We have considered the initial impact assessment; and readily acknowledge the difficulty faced by the Service in completing this exercise, given the dearth of data and hence subsequent analysis and consequent insight into the past behaviours of those parties influencing the choice of CVA and statutory moratoria: directors, insolvency practitioners, bankers and other major, influential creditors. Forecasting outcomes, impacts; costs and savings becomes even harder when an imperfect appreciation of the history of and reasons for SME usage of CVAs and moratoria sector is sought to be overlaid on larger, and especially very large businesses.

Our recent survey of IP members (365 responses) offers some insights, but we recognize that even within this essentially homogenous grouping there are inconsistencies in terms of forecasted change in behaviours, and the reasons suggested for the outcomes expected.

The foregoing naturally suggests an urgent review by parties combining both the necessary (academic?) rigour and experience together with access to reliable data: much of which would need to be gathered for the first time; coupled with broadly harvested sector and stakeholder opinions by those with past, relevant experience; and, importantly, those possessing the foresight to predict new patterns of behaviour by parties who will be responding to a significantly altered economic and business landscape, especially if some fundamentals are to be changed, as is mooted in the consultation document.

Our own review of past academic research into CVAs reveals a limited, and predominantly legal viewpoint (e.g. Flood et al[1]; Hamilton et al[2], Tribe[3]), rather than one informed by business-awareness, especially of the behavioural kind, historical and predictive.

The methodology used in the impact assessment is necessarily imprecise, but the wide range of outcomes illustrates the difficulties the authors have had in firstly, we suggest, in calculating take-up, subsequent “success” and then immediate and ongoing impact. In the latter case we are concerned that the collateral impact (mainly “damage”, and hence a benefit-reducing cost, on businesses that will bear the consequential burden of: likely higher borrowing costs; restricted availability of finance: less credit, slower decisions (as lenders could perceive more uncertainty of outcome, as historic expected default and loss rate data would be rendered invalid, and needed to be rebuilt); and an increased tendency for lenders to take available enforcement action before the stage when any moratorium could be sought.

We also consider that the methodology so far employed appears to assume a binary win/lose outcome choice, i.e. that in the event the new options aren’t introduced then companies will fail. That is not our experience, as a combination of professional skill on all sides: insolvency, turnaround and restructuring professionals and bankers together with the directors frequently results in an alternative survival strategy being designed and achieved, which preserves productive capacity, jobs, and value.

In conclusion, whilst appreciating the evident, considerable effort put into this part of the consultation, we would urge caution be employed by policy makers who might be attracted to one or more courses of action on what could be seen as attractive, large scale financial benefits, especially the multi-billion pound “non-financial benefits”.

R3 would welcome the opportunity to work with and assist the Service in any research into outcomes, in conjunction with other informed parties.