

JOH Consultancy LLP

October 2012 Technical Update

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SIP 9 ADDENDUM

There are two issues on SIP 9 that require further clarification and which the RPBs are reviewing on visits. I have detailed these below:

DISCLOSURE Para 7

Please note that it is a requirement to provide information in respect of creditors' rights when initially writing to creditors and other interested parties. Your RPBs are expecting you to provide this information within your first letter to creditors when in administration and not wait until you send the Proposal. Notice to other interested parties includes shareholders and the debtor so you may also want to include this information in your first letter to the bankrupt as well.

CHARGE-OUT RATES Para 10

The requirement of the SIP is to give the charge-out rates of the staff who will be working on the case. I would suggest in a small office this may be all the staff. However, in larger firms you are expected to state which level of staff will be working on the case. I am sure that this will create a problem when staff are promoted but retain their cases, as it is more cost effective to do that than pass them to another member of staff. The SIP does not seem to allow for staff turnover or promotion and I am not sure how the RPBs will address this issue.

GUIDES FOR CREDITORS

The new SIP 9 did not have any guides for creditors attached as appendices. However, these have been updated by the RPBs and I have provided a link below to the R3 guides:

[http://www.r3.org.uk/media/documents/publications/professional/Guide to Administrators Fees Nov2011.pdf](http://www.r3.org.uk/media/documents/publications/professional/Guide%20to%20Administrators%20Fees%20Nov2011.pdf)

If you are storing the guides on your own website and providing creditors with a link to your website, then the new guides will need to be downloaded on to your own website.

SIP 1

This SIP came into effect on the 2 May 2011. The emphasis of this SIP is the Code of Ethics and the importance of its application by IPs in all areas of insolvency and specifically the application of the SIPs.

Forum shopping

In *Sparkasse Hilden Ratingen Verlobt v Benk* and another [2012] EWHC 2432 (Ch) the court annulled a bankruptcy order made in England where, on the facts of the case, the debtor's centre of main interest was in Germany at the time of the presentation of the bankruptcy petition and when the bankruptcy order had been made. This case is interesting as the debtor had previously tried to petition for his bankruptcy in the UK prior to this bankruptcy but could not prove his COMI was in the UK.

FSA and further mis-selling

FSA has found that small companies have been mis-sold interest rate swap arrangements which have tied them into high interest rates for a fixed period. The banks who dealt with these products are now reviewing this issue and it is anticipated that companies may receive compensation. You therefore may want to review whether you have any cases effected by this issue.

Money Laundering

The Money Laundering (Amendment) Regulations 2012 came into force on 1 October 2012. The changes will not really have an effect on most IPs. The key areas

for IPs is the widening of the professional bodies whose members may now be relied upon to provide adequate identification and the need to retain the documentary evidence of identification of beneficial owners. I would suggest most IPs conduct their own identification of a new case in any event and would keep all documentation relating to the identification of beneficial owners.

FSA Consultation regarding Client Assets Regime

The FSA have had to respond to changes required by the European Markets Infrastructure Regulation and it is also proposing some additional changes to enhance the way firms currently protect clients' money. The FSA is also seeking comments on wider issues in relation to its general review of the client assets regime with the aim of producing better outcomes in investment firm insolvencies. The initial consultation closes 16 October 2012.

The Pensions Act 2008

The commencement of s87 of the Pensions Act 2008 from 1 October 2012 will have far reaching effects on the smaller firms within the profession as well as small firms generally by requiring the auto-enrolling of employees into a stake holder pension scheme, with a minimum contribution of 3% by employers.

Republic of Ireland new Personal Insolvency Bill

The new Personal Insolvency Bill 2012 in the Republic of Ireland is due to come in to force in November 2012. The bill will give authority to the formation of the Insolvency Service which is new to the Republic of Ireland. The legislation provides for various new insolvency options. It was hoped that the new regime would be less draconian than the old regime but in bankruptcy, debtors are still expected to pay contributions for five years and will be discharged three years after contributions end, so discharge is still 8 years, unlike the UK's 12 months. I would therefore not expect this to end the forum shopping that is currently occurring.

Disqualification applies to DROs, DRROs & DRRUs

Tribunals, Courts and Enforcement Act 2007 (Consequential Amendments) Order 2012. This Order extends legislation, providing for disqualification of persons from office in the event of insolvency, to persons subject to debt relief orders, debt relief restriction orders, debt relief restrictions undertakings and the respective interim orders. It comes into force on 1 October 2012 and is subject to transitional provisions.

Floating Charge Register in Scotland

Part 2 of the Bankruptcy & Diligence etc (Scotland) Act 2007 provides for a register of floating charges over assets located in Scotland. This has not been brought into force yet but if it does it will mean that if an English company is placed into insolvency and has assets based in Scotland unless the floating charge is registered in Scotland it will not be valid.

Insolvency Oracle

Michelle Butler former Head of Regulatory Standards and Monitoring at the IPA has set up a blog, the link is below, and she is inviting IPs to send her queries:

www.insolvencyoracle.com.

RPO details have changed

The Redundancy Payments Office details have changed and are below.

Email :
redundancyclaims@insolvency.gsi.gov.uk
Specific claim queries tel: 0330 331 0020
General queries tel: 0845 145 0004

Companies House new forms 4.71 and 4.72

The new final forms for MVL and CVL are available from the Companies House website from 1 October 2012:

<http://www.companieshouse.gov.uk/forms/insolvencyForms.shtml>

The forms have tried to tackle the confusion caused by R12A.47 and there is now less duplication.

New VAT 426 form issued by HMRC

I have detailed below the link to the new form, which is to be used immediately:

<http://r3-mail.org.uk/133C-YHE8-5V48OJ-DCD6B-1/c.aspx>

R3 Standard Terms and Conditions for IVAs

I have been advised that within the next month R3 will be issuing a new version of their standard terms and conditions for IVAs to address the 2010 amendment to the Rules.

SIP 1

CODE OF ETHICS

The Code of Ethics came into effect in November 2008. The Code took away a prescriptive approach to ethics and introduced a framework approach requiring IPs to assess relationships.

The Code gave criteria to assess threats from personal and professional relationships and identify whether they were significant. The Code provided suggestions about safeguards which could be put in place to manage these threats.

TRANSPARENCY para 4

The SIP requires that IPs' "acts, dealings and decision making processes" are transparent and understandable. An example of what this actually means in practice is when reporting on a pre-pack sale or requesting fee authority you provide sufficient information for creditors to understand what you have done and why you have done it.

DOCUMENTING COMPLIANCE Para 6

This innocuous paragraph I believe has far reaching effects on IPs and especially small firms, as it requires documentation to be produced as evidence of compliance with the SIPs. This means that you need to ensure that you have document packs which allow you to be compliant. An example would be the need to have detailed checklists and notes in respect of investigation work to demonstrate that you have completed an investigation and more importantly the reasons why you chose not to make an adverse report.

Author

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