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Our ref: ICAEW REP 36/14

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Dear Mr Beale

**Clause 10 - Deregulation Bill - partial authorisation of insolvency practitioners**

ICAEW welcomes the opportunity to comment on the consultation *Clause 10 - Deregulation Bill - partial authorisation of insolvency practitioners* published by the Insolvency Service on 23 January 2014, a copy of which is available from this link.

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 142,000 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 (**RPB**) under the Insolvency Act, currently licensing over 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.

## Consultation process

1. While the Insolvency Service raised this issue (along with other possible measures) in 2010, this was not a formal consultation exercise and the market environment has changed considerably since then. In particular, while there may have been some demand for a modified regime to facilitate individual voluntary arrangements in the period leading up that exercise, the IVA market has changed materially since then with the development of large volume providers of IVA services. We do not, therefore, believe that the discussions referred to in 2010 constitute appropriate consultation for the purposes of clause 10 of the Deregulation Bill. It would have been preferable had there been a full consultation before the provisions were included in the draft Deregulation Bill 2013. However, we are happy to have the opportunity to comment now.

2. Less than one month has been allowed for this consultation. Nevertheless, we have sought views of our members and our response reflects input received through this process as well as the views of the Insolvency Committee referred to above.

3. We are being asked to comment on a proposal which has already been included (subject to consultation) in the Bill, effectively putting the onus on those, such as ICAEW, who oppose the proposal to make a case against change. We consider this to be inappropriate in a context such as this where issues of detail (such as the contents of examinations) clearly arise and where, at the very least, regulation will become more complex (through multiple licences in place of one).

### Unsubstantiated basis for proposal

4. The consultation paper makes a number of assertions regarding the perceived benefits of the proposals, none of which have been substantiated and none of which we consider to be at all persuasive.

5. It is suggested that the change will reduce barriers to entry and thereby increase competition. Reducing the breadth of knowledge required of IPs could be regarded as reducing a barrier to entry. It could also simply be regarded as a lowering of standards. In either case, no explanation is given as to how this might result in increased competition. Competition needs to be measured not only in terms of cost, but also in terms of quality and effectiveness. In our view, the market is already competitive. We are not aware of a demand for partially qualified practitioners. Even if there were to be a demand, for reasons noted below, we think that the demand would come from large organisations rather than small ones and any gain in terms of cost reduction might be at the expense of smaller firms and diversity of provider.

6. The paper states that the change will give rise to reduced training fees, to the benefit particularly of smaller firms, including new entrants and that those who have chosen to specialise in a particular area would have the burden of studying areas of little relevance to them removed. There are two aspects of this which require consideration, first the training for the qualification examinations and secondly continuing professional development (**CPD**).

7. As regards training for qualification, if partially qualified IPs were simply required to take the personal or corporate modules of the current Joint Insolvency Examination Board (**JIEB**) exam, then this might be somewhat cheaper than covering all the curriculum. However, we understand that the Insolvency Service accepts that it would be necessary for there to be a degree of overlap, for instance, that the curriculum for personal insolvency would need to cover some aspects of corporate insolvency, so that any cost saving may not be as great as anticipated.

8. In any case, the issues of access to the profession could be better achieved by a review of the JIEB 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 for passing all three required papers. There is also only one training provider offering study packages for JIEB, meaning there are no competitive influences on the pricing of that training.

9. The initial costs of qualification are one-off costs which are unlikely to have a material effect on the competitive nature of the market as whole.

10. As regards ongoing training costs, a practitioner currently has flexibility to meet CPD requirements in a way best suited to his or her actual needs (whether specialist or general). It is unclear on what basis the proposal could reduce these costs, unless it is proposed that a partially qualified practitioner should have fewer CPD obligations than a fully qualified IP. This would result in a

partially authorised specialist having reduced standards compared to a fully authorised IP who has chosen to specialise.

11. No explanation is given as to why the Insolvency Service considers that reduced training for partially qualified practitioners will be of particular benefit to smaller firms. Our view (supported by responses from practitioners) is that smaller firms are the least likely to specialise and therefore the least likely to benefit.

12. Of the large firms, those specialising in corporate insolvency typically also handle insolvencies of partnerships (for which, outside of Scotland, full authorisation will still be required).

13. In short, the proposals would appear to be of most potential benefit to large organisations handling personal insolvencies in volume. These organisations typically operate a model where qualified IPs represent a small proportion of total staff used. We have no reason to suppose that these organisations would increase the number of IPs they use as a result of partial qualification, although they might seek to reduce costs by using partially qualified IPs where they formerly used fully qualified IPs (if they are cheaper). It does not necessarily follow that fees will be reduced as a result of use by them of partially qualified IPs or that the impact on their overall costs would be material. Given the large volume of insolvencies handled, any effect on standards involved in the partially qualified regime might be of particular concern in this context.

### Incomplete knowledge/declining standards

14. Business and individuals seeking insolvency related advice need to know from the outset whether the IP can help them. The distinctions between corporate and personal financial affairs are often blurred. For instance, the financial position of a director of a company (being an individual) and the company itself may be intertwined and personal guarantees may be involved. Many businesses are operated by sole traders (who would fall under the personal insolvency regime), yet the sort of issues arising in that context are similar to those which arise more often in the corporate insolvency context (for instance, consideration of leasehold properties and security interests). An IP should, therefore, have sufficient expertise to recognise the relevant issues in both corporate and personal insolvency.

15. For these reasons, we believe that it is necessary for an IP to have a broad knowledge of both personal and corporate insolvency matters, at least in order to qualify as an IP. While there may be room for discussion as to whether more flexibility could usefully be introduced into the JIEB exams, that is a relatively small issue, not justifying the proposed changes to the insolvency licensing regime.

16. Post qualification, an IP may choose to specialise. However, professional rules of conduct (such as those of ICAEW) require the IP to, in effect, exercise appropriate skill and care. This means that, even where an IP has chosen to specialise in either personal or corporate insolvency, the IP would still need to maintain appropriate knowledge of other areas of practice as necessary (eg to advise on overlapping issues noted above). The existing regime facilitates maintenance of a sufficiently broad knowledge with potential for specialisation in a way which appears to work satisfactorily. The proposal for change does not suggest otherwise.

17. Absent a sufficiently broad knowledge, there is a material risk that a partially qualified IP will not have had adequate training. It is important to maintain the quality of IPs in order to meet Government objectives (in particular of maximising returns to creditors).

### Additional regulatory burden and complexity

18. The proposals will introduce two new licences for IPs adding complexity to the regulatory regime for insolvency, with three types of licence rather than one. In addition to this, the regime will differ

between Scotland and the rest of the UK because of the differing treatment of partnerships in Scotland.

19. This added complexity effectively adds to 'red tape' and so does not serve the government objective of reducing regulatory burdens. It would also further complicate an already complicated regulatory environment at a time when concerns about that complexity have been raised by Government and its advisors[1]. This proposal is likely to be confusing for the wider public, potential clients and other professionals involved.

### Reduced flexibility for IPs

20. As noted above, fully qualified IPs under the existing regime are free to specialise once qualified and a number do so.

21. If a specialised IP wishes to broaden his/her experience, he/she may currently do so without requiring an additional licence. The onus would be on the IP to ensure that appropriate standards are met, for instance through additional training or supervised experience. This flexibility is useful in enabling practitioners to maintain a broad experience, should they wish to do so, and to enable the profession as a whole to adapt to changes in the market from time to time.

22. A partially authorised IP under the proposed regime would need to obtain a further licence to broaden experience (and, presumably, take additional exams in order to do so). This would introduce a structural impediment to flexibility for those who choose the partially authorised route.

### Costs

23. If, contrary to our expectations, there were to be substantial take up of a partial authorisation regime, this would reduce the numbers of IPs who would otherwise have sought full qualification, with the result that the cost of obtaining the full qualification would probably increase due to loss of economies of scale.

24. There would inevitably be increased administrative burdens for RPBs in managing three potential qualifications rather than one. By contrast, we do not see that costs of monitoring IPs would be reduced in any material way – the activity of a partially qualified IP would need to be monitored in a similar way to monitoring required of a specialist IP under the current regime and it would be necessary to assess whether or not a partially qualified IP had kept within the scope of the partial licence and whether appropriate skill and care had been used in relation to areas of overlap outlined above.

25. If, as we believe would be the case, a partial qualification regime would result in uncertainty for the public (eg as to which type of practitioner to use), this could be expected to lead to increased costs (for instance, where an initial approach to a personal or corporate only qualified IP turns out to have been inappropriate). If partially qualified IPs do fail to identify broader issues when appropriate, there may also be increased litigation or reduction in returns to creditors and an impact on the wider economy.

26. The insurers to whom we have spoken do not believe that insurance or bonding costs would fall as a result of partial authorisation. Costs currently take into account the nature of a particular case or the profile of the IP/firm (including whether broad based or focused on personal insolvency). If the proposal were to result in falling standards, then there could, of course, be an adverse impact on insurance costs.

[1] https://www.gov.uk/government/consultations/insolvency-practitioner-regulation-and-fee-structure

27. For reasons outlined above, if there are cost savings resulting from partial qualification, it is the large volume personal insolvency specialists who would be most likely to benefit. There is no reason to suppose that reduced costs would be passed on (through reduced fees) to the benefit of debtors or creditors, but if the volume providers were to become more competitive, this might impact the viability of smaller practices engaged in this sort of work and so reduce diversity of provider.

### ICAEW and the public interest

28. ICAEW is the largest of the authorised bodies regulating insolvency practitioners, having licensed over 700 of the total of around 1700 IPs. ICAEW licensed practices range from the largest firms to small/micro practices, include generalists and specialists (both for corporate and personal insolvency) and are found throughout England and Wales and the rest of the UK. We have received through our own consultation process no indications of support at all for the proposed partial qualification regime. While this might not be indicative of views of potential IPs (new entrants), it seems fair to assume that those with the experience in the area, such as our licensed IPs, are best placed to give well informed views on the matter.

29. We understand from discussions within the industry that our views are widely shared. We are therefore unclear where the impetus for the proposal has come from.

30. As noted above, ICAEW operates under a Royal Charter, working in the public interest. For the reasons outlined (in particular the potential impact that partial authorisation might have on standards of practice in the industry) ICAEW does not believe that the proposed reforms would be beneficial to the public.

### Conclusion on partial authorisation

31. For the reasons outlined above, we call for the proposals on partial authorisation to be dropped.

### Repeal of s389(1A) and s389A Insolvency Act 1986

32. We agree that these provisions did not work and should be repealed.

Yours sincerely

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