Final 02/06/10

IPA – Putting Better Regulation into Practice

Official Receiver becoming Trustee on Bankruptcy Order; and Removal of No Meeting Notices in Bankruptcies and Compulsory Liquidations – IPA Response to Insolvency Service Consultation Letter

Bankruptcy

1. The IPA agrees that it would be consistent with the approach in other court-based insolvencies if the Official Receiver (OR) automatically became trustee of a debtor's estate on the making of the bankruptcy order. That would remove the need for the OR to give notice to the court, and to the creditors, of his decision not to summon a meeting of creditors before he can become trustee.

2. It now appears from The Service's response to the IPA's query about the figures given in the Impact Assessment which accompanied the Consultation Letter that the staff cost savings resulting from the removal of no meeting notices are very significantly overstated – by something of the order of 80%-85%. That said, those savings, together with the printing cost savings, would still be worthwhile. But it is noted that The Service offers only that the savings "can...be passed on indirectly to creditors through the efficient use of [its] time and finances" – there is no commitment to a reduction in the OR case administration fee which creditors might have expected to have seen, or otherwise no indication of how efficiency arising from the removal would be measured and reported.

3. Removal of no meeting notices does highlight an important issue – the opportunity which they provide for creditors, very largely unsighted until that point about the bankrupt's assets, to consider whether they would wish to requisition a meeting for the purpose of appointing an insolvency practitioner (IP) trustee or request that the OR seek such an appointment by the Secretary of State (SoS). The IPA has asked for an assurance that the Report to Creditors issued by the OR will clearly and prominently set out in cases where the OR has decided not to call a meeting or to seek a SoS appointment that creditors do have a right to requisition a meeting. That assurance has been provided; but it would be helpful, whether or not it proceeds with the proposed legislative change, if The Service agreed to discuss further with creditor groups and other stakeholders the formulation and presentation of that information.

4. Removal raises three further issues. First, if the OR decides not to summon a first meeting of creditors for the purpose of appointing a trustee, then a creditor requesting that he hold such a meeting – and the IPA suggests that the creditor alone or with other creditors need for this purpose to represent only not less than 10% in value of the creditors - should not be required to deposit any security for the expenses of summoning and holding it: such a requirement undoubtedly represents an unnecessary barrier, even allowing under the present legislation that the meeting can vote that the expenses may be payable out of the estate as an expense of the bankruptcy.

5. Secondly, The Service should enter into discussions with creditor groups, IPs and other stakeholders as to the basis on which and the detailed criteria on which ORs currently decide not to hold meetings of creditors and retain cases as trustee that may deny creditors generally of the opportunity to appoint a trustee of their choice. It is noted from

an article published on the web by Insolvency News on 1 December 2009 that The Service was quoted as saying that "Our research has shown that when cases, particularly bankruptcies, remain with the OR, they often achieve a much better result for creditors than similar cases which are passed to IPs". It would be helpful if that research was to be made available as part of the discussions.

6. Thirdly, it is self-evidently essential that the OR's Report to Creditors should contain a clear and full statement of a debtor's assets on which creditors can reach a view about requisitioning a meeting or seeking a SoS appointment.

7. It would also be opportune for The Service, whether or not it proceeds with the proposed legislative change, to discuss with stakeholders:

- The criteria for the OR deciding to request or not to request a statement of affairs, as set out in The Service's letter of 18 March 2010 outlining other possible legislative changes and which might affect the completeness of the information provided to creditors for consideration of whether to seek an IP trustee appointment.
- The criteria for obtaining an SoS appointment before issuing a Report to Creditors; and how far the Report should set out details of the creditors consulted in lieu as it were of a meeting and voting.
- A time limit for the issue of the OR's Report to Creditors in order that matters are not taken to a point where the position of an IP trustee might have been compromised or prejudiced by the OR so acting; and what further information might usefully be provided to creditors and how frequently.

  The implementation of the Service Transformation Plan, outlined in The Service's Corporate Plan 2010-2011, would seem to provide the means by which ready, and even earlier, creditor access to information about assets could be made available: it would be useful to know more about the electronic services which would be offered.

Interim Receiver/Receiver

8. The IPA agrees that it would follow from the OR becoming trustee upon the making of a bankruptcy order that interim receiver could be changed to receiver; and notes that it is proposed that the restriction of the role of receiver to the OR should be removed

Company No Meeting Notices

9. The IPA agrees that it would be sensible to remove the requirement to file a no meeting notice in cases where a SoS appointment of an IP liquidator has been made shortly after the winding up order**.**

10. The IPA considers that the discussions with creditor groups, IPs and other stakeholders proposed at paras 5 and 7 should be extended to detailed criteria for ORs deciding not to hold meetings in compulsory winding ups and retaining cases as liquidator; the criteria for obtaining a SoS appointment before issuing a Report to Creditors; and a time limit for issuing Reports to Creditors.

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