

# SIP 6 CONSULTATION QUESTIONNAIRE

[Please use the TAB key to move from one answer to the next, and the drop down menu to select responses where appropriate.]

Name of individual making the response: Michelle Butler  
Firm name : Insolvency Oracle  
RPB: IPA (ordinary member)

- 1 Do you believe that the revised version of SIP 6 identifies all appropriate principles?** Yes

Comments

Although I have answered "yes", I do think that the requirement for an IP to "facilitate participation" is rather wide in view of the range of stakeholders. For example, would it be wrong for an IP to convene an online meeting if it were likely (or possible?) that not all creditors had easy reliable internet access? What if some creditors do not speak or read English (well)? What if some are aurally or visually impaired? What steps are expected of IPs, not only in choosing a procedure but also in communicating it beforehand?

- 2 If "no", what additions do you believe should be made to the principles contained in the SIP?**

- 3 Do you believe that the revised version of SIP 6 identifies the key compliance standards?** No

Comments

- 4 If "no", what additions do you believe should be made to the key compliance standards contained in the SIP?**

It could usefully set out the regulators' expectations on discretionary advertising of non-meeting processes and virtual meeting practicalities, e.g. in providing meeting documentation to attendees and in allowing them to inspect proofs.

- 5 Paragraph 12 of the Interim SIP identifies the information that will commonly be required to facilitate the making of an informed decision by creditors when appointing a liquidator in a CVL.**

- a) Do you consider any of this information to be unnecessary or superfluous, and if so, why?** Yes

Comments

I question why the Insolvency Service saw fit to limit pre-S100 information to the Statement of Affairs if they believed other information were necessary (the IS has not been backward

in adding other SIP items into the 2016 Rules!) and thus why the JIC believes there is a gap to plug. The SIP8 S98 report was introduced when meetings were far more combative and well-attended. The effort (and cost) of a quasi-S98 report appears a waste in the vast majority of cases now where creditor engagement is next to nothing. That is not to say that creditors do not deserve some explanation, but I do not see how the SIP6 information helps creditors make an "informed decision" on the choice of liquidator; the Para 12 information is almost entirely about the company's demise, so given that all liquidators have the same job to do, why would this help them decide on the IP? Para 12(c) seems to me to be the only relevant item. I also wonder whether it could be challenged successfully that the costs of producing the SIP6 information do not fall as costs allowed under R6.7 on the basis that they are not "reasonable and necessary" for the decision process, especially where creditors are really not interested in the information. Finally, the SIP does not acknowledge that directors do not need to be assisted to convene a S100 decision by an IP: SIP6 puts non-statutory burdens on IPs to provide information, but what if a non-IP is doing this work? Is SIP6 not opening the door to non-IPs who are not bound by SIPs to do this work (more cheaply)? Given that much of the information relates to the company's demise, perhaps it would be better to require the liquidator to provide it post-S100 - this might be more trustworthy than the director's account and it would not risk being not provided due to director non-cooperation or because a non-IP was in the advising role; it would be more like the process of information-delivery in Administrations, which I think is no bad thing.

**b) Do you consider this list to be lacking any relevant or valuable information, and if so, why?** No

#### Comments

However, if Para 12 is to remain, I do think that it would help to clarify "an explanation of any material transactions... other than in the ordinary course of business" (Para 12(d)(iv)) - personally, I would consider this to encompass a sale of (some of) the company's assets, even if they sold for a modest sum, but I have heard contrary views.

**c) If you are an insolvency practitioner, have you received any feedback from creditors as to the value of the information you have provided?** Yes

#### Comments

I am not a licensed appointment-taker, but I have heard some stories from such IPs. Some creditors do seem bewildered by the mass of information they receive and would simply like to be directed to what form(s) they should be completing. I have also heard that some IPs have received objections to S100 deemed consent decisions but on investigation they discover that the creditors are objecting to the company's liquidation itself, rather than to the appointment of the nominated IP. This indicates to me that some creditors are misunderstanding the SIP6 intention behind the provision of the information, with which I have some sympathy, as I have explained above.

**6 If you are an insolvency practitioner, have you encountered any practical difficulties in complying with the principles or key compliance standards identified in this SIP?** Yes

#### Comments

I am not a licensed appointment-taker, however I have wondered how IPs can apply "sufficient and proportionate safeguards against participation by persons who are not properly entitled to participate". Presumably this is directed towards virtual meetings, as it did not appear to be needed previously. Given that in practice all that was required for attendees of physical meetings was to sign an attendance register (or a signature on a proxy or a business-by-correspondence form), it is difficult to discern what safeguards are

expected for attendees of virtual meetings: is anything more than an oral confirmation of identity expected? Or perhaps IPs are also expected to do more checking now in order to accept written proxies and voting forms?

**7 If “yes”, what (if anything), were you able to do to surmount these difficulties?**

I do not believe that any particular safeguards are being applied in practice, but I also have not heard that this has resulted in any practical difficulties.

**8 Have you encountered any practices in decision making or deemed consent procedures in respect of which you believe the SIP fails to provide adequate direction?** Yes

Comments

See above re discretionary advertising and creditors' difficulties in inspecting proofs at virtual meetings. I have also heard of non-IPs assisting directors to convene S100 processes and in these cases it is not clear to me what duties rest on the members' nominated liquidator (if any) to ensure that SIP6's requirements are met. I have also heard some accounts of aggressive proxy-gathering practices, which may breach the ethics code in respect of discrediting the profession, e.g. in asserting that the members' nominated liquidator will not carry out their statutory/SIP duties.

**9 If “yes” please describe how you consider these ought to be catered for in a revised SIP:**

It would be useful to set out the regulators' expectations on these items: should discretionary advertising be only where the IP has reason to believe that not all creditors' contact details are known or should it be in any S100 case (as the IP is completely reliant on the directors' information and therefore is unlikely to be able to gauge whether the information is complete)? Is it acceptable to tell creditors wishing to inspect proofs that it is impractical to do so at the virtual meeting, so alternative arrangements will be made after the meeting? If an IP's involvement is solely consenting to act as the liquidator and acting as such between the members' resolution and the S100 decision, what items of SIP6 apply to him/her? Where does the boundary lie between healthy competition between IPs and inappropriate advances to creditors to garner support and do IPs have a responsibility to ensure that the activities of persons endeavouring to garner support for them do not fall the wrong side of this boundary?

**10 Are there any other amendments you would wish to suggest to the SIP? Please provide details below.**

I would like clarity on the provision of the SIP6 S100 information: is it to be available on request or is it to be made available by posting in the mail or online with creditors being notified of its availability and access?

It may be useful to contact you to discuss your comments so please give your:

- telephone number 07704 887325 and
- email address [Insolvencyoracle@pobox.com](mailto:Insolvencyoracle@pobox.com)

Please email your completed comments to the secretary of the SIP 6 Working Party ([alisonc@ipa.uk.com](mailto:alisonc@ipa.uk.com)) or send by post to:

Alison Curry, Head of Regulatory Standards  
IPA, Valiant House, 4-10 Heneage Lane, London, EC3A 5DQ

**Closing Date: 13 October 2017**