



3 August 2007

Our ref: ICAEW Rep 65/07

Your ref:

Andy Woodhead
Insolvency Service Policy Unit
PO Box 203
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By email

Dear Mr Woodhead

A CONSULTATION DOCUMENT ON PROPOSED CHANGES TO THE INDIVIDUAL VOLUNTARY ARRANGEMENT (IVA) REGIME CONTAINED IN THE INSOLVENCY ACT 1986 AND ASSOCIATED MATTERS

The Institute of Chartered Accountants in England and Wales ('the Institute') is pleased to respond to your request for comments on '*A consultation document on the proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters*'.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW Representation

ICAEW REP 65/07

**RESPONSE TO 'A CONSULTATION DOCUMENT ON PROPOSED
CHANGES TO THE INDIVIDUAL VOLUNTARY ARRANGEMENT
(IVA) REGIME CONTAINED IN THE INSOLVENCY ACT 1986 AND
ASSOCIATED MATTERS'**

Memorandum of comment submitted in August 2007 by The Institute of Chartered Accountants in England and Wales, in response to The Insolvency Service's consultation paper 'A consultation document on the proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters' published in May 2007

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the consultation paper '*A consultation document on the proposed changes to the Individual Voluntary Arrangement (IVA) regime contained in the Insolvency Act 1986 and associated matters*' published by The Insolvency Service.

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.
4. The Institute's regulation of its members and affiliates in insolvency is overseen by the Insolvency Service, and the Institute is the largest of the Recognised Professional Bodies under the Insolvency Act, currently licensing more than 700 practitioners. The Institute'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 Institute licence holders.

GENERAL COMMENTS

5. We generally welcome this consultation as a genuine attempt, in relation to many of the proposals, to de-regulate individual voluntary arrangements (IVAs). We believe that, subject to the proper supervision of the new voluntary arrangements by properly qualified persons, the new arrangements will be of considerable benefit to debtors and creditors alike.
6. It would have been helpful if we could have seen the proposed draft legislation (both primary and secondary) at the same time as this consultation.
7. There is no indication in the consultation document how these proposals will interact with the Insolvency Service's project to consolidate the secondary legislation. Of particular note is the difference in implementation dates (April 2008 for the SIVA and October 2008 for the consolidation project). This difference gives rise to questions; for example,
 - Are there changes to be made as part of the consolidation project (for example the introduction of electronic communication) which will impact on the SIVA regime?
 - Will the rules for SIVAs be included in the new consolidated rules?

- Will it be possible to propose a joint or interlocking SIVA?
8. We seek clarification as to whether the devolved administrations plan to introduce similar provisions. The personal insolvency regime in Northern Ireland, in particular, is now very similar for that for England and Wales, so the equivalent to the SIVA would be a useful addition.
 9. In the (unusual) event of an Insolvency Practitioner (IP) seeking recognition of the voluntary arrangement in the EU, the lack of any court involvement will probably be detrimental and the process may well not be recognised. We believe there should be a provision to allow the Supervisor/Nominee to obtain the necessary court involvement to satisfy the EU Insolvency Regulation.
 10. We believe that proper advice on any voluntary arrangement can only be given where the person advising is qualified to advise on, and deal with, the alternatives. As the Insolvency Services is aware, the Institute is seeking to be able to license appropriately qualified individuals to be Voluntary Arrangement Practitioners in addition to existing IPs.
 11. We assume that protocols (drawn up by BBA and Insolvency Service and being considered at the moment) will form the basis of the "Standard Terms & Conditions" for a SIVA. We have some concern that there is a danger that, within major creditors, those who decide whether to accept or reject proposals may become so used to the vast numbers of SIVAs (and "SCIVAs") they may reject anything that does not follow the protocol. We consider if this is the case, that this would deteriorate the position for traders, other non-consumer debtors and anyone whose circumstances do not quite meet the fairly narrow criteria. This would run contrary to the stated purpose of the Enterprise Act.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Q1. Comments on the proposal to amend the Insolvency Act 1986 to provide for a simplified version of the IVA regime (SIVA).

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

No comment

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

Creditors may expect that their current right to modify a debtor's proposal should continue. A creditor with 25% or more of the total debts may wish to see their ability to block proposals continue. The removal of these rights may streamline the process overall, but creditors will still be affected.

c) Do you have any views on the costs and savings as identified in this consultation document and addressed in the draft Regulatory Impact Assessment attached at Annex E?

Except for at page 67 savings are not quantified. This comment applies to all questions concerning costs and savings. It is unlikely that real cost savings will be

achieved by not holding a creditors meeting (as suggested in Paragraph 78) as few creditors attend the creditors meetings in any event. Similarly, with the reduction in the voting majority (paragraph 89) we would expect that IPs will continue to contact creditors in SIVA cases.

d) Are there any other benefits that would be gained from these proposals?

No comment

e) Do you have any other comments?

It should be recognised that the removal of a creditor's right to modify may result in more proposals being rejected as a creditor may choose to vote against the proposal if they cannot include their own preferred terms into the arrangement.

What is envisaged will happen in cases where no-one votes? Will there be a means of adjourning a "paper" meeting?

As regards the 90 day filing limit, what will happen to those creditors who do not file claims within 90 days? Does this mean debts not notified will be void? Is there a danger that they would be at liberty to pursue their debts outside of the IVA? Have the issues identified by HMRC in their response to the initial consultation been resolved, or will anyone with a debt to HMRC effectively be denied access to a SIVA?

Supplementary Question

In principal do you support the introduction of Simple IVAS?

Yes.

Q2. Comments on the proposal to amend voluntary arrangements so as to reduce the amount of papers filed at court.

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

We believe that whether the involvement of the court, albeit in a routine way, provides the process with gravitas, and therefore offers comfort to the debtor (and the IP) that creditors will comply with the terms of the arrangement should be considered.

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

Creditors have a right to inspect the court file. Whilst there is no suggestion that this right is to be removed, in most cases there will be no file to inspect. Therefore, one source of information for creditors is effectively removed.

c) Do you have any views on the costs and savings as identified in chapter 11 of this consultation document and as addressed in the draft Regulatory Impact Assessment attached at Annex E?

See 1 (c) above.

d) Are there any other benefits that would be gained from these proposals?

Removing the necessity to file routine papers at court will offer an IP more than administrative efficiencies as delays at court can delay the whole process. This is a common complaint raised by IPs. The removal of this task from the courts should free up court time for other applications and processes.

e) Do you have any other comments?

None

Supplementary Question

In principal do you support reducing the amount of papers filed at court?

Yes.

Q3. Comments on proposal to amend the Insolvency Act 1986 to provide for a revised reporting procedure

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

It could be argued that particularly in the early stages of an arrangement, before a dividend has been paid (which can take over a year) the creditors should be kept informed as to the progress of the arrangement.

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

No comment

c) Do you have any views on the costs and savings as identified in this consultation document and as addressed in the draft Regulatory Impact Assessment attached at Annex E?

See 1 (c) above.

d) Are there any other benefits that would be gained from these proposals?

No comment

e) Do you have any other comments?

Guidance should be produced setting out what constitutes a factor that affects the durability of the arrangement. The absence of such guidance could lead to disagreements between the IP and creditors as to when a report should be made. A lack of guidance could also make the task of monitoring compliance more problematic. Should reports be produced when a debtor is able to increase his/her contributions?

How would this proposal interact with the process for agreeing variations in an arrangement? The IP currently contacts creditors to seek their agreement to a variation (usually a reduction in the level of contribution) – would exception reporting in such cases be a duplication of the process to agree a variation?

Supplementary Question

In principal do you support what the proposal for a revised reporting procedure?

Yes.

Q4. Comments on the proposal to amend section 389A of the Insolvency Act 1986

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

No comment

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

No comment

c) Do you have any views on the costs and savings as identified in this consultation document and as addressed in the draft Regulatory Impact Assessment attached at Annex E?

No comment

d) Are there any other benefits that would be gained from these proposals?

No comment

e) Do you have any other comments?

The SIVA consultation is drafted on the basis that an insolvency practitioner will be nominee and supervisor of the arrangement. A SIVA is a voluntary arrangement but it could be made clearer that those authorised using S389A may act in relation to SIVAs.

Supplementary Question

In principal do you support what the amendment of section 389A?

Yes.

Q5. Comments on the proposal to repeal the Deeds of Arrangement Act 1914

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

No comment

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

Although Deeds of Arrangement Act may not be used very often, and probably will be used even less if these proposals come to fruition, it remains an alternative option for resolving a debt problem which does not fit into any other framework. We consider that no additional regulatory burden is caused by leaving this Act on the statute book but options may be unnecessarily narrowed if it is removed.

c) Do you have any views on the costs and savings as identified in this consultation document and as addressed in the draft Regulatory Impact Assessment attached at Annex E?

No comment

d) Are there any other benefits that would be gained from these proposals?

No comment

e) Do you have any other comments?

None

Supplementary Question

In principal do you support repealing the Deeds of Arrangement Act 1914?

See answer to 5(b).

Q6. Comments on proposals to restructure and restate Part VIII of the Insolvency Act 1986

a) Do the proposals put forward in this consultation exercise maintain necessary protections for those affected?

No comment

b) Do the proposals put forward in this consultation exercise prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in paragraph 11 above?

No comment

c) Do you have any views on the costs and savings as identified in this consultation document and as addressed in the draft Regulatory Impact Assessment attached at Annex E?

No comment

d) Are there any other benefits that would be gained from these proposals?

No comment

e) Do you have any other comments?

None

Supplementary Question

In principal do you support the proposal to restructure and restate Part VIII of the Insolvency Act 1986?

Yes.

Supplementary Question

Q7. Do you think the supervisor in SIVA should be given the discretion to extend the 90-day period during which creditors are required to file their claims?

No comment

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