



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

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Our ref: ICAEW Rep 115/07

Your ref:

AR Consultation
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Dear Sir

ASSET RECOVERY ACTION PLAN CONSULTATION

The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper *Asset Recovery Action plan – A Consultation Document* published by The Home Office in May 2007.

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.

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.

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General points

The Insolvency Committee supports Government's intentions to ensure that those who engage in criminal activity are not allowed to benefit financially from their actions. We support the aim of reducing the harm caused by crime and the delivery of the message that 'crime does not pay'. However we have some serious reservations about the impact of the proposals on the innocent creditors of criminals. Often criminal activity is undertaken behind the front of an apparently legitimate business. Some legitimate businesses are run by criminals but have no other connection with the criminality at all. In both cases the innocent can extend credit to individuals and businesses which subsequently are subject to formal insolvency appointments. Steps should be taken to ensure that these innocent creditors are not turned into further victims of the criminal activity.

We are also cautious of the impact of insolvency which results following recovery action. Again, there is a potential for innocent creditors to be left without the possibility to recover their debt.

We believe that clarification is necessary in the following areas of the proposals –

- removing time limits

There is a danger that innocent creditors who otherwise may have recovered some of their outstanding debts from the assets of an individual or business (accrued legitimately some time after previous criminal activity) will be further penalised because those assets will be subject to recovery. This is despite the assets having no direct link to criminality.

Assets being recovered for crimes committed significantly in the past, where such recovery deprives innocent creditors, could be detrimental to the public interest.

- extending recovery to assets *retained* rather than *obtained* by criminal activity

It appears that this proposal will enable the recovery of 'windfall' assets such as property acquired by a criminal through legacy. In an insolvency situation these windfall assets would otherwise be available for the benefit of the creditors.

- automatic transfer of title

It is imperative that any powers which specify transfer of title maintain appropriate rights to enable third parties, including creditors or insolvency practitioners, to pursue their claim against the transferred assets.

- attachment to earnings orders

The use of attachment to earnings orders or similar should consider the existence of formal insolvency appointments and the impact such orders may have on the availability of funds to satisfy innocent creditors.

- seizure of assets

We are concerned that extension to seizure powers should not consequently result in delay in the conclusion of insolvency engagements already in progress.

Consideration should be given to minimising adverse outcomes for such third parties, particularly where there may be no criminal conviction. Although a right of appeal is proposed for the defendant it is unclear how claims of third parties could be managed.

Therefore, whilst welcoming the intentions and the thrust of the proposals the Committee urges Government to ensure that steps are taken to protect the genuinely innocent from suffering loss as a result of recovery action taken against individuals and businesses.

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

Yours sincerely



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