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Dear Consultee

Consultation on the withdrawal of the optional facility for liquidators in voluntary liquidations to bank with the Insolvency Services Account (“ISA”)

I am seeking your views on the proposal to withdraw the optional facility for liquidators in voluntary liquidations to bank with the ISA. This document also provides advance notice of the proposed changes which, subject to the outcome of the consultation and approval by the Minister, would come into force in 2011.

I set out below the background and details of the proposal, together with a summary Impact Assessment.

Overview

The Insolvency Regulations 1994 provide for the ISA, which is administered by The Insolvency Service, to be used in all cases by liquidators in compulsory winding-up cases and trustees in bankruptcy. All monies received by the liquidator/trustee are paid into the ISA in the course of their administration of each case and various statutory fees are applied to the balances deposited as well as to payments made to creditors.

Up until 2004, liquidators in voluntary liquidations were also required to use the ISA,

but at that time changes were made¹ to enable them to use alternative account providers in the commercial sector.

Detail

On behalf of The Insolvency Service, Estate Accounts Services (“EAS”) handle all receipts into and payments out of the ISA, maintains an account for each insolvency estate and ensures that fees are charged and collected in accordance with the legislation. In maintaining the accounts, EAS provides services in relation to them, including the handling of unclaimed dividends, the crediting of interest and the provision on request of six-monthly statements to insolvency practitioners. EAS also provides an on-line facility for office holders to view their estate accounts and print statements as required.

The cost of EAS is met from fees. Where it provides services to Official Receivers on the cases they are administering, the costs of these services are funded from the case administration fees charged to these insolvency cases. Where provided to insolvency practitioners on the cases they are administering, the cost of the services are funded from a quarterly fee charged to the case as well as fees on certain transactions.

Background to the proposal

The rate at which voluntary liquidators use the ISA has seen a marked decline since 2004 when it became optional, this despite the fact that since then the number of voluntary liquidations has actually increased (see Annex for data on these trends). The reasons for this may be complex but are likeliest to have been due to a combination of factors, such as comparative interest rates and account charges. The result of this decline has now been to call into question whether the ISA should remain available for use in voluntary liquidations, since the declining number of accounts held has made the administrative effort involved disproportionate. It is also apparent that in some cases liquidators place accounts for short periods in order to take advantage of favourable interest rates or charges or a combination of the two. This makes planning resources in this area more and more difficult.

¹ Amendment to Regulation 5(2) of the Insolvency Regulations 1994 by Paragraph 2 of the Schedule to The Insolvency (Amendment) Regulations 2004

Benefits of change

The main benefits in withdrawing the ISA account for voluntary liquidations are twofold: Firstly, it will enable the ISA to be focussed on providing facilities in compulsory cases handled by Official Receivers and insolvency practitioners, where these services can be provided at lower cost than is likely to be available elsewhere and also as part of The Insolvency Service's integrated case management system. Secondly, it will ensure that The Insolvency Service is able to concentrate on those activities that are essential to meet Government priorities including the recovery of fees to meet The Service's costs in compulsory cases. It is suggested that the provision of services for non-compulsory estate activities does not fall into this category and could be provided more effectively and at lower cost if carried out solely by non-state providers.

As stated above, if these changes are given Ministerial approval they would come into force from as early as April 2011. This means that no new ISA accounts would be opened after this time and alternative provision for all existing accounts would need to be made. While a transitional period may be considered to enable such arrangements to be made, it is not expected that this would be for longer than six months. This would mean that arrangements would have to be made by voluntary liquidators to withdraw any funds remaining in existing accounts by the beginning of October 2011.

The questions this consultation therefore poses are:-

1. Does the optional facility for voluntary liquidators to use the ISA need to be retained?

2. Would removal of the facility result in extra costs and if so what would these costs be?

I would be grateful to hear your views and welcome your comments about the proposal put forward in this letter by **Friday 17th December 2010**. If you are aware of anyone else who you think may have an interest, please feel free to pass them a copy of this letter. Please send your responses by e-mail to The Insolvency Service at: DSM.FGAS@insolvency.gsi.gov.uk or by post to: The Insolvency Service, Finance Governance and Accounting Services Directorate, Zone B, 5th Floor, 21 Bloomsbury Street, London WC1B 3QW

Yours faithfully

Lesley Beech

Director of Finance, Governance and Accounting Services

The following tables illustrate the decline in use of the ISA by voluntary liquidators:-

Table 1 – Number of Voluntary Liquidation Estates and Fees Charged

Year	Number of Estates	Total Balances	Fees Charged	Fees Written Off	Net Fees Charged
		£m	£	£	£
2004/05	7,986	516	965,131	16,111	949,020
2005/06	5,966	673	532,998	1,657	531,341
2006/07	4,723	966	384,460	500	383,960
2007/08	4,247	1,077	332,740	315	332,425
2008/09	4,319	981	323,420	471	322,949
2009/10	3,398	619	339,543	594	338,949

Table 2 – Detailed Breakdown of Fees Charged

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Pre-2004	949,020	481,881	281,723	163,080	102,000	80,266
Year 1		40,000	40,085	32,545	23,680	18,170
Year 2		9,460	50,612	56,240	40,040	28,043
Year 3			11,540	61,900	58,249	41,078
Year 4				18,660	79,460	68,621
Year 5					19,520	85,370
Year 6						17,401
Totals	949,020	531,341	383,960	332,425	322,949	338,949

By way of comparison, the actual numbers of voluntary liquidations having risen markedly over the equivalent period:-

Table 3 – Number of Creditors Voluntary Liquidations (Calendar Years)

Year	2004	2005	2006	2007	2008	2009
Number	7,608	7,660	7,719	7,342	10,041	13,434

The changes in interest rate applied to balances held on the ISA

Table 4 – ISA Interest Rate 2004 to 2009

Date of Change	Interest Rate %	Date of Change	Interest Rate %
01 August 2004	4.50	17 October 2008	6.25
01 August 2005	5.00	11 November 2008	4.75
01 December 2005	5.25	09 December 2008	3.50
02 October 2006	6.00	13 January 2009	2.75
05 February 2007	6.50	09 February 2009	2.00
18 May 2007	6.75	10 March 2009	1.25
10 July 2007	7.00	13 May 2009	0.50