL BULLETIN

Information Issued by the General Technical Committee of the Association of Business Recovery Professionals to members, associates and new professionals

CONTENTS

Association of Business Recovery Professionals R3 Rescue Recovery Renewal

CONSULTATIONS ON REVISIONS TO SIPS 3.1, 3.2, 7 AND 9

The Joint Insolvency Committee ('JIC') is consulting on changes to SIP 3.1 - Individual voluntary arrangements, SIP 3.2 - Company voluntary arrangements, SIP 9 - Payments to insolvency office holders and their associates and SIP 7 - Presentation of financial information in insolvency proceedings.

The consultation commenced on 27 April 2020 and is open for a period of 12 weeks, closing on 20 July 2020.

The JIC recognises that these are testing times. But these are only proposed changes. There is no intention to amend the Statements of Insolvency Practice (SIPs) without careful consideration of the responses received and any plan to introduce changes will take into account any continuing challenges faced by the insolvency profession.

The legislative changes recently announced by Government do not have impact on the SIPs which are the subject of this consultation.

SIP 3.1 Individual Voluntary Arrangements and SIP 3.2 - Company Voluntary Arrangements

A working group of the JIC has been reviewing SIP 3.2 - Company Voluntary Arrangements. The working group was comprised of insolvency professionals and other participants in the company voluntary arrangement (CVA) process, including the British Property Federation and HMRC.

The JIC decided to review the SIP because of the raised profile of the CVA particularly in the retail sector, the outcome of the government's review of the corporate insolvency framework and its focus on company rescue, and the academic research into CVAs carried out by Professor Peter Walton. Professor Walton presented to the working group on his findings.

The principal changes made to SIP 3.2 relate to transparency and the provision of information. In particular, additions have been made to the section of the SIP which deals with the proposal. Other changes include an emphasis on the need for the nominee to be objective.

After completing its review of SIP 3.2, the working group identified potential changes which would also be relevant to SIP 3.1 - Individual Voluntary Arrangements and S IP 3.3 – Trust Deeds. No detailed review of SIP 3.1 and SIP 3.3 was carried out, the relevant changes from SIP 3.2 were simply carried over into SIP 3.1 and SIP 3.3. The JIC is also seeking your views on the proposed changes to SIP 3.1 and there is an opportunity in the consultation questionnaire to suggest other changes to SIP 3.1. SIP 3.3 is not included in this consultation as the recent inquiry into Protected Trust Deeds by the Scottish Government may recommend changes to the law, which could require changes to the SIP or recommend changes to the SIP directly.

The consultation seeks your views on the changes made by the working group. SIP 3.2 applies in England and Wales, Scotland and Northern Ireland, SIP 3.1 applies in England and Wales and Northern Ireland.

All the changes proposed to the SIPs are in the context of the current legislative framework. SIPs cannot be used as a means of amending the law.

THE PROPOSED CHANGES TO SIP 3.1

The proposed changes in full can be found **here**. A summary of these changes is below –

Advice to the debtor

- To include whether the debtor will require additional specialist assistance which will not be provided by any supervisor appointed.

Documentation

- Documentation showing the explanation given of the roles of the nominee and supervisor.

Preparing for an IVA

- Creditors are given adequate time to consider the proposal. Where creditors may need assistance in understanding the consequences of an IVA, the insolvency practitioner ('IP') should consider signposting sources of help.

The proposal

- The proposal is considered objectively, has substance and to include -
- Details of the alternative options considered, both prior to and within formal insolvency by the debtor;
- Sufficient information to support any profit and cash projections, subject to any commercial sensitivity;
- An explanation of the role and powers of the supervisor;
- Where it is proposed that certain creditors are to be treated differently, an explanation as to which creditors are affected, how and why, in a manner which aims to be clear and useful;
- An explanation of how debts are to be valued for voting purposes, in particular where the creditors include long term or contingent liabilities;
- Disclosure of the estimated costs of the IVA including the proposed remuneration of the nominee and the supervisor and the bases for those estimates;
- An explanation of how debts which it is proposed are compromised will be treated should the IVA fail; and
- The circumstances in which the IVA [may] will conclude or fail, including what may happen to the debtor in such circumstances.

The nominee

- When acting as nominee, the IP should have procedures in place to ensure that they are able to report objectively.
- In the absence of consent, the IVA cannot proceed in a modified form. The debtor's consent, or otherwise must be recorded.

The supervisor

- Full disclosure is made of the costs of the IVA and of any other sources of income of the IP, associates of the IP or the firm, in relation to the case, in reports.
- An explanation of any increase of costs is to be provided.
- When the IVA concludes or fails, the supervisor should ensure that they act in accordance with the IVA proposal. What is to happen should be reported to creditors.

THE PROPOSED CHANGES TO SIP 3.2
The proposed changes in full can be found **here**. A summary of these changes is below –

Principles
An IP should explain to the directors their responsibilities and role before and during the CVA.

Standards of general application
To include whether the company will require additional specialist assistance which will not be provided by any supervisor appointed.

Documentation
- Documentation showing the explanation given of the roles of the nominee and supervisor.

- A detailed note of the strategy, outlining the advantages and disadvantages of each option, including the impact of trading within a CVA for a prolonged period and the continued viability of the business during that period.

Standards of specific application
Preparing for a CVA

- Creditors are given adequate time to consider the proposal. Where creditors may need assistance in understanding the consequences of a CVA, the IP should consider signposting sources of help.

The proposal
- The proposal is considered objectively, has substance and to include -
    - the roles of the directors and key employees and their future involvement in the company, including the background and financial history of the directors where relevant;
    - the alternative options considered, both prior to and within formal insolvency by the company;
    - sufficient information to support any profit and cash projections, subject to any commercial sensitivity;
    - an explanation of the role and powers of the supervisor;
    - where it is proposed that certain creditors are to be treated differently, an explanation as to which creditors are affected, how and why, in a manner which aims to be clear and useful;
    - an explanation of how debts are to be valued for voting purposes, in particular where the creditors include long term or contingent liabilities;
    - disclosure of the estimated costs of the CVA including the proposed remuneration of the nominee and the supervisor and the bases for those estimates;
    - the identity of the source of any referral of the company, the relationship or connection of the referrer to the company and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment;
    - details of the amounts and source of other payments made, or proposed to be made, to the nominee and the supervisor or their firms in connection, or otherwise, with the proposed CVA, directly or indirectly and the reason(s) for the payment(s);
    - an explanation of how debts which it is proposed are compromised will be treated should the CVA fail; and
    - the circumstances in which the CVA [may] will conclude or fail, including what will happen to the company in such circumstances.

The nominee

- When acting as nominee, the IP should have procedures in place to ensure that they are able to report objectively.

The supervisor

- Full disclosure is made of the costs of the CVA and of any other sources of income of the IP, associates of the IP or the firm, in relation to the case, in reports.

- An explanation of any increase of costs is to be provided.

- When the CVA concludes or fails, the supervisor should ensure that they act in accordance with the CVA proposal. What is to happen should be reported to creditors.

THE PROPOSED CHANGES TO SIP 7

There are a number of proposed changes to the SIP and we therefore ask members to familiarise themselves with these changes **here**.

The changes focus on transparency and ensuring information provided to creditors and other interested parties is clear, informative and consistent to enable parties to understand the nature and amounts of the receipts and payments.

There is also greater emphasis on the term 'associate'. Consideration is to be given to the substance or likely perception of any association between the IP, their firm, or an individual within the IP's firm and the recipient of a payment. Where a reasonable and informed third party might consider there would be an association, payments should be treated as if they are being made to an associate, notwithstanding the nature of the association may not meet the definition in the legislation.

When an office holder's appointment is followed by the appointment of another IP, whether or not in the same proceedings, the prior office holder should provide the successor with information in accordance with the principles and standards contained in this statement. This is in addition to any statutory obligations imposed on an office holder to provide information.

Requests for additional information, including on expenses, should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the appointment.

THE PROPOSED CHANGES TO SIP 9

There are a number of proposed changes to the SIP and we therefore ask members to familiarise themselves with these changes **here**.

The proposed changes provide greater focus for IPs, in particular with regard to expenses – *"Expenses are any payments from the estate which are neither an office holder's remuneration nor a distribution to a creditor. Expenses also includes disbursements. Disbursements are payments which are first met by, and then reimbursed to, an office holder."*

There is greater emphasis on all payments from an estate being fair, reasonable and proportionate to the insolvency appointment. Also, payments to associates to strongly highlighted.

The term 'fee' has been amended to 'fees'. The following are not permissible as either remuneration or an expense:

a) an expense or any other charge calculated as a percentage of remuneration;
b) an administration fee or charge additional to an office holder's remuneration;
c) the recovery of any overheads other than those absorbed in the charge out rates.

When providing a fees estimate of time to be spent, creditors and other interested parties may find a blended rate (or rates) and total hours anticipated to be spent on each part of the anticipated work more easily understandable and comparable than detail covering each grade or person working on the appointment. The estimate should also clearly describe what activities are anticipated to be conducted in respect of the estimated fee. When subsequently reporting to creditors, the actual hours and average rate (or rates) of the costs charged for each part should be provided for comparison purposes.

Expenses are divided into those that do not need advance approval before they are charged (category 1) and those that do (category 2).

- Category 1 expenses: These are payments to persons who are not an associate. Category 1 expenses can be paid without prior approval.

- Category 2 expenses: These are payments to associates. Before being paid, category 2 expenses require approval in the same manner as an office holder's remuneration.

When seeking approval of category 2 expenses, an office holder should explain for each payment the basis on which payment is being made.

Any shared or allocated payments incurred by the office holder or their firm are to be treated as category 2 expenses and approval sought before payment. This is irrespective of whether the payment is being made to an associate, because the office holder will be deciding how the expenses are being shared or allocated between insolvency appointments. Requiring approval of these payments enables those who are approving the expenses to confirm that the approach being taken by the office holder is reasonable.

If an office holder has obtained approval for the basis of category 2 expenses, that basis may continue to be used in a sequential appointment where further approval of the basis of remuneration is not required, or where the office holder is replaced.

120.2

THE DISCLAIMING OF ONEROUS PROPERTY – DOES A VAT CHARGE ARISE?

R3's tax working party group and HMRC have been discussing whether a Value Added Tax ('VAT') charge can arise when disclaiming onerous property and whether disclaiming property constitutes a 'transfer'?

HMRC have confirmed that there can only be a VAT charge on the disclaimer of an onerous property in one of two circumstances:

(1) That the disclaimer has been done for a consideration i.e. payment in one form or another; or

(2) That there has been a transfer of ownership of the property

It has long been established that the first bullet point does not apply.

Following discussions with R3, HMRC have agreed that the disclaimer of an onerous property by an IP, providing neither of the above two bullet points apply, would NOT give rise to a VAT charge. *

* The wording in this technical note under the heading VAT has been provided by HMRC.

VAT

The relevant VAT legislation on what constitutes a 'supply' for VAT purposes, is as follows -

Section 5(2) of the Value Added Tax Act 1994 ('VATA94') states the following:

Subject to any provision made by [Schedule 4] and to Treasury orders under subsections (3) to (6) below -

(a) "supply" in this Act includes all forms of supply, but not anything done otherwise than for a consideration; (i.e. payment of some sort)

(b) anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.

Under para 1(1) Schedule 4 VATA94 *"Any transfer of the whole property in goods is a supply of goods" but, subject to sub-paragraph (2) below, the transfer –*

(a) of any undivided share of the property, or

(b) of the possession of good,

Is a supply of services.

There is no mention of 'consideration' in para 1(1) Schedule 4 and therefore a discussion arose on whether a VAT charge can arise when disclaiming onerous property and whether the disclaiming of a property constitutes a 'transfer'?

120.2 // THE DISCLAIMING OF ONEROUS PROPERTY – DOES A VAT CHARGE ARISE?

A disclaimer

Governed by the Insolvency Act 1986 ('IA86) and Insolvency Rules 2016 ('IR16'), a disclaimer is a statutory procedure and the relevant provisions are as follows –

(1) Liquidation

s178, s179, s180, s181 and **s182** IA86 and **r19.1 – 19.11** IR16.

(2) Bankruptcy

s315, s316, s317, s318, s319, s320 and **s321** IA86 and same rules as above.

Note - An administrator does not have a statutory power to disclaim.

Liquidators and Trustees are entitled to disclaim any onerous property, which is defined (s178(3), s315(2) IA86 as (1) any unprofitable contract and (2) any other property which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

*A most common form of onerous property encountered by Insolvency Practitioners ('IPs') is leasehold property, however, it is not limited to leases. The definition of 'property' is wide and 'includes money, goods, things in action, land, and every description of property wherever situated and also obligations and every description of interest, whether present or future or vested or contingent arising out of, or incidental to, property.'(**s436(1) IA86**).*

The purpose of a disclaimer is to allow an IP to complete the liquidation or bankruptcy affairs without being held up by obligations under unprofitable contracts, or by continued ownership or possession of property which has no value.

A disclaimer is affected by the liquidator or trustee authenticating and dating a notice of disclaimer and sending copies thereof to prescribed persons as set out in the relevant legislative provisions.

VAT GROUP REGISTRATIONS

The following note on VAT group registrations and the impact of insolvency on such groups has been prepared by HMRC.

What is a group registration?

A group registration is one in which two or more companies are registered together under a single VAT registration. One company will act as a 'representative member' on behalf of the group. The representative member of the group is responsible for lodging returns and paying VAT and receiving VAT repayments on behalf of the group registration.

Joint & Several liability

Each member of the group is jointly and severally liable for any VAT debt incurred by the group for the period that that company was a member of the group.

Although HMRC will normally expect the representative member to pay any VAT owing on behalf of the group, HMRC may pursue the debt against any company that was a member of the group at the time that the debt was incurred.

Control of the group

Although the representative member is responsible for rendering returns and paying VAT on behalf of the group, it is the controlling entity that legally controls the other companies in the group. The controlling entity may be the representative member, another member of the VAT group, or a single other person who is not one of the group members. That person can be a body corporate, an individual or a partnership.

Identification of the controlling entity

Applications for group registration are made on form **VAT 50.** The VAT 50 form requests details of the individual, corporate body or partnership that controls the group.

The group is legally required to advise HMRC of any changes to the composition of the group, including inclusion or removal of members, change of controlling entity etc. Any such changes are notified to HMRC using forms VAT 50 and **VAT 51**. A change of representative member should be notified to HMRC using form **VAT 56**. If the new representative member is not already a member of the VAT group, then the VAT 56 will need to be accompanied by a VAT 50 and VAT 51.

Effect of insolvency

Controlling entity insolvent (and controlling entity is also the representative member)

The controlling entity of the group controls the other members of the group. Therefore, where the controlling entity of the group is insolvent and the controlling entity is also the representative member of the VAT group it will retain the VAT group registration. The Insolvency Practitioner ('IP') should account for post-appointment VAT using the group VAT return...

Any solvent group subsidiaries are normally taken out of the group and registered separately (or allowed to form a new group) if appropriate. Such solvent subsidiary companies are jointly and severally liable for the VAT debt of the representative member up to the date of the representative member's insolvency.

However, HMRC has no legal right to remove solvent subsidiary companies out of an insolvent group if the IP of the representative member objects to the removal.

Therefore, HMRC will take action as follows:

- Input VAT 769 for the group registration to calculate and lodge the VAT claim for the insolvent representative member.

- Contact the IP of the controlling entity to inform him/her that the solvent subsidiary companies will be removed from the VAT group unless the IP objects to their removal within 14 days.

- If the IP objects to the removal of the solvent subsidiary companies, those companies will remain part of the VAT group. The IP will then need to include taxable supplies made by the solvent subsidiary companies on the group VAT returns.

- If the IP does not object to removal of the solvent subsidiary companies, they will be removed with effect from the date of the representative member's insolvency. The solvent subsidiary companies will be re-registered if appropriate.

Controlling entity insolvent (and controlling entity is not the representative member)

Since the controlling entity controls all of the other companies it will remain part of the group if the IP wishes it to. In that case, the IP will need to account for post-appointment VAT on the group VAT return lodged by the representative member.

Alternately, the IP may remove the controlling entity from the group. The controlling entity may be re-registered separately if it meets the registration criteria i.e. it would need to be making, or intending to make, taxable supplies.

If the controlling entity is removed from the VAT group, HMRC will lodge a manual claim for the group VAT date in the insolvency proceedings of the controlling entity, up to the date of its insolvency.

Controlling entity solvent but one or more subsidiary companies insolvent.

If a company other than the controlling entity becomes insolvent, whether or not it is the representative member of the group, then it is no longer controlled by the controlling entity nor by any other company within the group. It is controlled by the IP from the date of its insolvency. Therefore, the control criteria allowing it to remain part of the group no longer apply. Consequently, the insolvent subsidiary company (whether or not it is the representative member) must be removed from the group.

HMRC will lodge a manual claim for the VAT group debt in the insolvency proceedings of the company removed from the group, up to the date of its insolvency.

The group registration will carry on and normal recovery action will continue in respect of the debt for the rest of the VAT group. If the insolvent subsidiary company is also the representative member of the group then, upon its removal, the group must appoint a new representative member. The group is legally obliged to notify HMRC of any changes to the composition of the group, including the appointment of a new representative member.

Group registrations in a voluntary arrangement (VA)

VA is a business rescue procedure in which an IP will help draw up the proposed arrangement and then monitor the arrangement if it is approved by creditors. But, unlike in other insolvency procedures, when a company enters a VA the IP does not take control of the company. Therefore, a group member entering a VA will not break the control conditions necessary for group registration, since a company in a VA remains under the control of the controlling entity of the group rather than control passing to an IP.

In addition, the attempt to rescue the company may depend on its continued membership of the VAT group. Therefore, a group member entering a VA will not be removed from the VAT group unless that company specifically requests to do so.

HMRC will take action as follows:

Controlling entity in a VA (and the controlling entity is also the representative member)

Input VAT 769 for the group registration to calculate and lodge the VAT claim against the holding company.

Controlling entity in a VA (and controlling entity is not the representative member)

HMRC will submit a manual claim in the VA of the holding company for the group debt of the VA.

Subsidiary company in a VA.

HMRC will submit a manual claim in the VA of the subsidiary company (whether or not the subsidiary company is also the representative member of the group) for the group debt up to the date of its VA. If the subsidiary company entered the VA part way through a VAT period for which there is a group debt, that debt will be pro-rata'd up to the date of the subsidiary company's VA for the purposes of HMRC's claim.

TAX UPDATE – TTP ARRANGEMENTS

HMRC have kindly informed R3's tax working group of their current position with regards to Time To Pay ('TTP') proposals and the collector's position on interest and penalties.

HMRC – TTP proposals

A TTP proposal should be made in writing as it allows those submitting the opportunity to provide as much supporting detail as necessary to obtain approval.

Standard information to be provided would include –

- Description of the business;
- Annual total liability to tax;
- Details of the nature and amount of tax to be deferred by instalment;
- A short-term cashflow forecast (particularly if the request is for an amount greater than £750,000); and
- The reasons why the request is being made (specifically the direct link to COVID-19)

Additionally, to support a TTP proposal, HMRC would want to see the following in some form –

- Details of the measures the company has implemented to allow it to pay the debt as quickly as possible (in particular, if the company has applied for and received support via any other government scheme);
- An explanation of the parts others have played in ensuring the company presents the best proposal possible;
- An explanation of the other funding options explored before seeking TTP (e.g. via banks, other lenders, shareholders, directors etc);
- Any information to support why HMRC should provide support and take an element of risk when others are not willing to invest or inject capital into the company.

HMRC appreciate that the trading and the financial landscape has altered due to the COVID-19 crisis. HMRC recognise that work remains to be done by them to determine what kind of TTP proposals they would find acceptable in this changed landscape. Further announcements to be made in due course.

HMRC – Collector's position on interest and penalties

Self-Assessment Deferred Payments

- HMRC will make the necessary adjustments to automated systems to prevent any late payment interest from accruing;
- Individuals will not be charged late payment interest provided the deferred payment on account is paid in full on 31 January 2021;
- If the individual's deferred payment on account is not paid by 31 January 2021 they may incur late payment interest from that date;
- Penalties will not be applied.

VAT Deferred Payments

- Interest will not be charged on the deferred VAT payment;

- If the payment has been deferred as a result of the VAT deferrals announcement, interest will not be charged.

Supply VAT

- You cannot defer payment of supply VAT as part of the VAT payments deferral due to COVID-19, you must pay VAT in line with existing rules;

- As supply VAT is paid via duty deferment the duty deferment support is available for supply VAT.

The COVID-19 VAT deferral scheme is available for VAT declared on VAT returns.

This does not apply to any other form of VAT declarations, i.e. CHIEF declarations nor VAT accounted for through VAT 908s. Supply VAT is not import VAT, but it is declared on a VAT 908 and the form does not distinguish between the two. Payments are subject to duty deferment arrangements and payment is made via direct debit on the 15th day of the month following the transaction (import or supply). This means that the arrangement announced for duty deferment is available.

Duty deferment account holders who are experiencing severe financial difficulty as a result of COVID-19 and who are unable to make payment of deferred customs duties and import VAT due on 15th of a month can contact HMRC -

- They can contact HMRC for approval to enter into an extended period to make full or partial payment, without having their guarantee called upon or their deferment account suspended;

- The account holder should contact one of the following:

    - Duty Deferment Office 03000 594243
    - Email: cdoenquiries@hmrc.gov.uk
    - COVID-19 helpline on 0800 024 1222

Import VAT

The Government has introduced a relief for import duty and VAT for some goods imported from non-EU countries to combat the impact of COVID 19. This relief will initially be in place until 31 July 2020.

<u>Who can claim this relief?</u>

You can claim this relief if you are -

- State organisations, including state bodies, public bodies and other bodies governed by public law;

- Other charitable or philanthropic organisations approved by the competent authorities.

Goods the relief can be claimed on -

- The relief will apply to imports of protective equipment, other relevant medical devices or equipment for the COVID-19 outbreak.

- If your goods are lent, hired out or transferred to an organisation eligible for the relief it will remain in place, so long as you meet the relief conditions.

Relief can be claimed on imported goods for free circulation that are

- For distribution free of charge to those affected by the COVID-19;
- Be made available free of charge - while remaining the property of the organisations importing them;
- For donation or onward sale to the NHS;
- By disaster-relief agencies for free circulation to meet their needs during the COVID-19 outbreak.

Excise Duty

The default for all Excise duty debts is enhanced TTP (if appropriate).

If the Excise debt has arisen as a result of a failed Duty Deferment direct debt (29th March due date) -

- HMRC won't inhibit the duty deferment account or call on any guarantee;
- HMRC will discuss TTP with any debtor that contacts them (once the debt is on the system) but won't be actively contacting these debtors in the short term (due to Coronavirus helpline priorities);
- TTP offered will be in line with that announced at the budget.

Customs Duty (and import VAT)
(May be split into C18 Misdeclaration and C18 Not paid at port)

There has been some movement on Customs Duty/Import VAT for people who pay their Customs and Import VAT via a Duty Deferment account. We continue to discuss how to treat Customs Duty and Import VAT debts not paid via Duty Deferment accounts.

120.5

PRACTICE DIRECTION AMENDMENTS – STATEMENT OF TRUTH

On 27 January 2020 the 113th update to the Civil Procedure Rules ('CPR') was published. The update provided amendments to a number of Practice Directions ('PD'), in particular PD 22 – Statements of Truth, which supplements CPR Part 22.

The Insolvency Rules (England and Wales) 2016 defines in **Rule 1.2** **"statement of truth"** as a statement of truth made in accordance with **Part 22** of the **CPR.**

Insolvency **Rule 12.1(3)** explicitly states that CPR 32 applies in respect of false statements.

CPR 32.14(1) states

(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth)

CPR Rule 22.1(1)(g) includes Insolvency as it refers to *"Any other document where a rule or practice direction requires it."*

Therefore, the Statements of Truth (such as s.99(2A) IA 1986) are governed by Rule 22.1 of the CPR.

Rule 22.1 now has the amended form of words to include the part in red

"I believe that the facts stated in this [document name] are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

References relating to documents that require a Statement of Truth pursuant to the Insolvency Rules (England and Wales) 2016 –

- 2.6, 2.11 (CVA)
- 3.29, 3.31 (Admin)
- 4.7,4.8 (Admin Receiver)
- 6.2, 6.3, 6.5, 6.8 (CVL)
- 7.6, 7.18, 7.28, 7.41, 7.42, 7.46, 7.47, 7.88 (WUC)
- 8.5 (IVA)
- 10.3, 10.10, 10.28, 10.56, 10.60, 10.61, 10.63, 10.65 (BKY)
- Para 6 (Sch4 Service of documents)

Members should familiar themselves with the updated PD 22 and make changes to their standard documentation where necessary.

113th UPDATE – PRACTICE DIRECTION AMENDMENTS

PRACTICE DIRECTION 22 – STATEMENTS OF TRUTH

PD 22 has been amended as follows –

Form of the statement of truth

2.1 The form of the statement of truth verifying a statement of case, a response, an application notice or a notice of objections should be as follows:

'[I believe][the (claimant or as may be) believes] that the facts stated in this [name document being verified] are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'

2.2 The form of the statement of truth verifying a witness statement should be as follows (and provided in the language of the witness statement):

'I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.'

2.2A The form of the statement of truth verifying a costs budget should be as follows:

'This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation.'

2.3 Where the statement of truth is contained in a separate document, the document containing the statement of truth must be headed with the title of the proceedings and the claim number. The document being verified should be identified in the statement of truth as follows:

(1) claim form: 'the claim form issued on [date]',
(2) particulars of claim: 'the particulars of claim issued on [date]',
(3) statement of case: 'the [defence or as may be] served on the [name of party] on [date]',
(4) application notice: 'the application notice issued on [date] for [set out the remedy sought]',
(5) witness statement: 'the witness statement filed on [date] or served on [party] on [date]'.

2.4 The statement of truth must be in the witness's own language.

2.5 A statement of truth must be dated with the date on which it was signed.

Who may sign the statement of truth
3.1 In a statement of case, a response or an application notice, the statement of truth must be signed by:

(1) the party or his litigation friend2, or
(2) the legal representative3of the party or litigation friend.

3.2 A statement of truth verifying a witness statement must be signed by the witness.

3.3 A statement of truth verifying a notice of objections to an account must be signed by the objecting party or his legal representative.

3.4 Where a document is to be verified on behalf of a company or other corporation, subject to paragraph 3.7 below, the statement of truth must be signed by a person holding a senior position4 in the company or corporation. That person must state the office or position held.

3.5 Each of the following persons is a person holding a senior position:

(1) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation, and

(2) in respect of a corporation which is not a registered company, in addition to those persons set out in (1), the mayor, chairman, president or town clerk or other similar officer of the corporation.

3.6 Where the document is to be verified on behalf of a partnership, those who may sign the statement of truth are:

(1) any of the partners, or
(2) a person having the control or management of the partnership business.

3.6A An insurer or the Motor Insurers' Bureau may sign a statement of truth in a statement of case on behalf of a party where the insurer or the Motor Insurers' Bureau has a financial interest in the result of proceedings brought wholly or partially by or against that party.

3.6B If insurers are conducting proceedings on behalf of many claimants or defendants a statement of truth in a statement of case may be signed by a senior person responsible for the case at a lead insurer, but–

(1) the person signing must specify the capacity in which he signs;
(2) the statement of truth must be a statement that the lead insurer believes that the facts stated in the document are true; and
(3) the court may order that a statement of truth also be signed by one or more of the parties.

3.7 Where a party is legally represented, the legal representative may sign the statement of truth on his behalf. The statement signed by the legal representative will refer to the client's belief, not his own. In signing he must state the capacity in which he signs and the name of his firm where appropriate.

3.8 Where a legal representative has signed a statement of truth, his signature will be taken by the court as his statement:

(1) that the client on whose behalf he has signed had authorised him to do so,
(2) that before signing he had explained to the client (through an interpreter where necessary) that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document were true, and
(3) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts (see rule 32.14).

3.9 The individual who signs a statement of truth must print his full name clearly beneath his signature.

3.10 A legal representative who signs a statement of truth must sign in his own name and not that of his firm or employer.

3.11 The following are examples of the possible application of this practice direction describing who may sign a statement of truth verifying statements in documents other than a witness statement. These are only examples and not an indication of how a court might apply the practice direction to a specific situation.

Managing Agent	An agent who manages property or investments for the party cannot sign a statement of truth. It must be signed by the party or by the legal representative of the party.
Trusts	Where some or all of the trustees comprise a single party one, some or all of the trustees comprising the party may sign a statement of truth. The legal representative of the trustees may sign it.
Insurers and the Motor Insurers' Bureau	If an insurer has a financial interest in a claim involving its insured then, if the insured is the party, the insurer may sign a statement of truth in a statement of case for the insured party. Paragraphs 3.4 and 3.5 apply to the insurer if it is a company. The claims manager employed by the insurer responsible for handling the insurance claim or managing the staff handling the claim may sign the statement of truth for the insurer (see next example). The position for the Motor Insurers' Bureau is similar.
Companies	Paragraphs 3.4 and 3.5 apply. The word manager will be construed in the context of the phrase 'a person holding a senior position' which it is used to define. The court will consider the size of the company and the size and nature of the claim. It would expect the manager signing the statement of truth to have personal knowledge of the content of the document or to be responsible for managing those who have that knowledge of the content. A small company may not have a manager, apart from the directors, who holds a senior position. A large company will have many such managers. In a larger company with specialist claims, insurance or legal departments the statement may be signed by the manager of such a department if he or she is responsible for handling the claim or managing the staff handling it.
In-house legal representatives	Legal representative is defined in rule 2.3(1). A legal representative employed by a party may sign a statement of truth. However a person who is not a solicitor, barrister or other authorised litigator, but who is employed by the company and is managed by such a person, is not employed by that person and so cannot sign a statement of truth. (This is unlike the employee of a solicitor in private practice who would come within the definition of legal representative.) However such a person may be a manager and able to sign the statement on behalf of the company in that capacity.

For ease of reference, the amendments were as follows -

Practice Direction 22 – Statements of Truth

1) In paragraph 2.1, in the wording of the statement of truth, at the end insert "I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.".

2) In paragraph 2.2— a) after "as follows" insert "(and provided in the language of the witness statement)"; and b) in the wording of the statement of truth, at the end insert "I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.".

3) After paragraph 2.3 insert— "2.4 The statement of truth must be in the witness's own language. 2.5 A statement of truth must be dated with the date on which it was signed.".

4) In paragraph 3.8(2), after "to the client" insert "(through an interpreter where necessary)".

5) For the heading above paragraph 3A.1 substitute— "Inability of persons, other than by reason of language alone, to read or sign documents to be verified by a statement of truth"

6) In paragraph 3A.1, after "the document," insert "other than by reason of language alone,".

120.6

REMINDER ON THE USE OF WEBSITES TO PUBLISH DOCUMENTS

If a notice is provided to creditors under r1.50 of the Insolvency (England & Wales) Rules 2016 ('IR16'), it is not necessary for members to write again to creditors at the time a progress report is being made available. If you do, you may be criticised for incurring additional costs to the estate.

The rules

Rule 1.49 IR16 – allows for the use of a website to deliver a particular document, by delivering a notice to creditors

(2) "An office-holder who is required to deliver a document to any person may (except where personal delivery is required) satisfy that requirement by delivering a notice to that person which contains—

(a) a statement that the document is available for viewing and downloading on a website;

(b) the website's address and any password necessary to view and download the document; and

(c) a statement that the person to whom the notice is delivered may request a hard copy of the document with a telephone number, email address and postal address which may be used to make that request."

Rule 1.50 IR16 - introduced the ability for an officeholder to be able to deliver a notice to creditors that all future documents, with some exclusions, will be made available for viewing and downloading on a website without further notice.

(1) "The office-holder may deliver a notice to each person to whom a document will be required to be delivered in the insolvency proceedings which contains—

(a) a statement that future documents in the proceedings other than those mentioned in paragraph (2) will be made available for viewing and downloading on a website without notice to the recipient and that the office-holder will not be obliged to deliver any such documents to the recipient of the notice unless it is requested by that person;

(b) a telephone number, email address and postal address which may be used to make a request for a hard copy of a document;

(c) a statement that the recipient of the notice may at any time request a hard copy of any or all of the following—

(i) all documents currently available for viewing on the website,

(ii) all future documents which may be made available there, and

(d) the address of the website, any password required to view and download a relevant document from that site.

(2) A statement under paragraph (1)(a) does not apply to the following documents—

(a) a document for which personal delivery is required;

(b) a notice under rule 14.29 of intention to declare a dividend; and

(c) a document which is not delivered generally."

120.6 // REMINDER ON THE USE OF WEBSITES TO PUBLISH DOCUMENTS

The reminder
Where an officeholder has issued a notice under r1.50 of IR16, on the basis of seeking to save costs, it is not necessary to write again to creditors at the time of the progress report being made available. If a notice has not been provided under this rule, it is necessary to write to creditors to inform them that the report is published on a website.

It would be best practice for creditors to receive an automated notification email when a new document is uploaded to a website portal. However, we appreciate that this will be dependent on the officeholder's information technology systems.

SCOTLAND – This reminder is applicable to Scotland and the equivalent rules are as follows –

Rule 1.44 The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

Rule 1.45 The Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018

Rule 1.44 The Insolvency (Scotland) (Receivership and Winding up) Rules 2018

Rule 1.45 The Insolvency (Scotland) (Receivership and Winding up) Rules 2018

PRE-APPOINTMENT COSTS – A REMINDER FOR MEMBERS

Over the course of 2019, the profession has seen a number of high profile insolvencies and for many they do not happen overnight. In some circumstances, a company undertakes a restructuring process to consider options available with no thought of insolvency. The insolvency advice aspect may not be contemplated until a much later stage for a variety of reasons.

At the 2019 SPG Forum in Oxfordshire, one of the presentations got the R3 Technical Team thinking about pre-appointment expenses and asking the question: *"What pre-appointment costs can be charged as an expense of an administration or liquidation?"*

Members may recall that any work undertaken or services provided to a company, which remain unpaid at the date of insolvency, will rank as an unsecured claim to be paid in accordance with insolvency legislation with some exceptions.

In administrations, pre-appointment costs incurred by an insolvency practitioner with a view to the company entering administration can be paid as an expense (**Rule 3.51(2)(i) IR16** (with requisite creditor approval under **Rule 3.52 IR16**)).

In creditors' voluntary liquidations ('CVLs'), certain costs connected with the preparation of the statement of affairs and with the creditors' decision process can be paid as an expense (with requisite creditor approval where relevant) (**Rule 6.7 IR16**).

This article is a reminder to members on the rules applicable to pre-appointment costs in administrations and in CVLs.

Administration

Rule 3.1 IR16 provides the meaning of pre-administration costs:

> ***"pre-administration costs"*** means fees charged and expenses incurred by the administrator, or another person qualified to act as an insolvency practitioner in relation to the company, before the company entered administration but with a view to it doing so; and
>
> ***"unpaid pre-administration costs"*** means pre-administration costs which had not been paid when the company entered administration

The important phrase to note is: "with a view to it doing so". Only those costs directly attributable to the furthering of one of the objectives in **Paragraph 3(1) of Schedule B1 IA86** are recoverable, i.e. those charged or incurred by the proposed administrator or other qualified IP with a view to the company entering administration, including those of the legal profession (or any other party so instructed by them). This is borne out by **Rule 3.36(c) IR16** that requires the statement of pre-administration costs in the administrators' proposals to include an explanation of how the work had been intended to further the achievement of an administration objective.

The administrator or other qualified IP could not recover the costs of general advice, such as assisting the company to explore options other than administration. Only those costs incurred following a decision to place the company into administration could be considered as recoverable pre-administration costs. We are aware that this is also the interpretation of certain Recognised Professional Bodies.

CVLs

Rule 6.7 IR16 provides for the payment of certain pre-liquidation costs as an expense of the winding up:

> *(1) Any reasonable and necessary expenses of preparing the statement of affairs under section 99 may be paid out of the company's assets, either before or after the commencement of the winding up, as an expense of the winding up.*
>
> *(2) Any reasonable and necessary expenses of the decision procedure or deemed consent procedure to seek a decision from the creditors on the nomination of a liquidator under rule 6.14 may be paid out of the company's assets, either before or after the commencement of the winding up as an expense of the winding up.*

As members will note, the above fails to mention costs and expenses in relation to pre-appointment advice, for convening a general meeting of the company and for assisting the company during the hiatus period. Therefore, costs and expenses incurred in respect of this pre-appointment work cannot be paid from the estate post-appointment even if you have approval, as there is simply no legislative authority for it.

Therefore, it is important to ensure that, when seeking approval for pre-CVL fees, all information issued to creditors clearly states that the fees in question cover only the work related to preparing the statement of affairs and to assisting with the decision procedure or deemed consent procedure to seek a decision from creditors on the nomination of the liquidator and that such proposed fees are reasonable having regard to that scope of work.

"NOTICE UNDER R14.31 OF IR16 ON SMALL DEBTS DOESN'T TAKE THE FORM OF A STANDALONE NOTICE" … NOT OUR WORDS, THE WORDS OF THE INSOLVENCY SERVICE.

Upon reading a review of a recent publication by the Insolvency Service ('IS'), a table summarising queries it had received since the commencement of the new Scottish corporate insolvency rules on 6 April 2019, we noticed that a view was provided on **r14.31 Insolvency (England & Wales) Rules 2016 ('IR16')** *('Further contents of notice to creditors owed small debts etc.')*

Where an office-holder intends to treat a debt, which is a small debt according to the accounting records or the statement of affairs of the company or bankrupt, a notice must be delivered under **r14.29 IR16**. The contents of this notice must include the provisions listed in r14.31(2) IR16, however, we were aware some members had been unsure whether this took the form of a standalone notice.

The IS have stated the following –

"In England and Wales, notice under rule 14.31 on small debts doesn't take the form of a standalone notice, but instead the information in rule 14.31(2) is required to be included within the notice that is sent under rule 14.29 (a standard notice which doesn't require to be tailored to individual creditors). This explains the inclusion of rule 14.31(3) – it effectively allows the office-holder to draw up one list of small debts and add this information to the generic notice that will be sent to all creditors under rule 14.29. The provision is designed to allow the office-holder to draw up just one notice and to send that to all of the creditors, whether it's proposed to treat their debts as small or not – in short, the provision appears to reduce the amount of work the office-holder is required to do."

Scotland

The table summarising queries that IS has received since the commencement of the new Scottish corporate insolvency rules on 6 April 2019 can be found **here.**

120.9

SCOTLAND – THE INSOLVENCY (SCOTLAND) (COMPANY VOLUNTARY ARRANGEMENTS AND ADMINISTRATION) RULES 2018 ('ISCVAAR18'), AND THE INSOLVENCY (SCOTLAND) (RECEIVERSHIP AND WINDING UP) RULES 2018 ('ISRWUR18')

The Insolvency Service have published a table summarising certain queries together with responses (by the Insolvency Service and/or the Accountant in Bankruptcy) with regard to:

- the new corporate Scottish rules (**ISCVAAR18** and **ISRWUR18**) that came into effect on 6 April 2019; as well as
- the Court Rules pursuant to the Act of Sederunt (Rules of the Court of Session 1994) 1994 and the Act of Sederunt (Sheriff Court Company Insolvency Rules) 1986 **(Link)**

120.10

THE CORONAVIRUS (SCOTLAND) (NO.2) BILL
IMPORTANT CHANGES TO BANKRUPTCY (SCOTLAND) ACT 2016

On Monday 11 May 2020 the Coronavirus (Scotland) (No.2) Bill was published and included a number of important changes to bankruptcy legislation applicable in Scotland. The Bill is likely to come into effect by the end of the month as it will be subject to an expediated procedure to obtain Parliament's approval.

The changes will temporary; initially five months from when the Bill becomes legislation. The changes are as follows –

Coronavirus (Scotland) (No.2) Bill Schedule 1—Protection of the individual Part 3—Bankruptcy

(5) Electronic service of documents
Bankruptcy circulars may be sent electronically with the assent of the recipient.

(6) Financial criteria for minimal asset process ('MAP')

Changes to MAP administration:

- the debt ceiling is increased from £17,000 to £25,000;
- student debt is exempted from the debt ceiling calculation.

(7) Meaning of "qualified creditor"
Creditors may petition for the sequestration of individuals / entities when owed at least £3,000. This minimum debt threshold will be increased to £10,000.

(8) Deadline for sending proposals for debtor's contribution
The deadline for trustees to send their Debtor Contribution Order proposals to the Accountant in Bankruptcy ('AiB') in creditor petition bankruptcies is increased from 6 to 12 weeks;

(9) Virtual meetings of creditors
Virtual statutory meetings of creditors are permitted.

"Every meeting must be held either—

(a) in such place (whether or not in the sheriffdom) as is, in the opinion of the person calling the meeting, the most convenient for the majority of the creditors, or

(b) by such electronic means as would, in the opinion of the person calling the meeting, be most convenient to allow the majority of the creditors to participate in the meeting without being together in the same place."

Electronic signature of forms
(10) All statutory forms detailed in the **Bankruptcy (Scotland) Regulations** can be completed with electronic signatures.

Fees for debtor applications
(11) Currently, the application fee in full administration bankruptcies is £200, this will be reduced to £150.

MAP application fees are removed for those whose sole income is derived from benefits, and reduced to £50 from the current £90 for all others.

Registers of Scotland
The Bill also includes a provision to introduce electronic transmission of inhibitions and inhibition renewals to Registers of Scotland.

Minister for Business, Fair Work and Skills, Jamie Hepburn, said:

"We are aware of the ongoing financial difficulties faced by individuals during this unpredictable time; and also recognise the restrictions placed on those administering the insolvency process and the challenges this can pose"
"I hope these additional temporary measures will help – and we will continue to look at what more might be required as we start to think about the coming months."

120.11

NEW WEBSITE LINKS TO TECHNICAL MATERIALS

Despite the efforts of the Technical Team to have the website links to the technical materials held on the old R3 website transferred to the new version, it was not possible. This note provides members with new website links to 'Creditors Guides', 'Fee Guides', 'IVA Standard Conditions' and 'SIPS' (E&W, Scot, NI).

Creditor Guides

1) Administration...a guide for unsecured creditors

2) Administrative receivership...

3) Bankruptcy...

4) Compulsory Liquidation...

5) Creditors' Voluntary Liquidation...

6) Liquidation/Creditors' Committees and Commissioners...a guide for creditors

7) A Short Guide to Liquidations of Companies in Construction

Fee Guides

1) Guide to Administrators Fees

2) Guide to Liquidators Fees

3) Guide to Trustees Fees (Bankruptcy)

4) Guide to Voluntary Arrangement Fees

Previous versions – Version 1 (April 2010), Version 2 (November 2011, Version 3 (October 2015)

IVA Standard Terms

Current version (4) – issued January 2018

Conditions of Use for IVA Standard Terms – issued January 2018

For previous versions, please visit the following pages: Version 3 – issued October 2015, Version 2 – issued November 2011, Version 1 – issued April 2010

SIPs

SIP 1: AN INTRODUCTION TO STATEMENTS OF INSOLVENCY PRACTICE
- valid from October 2015

SIP 2: INVESTIGATIONS BY OFFICE HOLDERS IN ADMINISTRATIONS AND INSOLVENT LIQUIDATIONS - valid from April 2016

SIP 3: VOLUNTARY ARRANGEMENTS & TRUST DEEDS - valid from July 2014

SIP 3.1: Individual Voluntary Arrangements

SIP 3.2: Company Voluntary Arrangements

SIP 3.3: (Scotland) – Trust Deeds

SIP 4: DISQUALIFICATION OF DIRECTORS - valid from December 1998

SIP 5: NON-PREFERENTIAL CLAIMS BY EMPLOYEES DISMISSED WITHOUT PROPER NOTICE BY INSOLVENT EMPLOYERS

Guidance Out-Of-Date

SIP 6: DEEMED CONSENT AND DECISION PROCEDURES IN INSOLVENCY PROCEEDINGS
- valid from January 2018

SIP 7: PRESENTATION OF FINANCIAL INFORMATION IN INSOLVENCY PROCEEDINGS
- valid from May 2011

SIP 8: SUMMONING AND HOLDING MEETINGS OF CREDITORS CONVENED PURSUANT TO SECTION 98 OF THE INSOLVENCY ACT 1986 - superseded by SIP 6 from April 2017

SIP 9: PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES
- valid from December 2015

SIP 10: PROXY FORMS - superseded by SIP 6 from April 2017

SIP 11: THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS
- valid from January 2018

SIP 12: RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS – August 1996
- Withdrawn with effect from 1st January 2018 except for certain special insolvency regimes.

SIP 13: DISPOSAL OF ASSETS TO CONNECTED PARTIES IN AN INSOLVENCY PROCESS
- valid from December 2016

SIP 14: A RECEIVER'S RESPONSIBILITY TO PREFERENTIAL CREDITORS
- valid from June 1999

SIP 15: REPORTING AND PROVIDING INFORMATION ON THEIR COMMITTEES AND COMMISSIONERS - valid from March 2017

SISIP 16: PRE-PACKAGED SALES IN ADMINISTRATIONS - valid from November 2015

SIP 17: AN ADMINISTRATIVE RECEIVER'S RESPONSIBILITY FOR THE COMPANY'S RECORDS
- valid from August 1997 (renumbered May 2011)

For previous versions please click here

Scotland

Creditor Guides

1) Administration...a guide for unsecured creditors

2) Administrative receivership...

3) Compulsory Liquidation...

4) Creditors' Voluntary Liquidation...

5) Liquidation/Creditors' Committees and Commissioners...a guide for creditors

6) A Short Guide to Liquidations of Companies in Construction

Fee Guides

1) Creditors Guide to Remuneration of Trustees in Bankruptcy Scotland

2) Creditors Guide to IPs Fees Under a Voluntary Arrangement Scotland

3) Creditors Guide to Administrators Remuneration Scotland

4) Creditors Guide to Remuneration for a Trustee Acting Under a Trust Deed Scotland

5) Creditors Guide to Liquidators Remuneration Scotland

SIPs

SIP 1: AN INTRODUCTION TO STATEMENTS OF INSOLVENCY PRACTICE
- valid from October 2015

SIP 2: INVESTIGATIONS BY OFFICE HOLDERS IN ADMINISTRATIONS AND INSOLVENT LIQUIDATIONS - valid from April 2016

SIP 3: VOLUNTARY ARRANGEMENTS & TRUST DEEDS - valid from July 2014

SIP 3.2: Company Voluntary Arrangements

SIP 3.3: (Scotland) – Trust Deeds

SIP 4: DISQUALIFICATION OF DIRECTORS - valid from September 2009

SIP 5: INSOLVENCY BULLETIN NO. 5 - Valid from October 2000 *No longer applies*

SIP 6: DEEMED CONSENT AND DECISION PROCEDURES IN INSOLVENCY PROCEEDINGS
- valid from April 2019

SIP 7: PRESENTATION OF FINANCIAL INFORMATION IN INSOLVENCY PROCEEDINGS
- valid from May 2011

SIP 8: SUMMONING AND HOLDING MEETINGS OF CREDITORS CONVENED PURSUANT TO SECTION 98 OF THE INSOLVENCY ACT 1986 (Feb 2002)
- With effect from 6 April 2019 SIP 8 is withdrawn except for limited liability partnerships and for certain special insolvency regimes

SIP 9: PAYMENTS TO INSOLVENCY OFFICE HOLDERS AND THEIR ASSOCIATES
- valid from June 2012

SIP 10: PROXY FORMS (May 1997)
- With effect from 6 April 2019 SIP 10 is withdrawn except for limited liability partnerships and for certain special insolvency regimes

SIP 11: THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS
- valid from January 2018

SIP 12: RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS (May 1997)
- With effect from 6 April 2019 SIP 12 is withdrawn except for limited liability partnerships and for certain special insolvency regimes

SIP 13: DISPOSAL OF ASSETS TO CONNECTED PARTIES IN AN INSOLVENCY PROCESS
- valid from December 2016

SIP 14: A RECEIVER'S RESPONSIBILITY TO PREFERENTIAL CREDITORS
- valid from January 2001

SIP 15: REPORTING AND PROVIDING INFORMATION ON THEIR FUNCTIONS TO COMMITTEES (AND COMMISSIONS IN SEQUESTRATIONS) IN FORMAL INSOLVENCIES
- valid from March 2017

SISIP 16: PRE-PACKAGED SALES IN ADMINISTRATIONS - valid from November 2015

SIP 17: AN ADMINISTRATIVE RECEIVER'S RESPONSIBILITY FOR THE COMPANY'S RECORDS
- valid from May 2011

Northern Ireland

Fee Guides

1) Guide to Administrators fees

2) Guide to Liquidators' Fees

3) Guide to Trustees Fees

4) Guide to Voluntary Arrangement Fees

SIP 1: AN INTRODUCTION TO STATEMENTS OF INSOLVENCY PRACTICE – valid from October 2015

SIP 2: INVESTIGATIONS BY OFFICE HOLDERS IN ADMINISTRATIONS AND INSOLVENT LIQUIDATIONS - valid from April 2016

SIP 3: VOLUNTARY ARRANGEMENTS & TRUST DEEDS - valid from July 2014

SIP 3.1: Individual Voluntary Arrangements

SIP 3.2: Company Voluntary Arrangements

SIP 4: DISQUALIFICATION OF DIRECTORS - valid from August 1999

SIP 7: PRESENTATION OF FINANCIAL INFORMATION IN INSOLVENCY PROCEEDINGS - valid from May 2011

SIP 8: SUMMONING AND HOLDING MEETINGS OF CREDITORS CONVENED PURSUANT TO SECTION 98 OF THE INSOLVENCY ACT 1986 - valid from April 1997

SIP 9: REMUNERATION OF INSOLVENCY OFFICEHOLDERS - valid from April 1997

SIP 10: PROXY FORMS - valid from August 1996

SIP 11: THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS - valid from January 2018

SIP 12: RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS – valid from August 1996

SIP 13: ACQUISITION OF ASSETS OF INSOLVENT COMPANIES BY DIRECTORS

SIP 14: A RECEIVER'S RESPONSIBILITY TO PREFERENTIAL CREDITORS

SIP 15: REPORTING AND PROVIDING INFORMATION ON THEIR FUNCTIONS TO COMMITTEES IN FORMAL INSOLVENCIES - valid from April 2007

SISIP 16: PRE-PACKAGED SALES IN ADMINISTRATIONS

SIP 17: AN ADMINISTRATIVE RECEIVER'S RESPONSIBILITY FOR THE COMPANY'S RECORDS - valid from May 2011

120.12

REVISED INSOLVENCY CODE OF ETHICS

The revised insolvency code of ethics became effective from 1 May 2020 and is available here.

R3's Recovery Magazine, spring edition, contains an article titled 'A Few Good Practitioners' about the uneasy journey of the code from inception to its public debut. (**Link**)

The code comes at a time when the insolvency profession is undoubtedly in the public spotlight, and it is important that the profession continues to demonstrate the highest standards of professional conduct. To support this, it will be essential for IPs and practices to put in place appropriate and robust processes to ensure compliance with the Code.

120.13

COMPANIES HOUSE. DELIVERY OF INSOLVENCY FORMS BY EMAIL

As a response to the Covid-19 pandemic, with immediate effect, Companies House now accept the filing of statutory insolvency documents via emailed PDF attachments.

The Companies House forms are available on **www.gov.uk/topic/company-registration-filing/forms.**

These must be completed as normal and the PDF attached to the email. The emails should be sent to the following addresses:

For England and Wales:
- **Liquidation_EW@companieshouse.gov.uk**

For Northern Ireland:
- **Liquidation_NI@companieshouse.gov.uk**

For Scotland:
- **Liquidation_SC@companieshouse.gov.uk**

Companies House requirements for filing in this manner are as follows:

- Please enter the company name and number in the email subject line. Any discrepancy between the company name and number in the email, and the name and number entered in the PDF attachment, may result in the document(s) being returned for clarification.

- Digital signatures may be used on the forms if preferred.

- Only attach a document or a package of documents for one company to each email. Emails containing documents for more than one company will be returned.

- Only use this service for filings required under the Insolvency Act 1986, or the Insolvency (Northern Ireland) Order 1989, with the exception of certain Companies Act filings that may be submitted as part of a package of documents; for example, a form AD01 notifying of a change of registered office address. Companies Act filings sent by this method that are not part of a package of insolvency documents will be returned.

- Any documents that need to be rejected will be returned to the email address from which they were sent.

If you have already sent documents to Companies House, these are currently being dealt with and there is no requirement to resubmit via email.

This is a temporary solution to respond to the current crisis and Companies House is in the process of developing a system that will allow documents to be directly uploaded. We will notify you as soon as this is available.

(**Link**)

Caroline Sumner, Technical Director
Tel: 020 7566 4207
Email: caroline.sumner@r3.org.uk

Ben Luxford, Technical Manager
Tel: 020 7566 4218
Email: ben.luxford@r3.org.uk

www.r3.org.uk