



17 October 2013

Our ref: ICAEW Rep 150/13

Jack Reid  
Legislation Unit  
Insolvency Service  
Department of Enterprise, Trade and Investment  
Fermanagh House  
Ormeau Avenue  
Belfast  
BT2 8NJ

By email: [jack.reid@detini.gov.uk](mailto:jack.reid@detini.gov.uk)

Dear Mr Reid

**Discontinuance of licencing of insolvency practitioners by the Department of Enterprise, Trade and Investment**

ICAEW welcomes the opportunity to comment on the consultation paper *Discontinuance of licencing of insolvency practitioners* published by Department of Enterprise, Trade and Investment on 16 September 2013.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

ICAEW's regulation of its members and affiliates in insolvency is overseen by the Insolvency Service, and ICAEW is the largest of the Recognised Professional Bodies under the Insolvency Act, currently licensing around 700 practitioners. ICAEW's Insolvency Committee is a technical committee made up of Insolvency Practitioners working within large, medium and small practices. The Committee represents the views of ICAEW licence holders.

ICAEW supports the repeal of the provision enabling direct authorisation of insolvency practitioners by a competent authority (in reality the Insolvency Service for GB and DETINI for Northern Ireland). We are seeing a drive towards greater consistency in the approach to the regulation of insolvency practitioners. Most of the inconsistency in the current regulatory framework arises from the significant differences between the powers available to the recognised professional bodies (RPBs) and the Insolvency Service acting on behalf of the Secretary of State. The Secretary of State has no power short of authorisation removal with which to amend the behaviour of those authorised and it appears to be unable to publicise details of those IPs with whom it has agreed action plans. In the survey of IPs

conducted as part of the OFT's study, The Insolvency Service was considered to be the most lenient of the regulators.

Also, the Insolvency Service's Annual Review of Insolvency Practitioner Regulation has shown over the years that those IPs authorised by the Secretary of State generate significantly more complaints than those licensed by the RPBs.

DETINI authorises less than 10 insolvency practitioners, but faces the same issues as the Insolvency Service. Therefore it seems eminently sensible that DETINI should also cease direct authorisation, otherwise its authorisation regime could be seen as a safe harbour for IPs who wished to avoid the rigour of the RPB's disciplinary processes.

Neither is there any need for a regulator of last resort. The RPBs operate common standards for the granting of authorisation which are agreed with the Insolvency Service and contained within the Memorandum of Understanding. Their arrangements include an ability to license non-members to be insolvency practitioners. It seems reasonable to suggest that if an applicant failed to meet the standard for authorisation when applying to an RPB for a licence, then they are unsuitable to be a licence holder. It would seem inequitable if a lesser standard was applied by any regulator of last resort.

We expressed this view in our response to the Insolvency Service's consultation on the *Reforms to the regulation of insolvency practitioners*, [ICAEW REP 51/11](#).

### **Sub-division of insolvency practitioner regulation**

We are less convinced by the proposals allowing for partial authorisation of insolvency practitioners. Partial authorisation may reduce the acquisition costs of an insolvency qualification for an individual or their employer, and may reduce the salary costs for some firms. This could be seen as deregulatory. But we would question whether such a move could also lead to a reduction in standards. Insolvency law is complex but at the heart of most insolvency processes there will be people – whether as directors of failed companies or individuals with debt problems. This means that there will often be read across from a corporate failure to the personal finances of its directors, and the failure of a sole trader business could raise as many issues as the failure of a small company, albeit within a different insolvency framework. We'd question whether an insolvency practitioner with a partial authorisation for either corporate or personal insolvency would have the knowledge to deal with the cross cutting issues which arise in many insolvencies.

We think the issues of access to the profession could be better addressed by a review of the Joint Insolvency Examination Board examinations. Most modern qualifications including ICAEW's own ACA qualification are now modular, and include testing by a mix of examinations and computer based assessment, with multiple opportunities to access the testing. The JIEB remains a paper based test with sittings only once a year and strict rules on the routes by which you must pass all 3 required papers. There is also only 1 training provider offering study packages for JIEB, meaning there are no competitive influences on the pricing of that training.

Our view is that to retain the wide ranging knowledge needed by an insolvency practitioner whilst at the same time increasing access to the profession, modernising the JIEB is a better approach.

### **Withdrawal of the concession for non-insolvency practitioners**

We agree with these proposals.

Yours sincerely

**Charles Worth**

Manager, Company Law, Insolvency & Pensions

T +44 (0)20 7920 8753  
E [charles.worth@icaew.com](mailto:charles.worth@icaew.com)