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|  | General |  |  |  |
|  | This checklist covers the issues to be considered when undertaking investigations into the Company’s affairs and the directors conduct prior to liquidation  SIP2 specifies the minimum level of investigation which must be undertaken regardless of asset levels  Completing the **SIP2 Initial Assessment Checklist** will document the assessment of whether there are any matters which require further investigation in relation to the directors’ conduct or if there are any prior transactions by the Company, or the conduct of any person involved with the Company, which could give rise to a recovery for the estate if pursued under the relevant legislation – see section 6 below  Creditors will have been invited to bring to the liquidator’s attention, any issues they consider should be investigated both at any meeting (virtual or physical, if requested) and in the letter issued on appointment – review any responses received  Further information on matters to be considered under the CDDA before submitting a report on the directors’ conduct can be found at <https://www.gov.uk/government/collections/information-about-company-director-disqualification>  The liquidator’s online report via the Director Conduct Reporting Service (DCRS) is required within ***3 months*** of the appointment date (unless the Secretary of State agrees a longer period) – see <https://report-director-conduct.service.gov.uk> | CVL701 - C | SIP2  SBEEA 2015 |  |
|  | A copy of SIP2 should be given to all members of any Liquidation Committee formed and they should also be invited to bring any matters of concern to the liquidator’s attention |  | SIP2 |  |
|  | The Liquidation Committee must be consulted and advised of any decision to bring or defend legal actions arising out of the investigation (see below) |  | SIP2 |  |
|  | A questionnaire should have already been issued to any director who appears to have held office in the 3 years leading up to the liquidation, at the commencement of the case. This is to make enquiries of them relating to the company’s affairs, including the reasons for the failure of the company and the location of the company’s records. Record on the case files any instances of non-co-operation and take into consideration when reporting under the CDDA | CVL445 – L  CVL446 - F |  |  |
|  | Where initial investigations and/or the directors’ questionnaires have revealed that the company took out a Bounce Back Loan (BBL) during the COVID-19 pandemic, write to the directors to ascertain further details to determine whether there appears to have been any potential abuse of the scheme  See point 7 below for further information about investigations relating to the mis-use of BBL’s or other Government financial support schemes (such as CBILs, the Coronavirus Job Retention Scheme, or other financial support grants in place during the COVID-19 pandemic) | CVL708 - L | Dear IP 114 (December 2020)  Dear IP 135 (August 2021) |  |
|  | Where the legal costs associated with an investigation are likely to exceed £5,000 and will be funded out of floating charge realisations, it will be necessary to obtain prior approval from the floating charge holder and preferential creditors to the planned expenditure – see the relevant rules noted for further information  Note that with effect from 1/10/21, the category of relevant creditors from which approval must be obtained now includes a creditor in respect of a debt which is a moratorium debt or a priority pre-moratorium debt within the meaning given by s174A of the Act  Refer to Rules 6.44 to 6.48 for further information on approvals and authorisations under these provisions |  | Dear IP35  R6.44 – R6.48  Insolvency (E&W)(No2) (Amendment) Rules 2021 |  |
|  | Minimum level of investigation |  |  |  |
|  | Investigations should be proportionate to the circumstances of each case and the outcome should be clearly documented. Complete the **SIP2 Initial Assessment Checklist** (ideally by the end of Month 1) in conjunction with:   * Ascertaining the location of, safeguarding and listing the company’s books, records and other accounting information. Record any instances of non-co-operation on the case files. Complete a **Records Control Checklist** * Reviewing the Statutory books including the minute book. Compare to the company search and ensure all directors (who held office in the 3 years preceding the liquidation) are included in the investigation and consider whether there are any shadow directors whose actions warrant inclusion in the online CDDA report * Examining the company’s financial records (last accounts and movements since) to ensure that changes in the financial position of the company (ie, movements on assets and any unusual payments) can be satisfactorily accounted for * Carrying out a review of the Company’s bank statements in the period prior to insolvency which should include a review of any COVID-19 Government financial support schemes such as Bounce-Back Loans (**BBLs**) and Coronavirus Business Interruption Loans (**CBILs**). This review typically covers the 2 year period prior to insolvency in relation to antecedent transactions, however the review of any Covid-19 financial support scheme payments should start from 1 March 2020 to ensure any payments received in the relevant period are captured – see ***SIP2 Initial Risk Assessment Checklist*** in this regard. The output/conclusion of the review should be retained on the case files **–** CVL709 provides a record template for this**\*** * Considering the trading position where there is a material deficiency since the last financial statement * Reviewing transactions with associated companies or connected persons – in particular directors or their families. Ensure transactions are at arms length * Checking movements on directors’ loan accounts or other accounts where they have given a guarantee * Reviewing all information supplied by creditors who have expressed particular concern over the company’s dealings or directors’ conduct * Considering whether the initial investigation/assessment reveals any matters that suggest there are grounds for a more detailed investigation or any rights of action against third parties   **\***Any potential misconduct should be reported via DCRS as part of the office holder’s reporting of the directors’ conduct. Where potential mis-use of a Government backed COVID-19 financial support scheme is identified, the Insolvency Service has announced that a standard enquiry letter will now be issued to the office holder as part of their initial review which will enhance case targeting decisions prior to opening an investigation.  The standard enquiry letter should be returned to [DCAS@insolvency.gov.uk](mailto:DCAS@insolvency.gov.uk) once completed  If concerns are not covered by the online return, these should be reported via the DCRS contact button or via email to [DCAS@insolvency.gov.uk](mailto:DCAS@insolvency.gov.uk)  The liquidator should have regard to the size of the case, the level of assets available to fund any further investigations or actions and the materiality of the matters disclosed  Discuss with the liquidation committee (if there is one) where there appears to be grounds for further investigation before proceeding. If there is no committee, consider seeking the views of creditors before proceeding. If this is impracticable, consult with the major creditors – see section 23 below | CVL701 - C  CVL706 - C  CVL701 – C  CVL709- F | SIP2  Dear IP 143 – March 2022 |  |
|  | Criminal Offences |  |  |  |
|  | Where during the investigation the liquidator considers the directors have been involved in any criminal activity, he must report it to the Secretary of State (Intelligence & Enforcement Directorate, The Insolvency Service, Cannon House, 18 Priory Queensway, Birmingham B4 6BS) who will then pass it on to the relevant prosecuting authority for investigation |  | s218  Dear IP51  October 2011 |  |
|  | Wrongdoing in relation to an occupational pension scheme - the Pensions Schemes Act 2021 (**PSA**) significantly enhances the Pension Regulator’s (TPR) power to impose both criminal and civil sanctions against those (including individuals) who undertake wrongdoing in relation to an occupational pension scheme (see further below & the **Pensions Checklist** – CVL434)  Changes introduced by the PSA include the following:   * New criminal offences (implemented as new sections 58A & B of the Pensions Act 2004) – which include the avoidance of an employer debt and conduct risking accrued benefit schemes (which requires that a person knew or ought to have known that the effect of their conduct would worsen the outcome for the pension scheme and had no reasonable excuse for that conduct) * Changes to the Contribution Notice regime mean that TPR has greater power to require the payment of funds into a pension scheme (including from individual directors) * A new notifiable events regime (which affects corporate transactions where the entity operates a defined benefit scheme)   Detailed information and guidance can be accessed on TPR’s website:  [Pension Schemes Act 2021 | The Pensions Regulator](https://www.thepensionsregulator.gov.uk/en/pension-schemes-act-2021)  Consider these changes (and any other actionable matters, such as dishonesty) when undertaking the administration of the insolvency and reviewing the conduct of the directors, and consider the need to report any potential wrongdoing to TPR/The Insolvency Service (as appropriate)  In addition to the general obligation to report matters of a criminal nature outlined in the previous section, the NOCLAR provisions of the Insolvency Code of Ethics likely mean that the IP is expected to report potential wrongdoing as a matter of professional ethics  The way in which the Regulators will expect the NOCLAR provisions to be applied in the context of the new legislation is unknown at present, but it is logical that they will expect IPs to have an awareness of the new regime and apply ethical considerations appropriately – especially in view of TPR’s powers to require individual directors to contribute personally to the relevant pension fund  It is unlikely that IPs will be expected to undertake specific investigation of wrongdoing in relation to an occupational pension scheme but you should consider reporting any matters that come to your attention during the course of the liquidation (eg, details of a previous restructuring which has ostensibly/potentially adversely affected the interests members of the Company’s final salary pension scheme)  Nb, TPR has indicated that it does not intend to pursue behaviour that constitutes ordinary commercial activity |  |  |  |
|  | **Validity of Security** |  |  |  |
|  | Check all security held by banks and other lenders   * Floating charges registered within 12 months * Ensure properly registered * If a receiver is in office – check the validity of the appointment |  | s245 |  |
|  | Transactions at Undervalue and Preferences |  |  |  |
|  | Consider the possibility of transactions at undervalue or preferences occurring in the 6 months prior to liquidationReview the cash book for any unusual payments particularly in the weeks leading up to insolvency. In particular review payments to connected persons or companies – note that for connected persons the period is extended to 2 years. Review movements on all bank accounts which have been guaranteed by a director |  | s238  s239  s240 |  |
|  | Check recent disposal of assets and ensure they are at arms-length |  |  |  |
|  | **Fraudulent and Wrongful Trading** |  |  |  |
|  | Investigate and consider the possibility of fraudulent and wrongful trading |  |  |  |
|  | Fraudulent trading occurs where the business has been carried on with intent to defraud creditors The court has power to make those responsible personally liable for the loss suffered |  | s213 |  |
|  | Liability for Wrongful Trading occurs where   * The company is in liquidation * Before winding up, the person knew or should have concluded that liquidation was inevitable * The person was a director * The company was traded at a loss to creditors |  | s214 |  |
|  | The court has power to make those responsible personally liable for the loss suffered |  |  |  |
|  | Directors have a defence in that they took every step with a view to minimising the loss to creditors that they ought to have taken. The steps taken depend on an objective test of the skills and knowledge expected of the director and the skills actually possessed |  | s214 |  |
|  | Ob Where there have been allegations of fraudulent or wrongful trading and investigation is required, consider the cost / benefit of undertaking a detailed investigation |  |  |  |
|  | If investigation is agreed, consider the following   * Financial statements since the last audited accounts – account for significant changes in the financial position of the company * Age creditor balances at the date of liquidation and 6 months’ prior * Whether Crown debts have increased * Writs received and cheques returned * Board minutes commenting on creditor pressure * Any advice received by the directors from solicitors or accountants that the company is trading whilst insolvent * Advice given by another IP firm prior to this firm being instructed |  |  |  |
|  | Extortionate Credit Transactions |  |  |  |
|  | Consider whether credit granted to the company has been on the basis of agreements entered into at exorbitant rates of interest  Agreements entered into within 3 years of liquidation can be re-opened on application to the court who has numerous remedies ranging from adjustment of the interest rate to setting aside the entire transaction |  | s244 |  |
|  | Directors |  |  |  |
|  | The liquidator can apply to examine a director under oath regarding the company, its affairs or its property |  | s234-6 |  |
|  | Review whether the directors’ actions may amount to offences relating to   * Fraud on the company * Fraud on the company’s creditors * Misconduct during the winding up * Falsification of company records * Material omissions from the SoA’s * False representation to creditors * Misfeasance |  | s206-12 |  |
|  | Pursuing an action |  |  |  |
|  | It is for the liquidator to determine whether early investigation and legal action is warranted (eg, real prospect of recovery for the estate or as a matter of public policy)  Liquidators now have the ability to exercise any of the powers contained in Schedule 4 without the need to obtain sanction of either the court or a liquidation committee (or where there is none, the Secretary of State or a meeting of creditors) on all cases regardless of their commencement date  If the outcome of any proposed action is uncertain or the costs that would be incurred may materially affect the outcome for creditors (or funding is required), then further consultation with any committee and the major creditors may be appropriate or consider convening a meeting of any committee or seeking a decision of the creditors on how to proceed  Refer to point 6 above regarding legal costs where the assets are covered by a floating charge  If proceedings are to be issued:   * Ensure there are sufficient assets to meet any adverse costs or seek a contribution to costs from creditors to cover these before proceeding * An indemnity is obtained to cover adverse party costs * Consider a conditional fee agreement with solicitors | CVL702 – L  CVL703 – F  CVL707 - F | SIP2  SBEE Act 2015 – from 26 May 2015 |  |
| **Manager review of checklist** | | | | |
| Name: | | | | |
| Signature: | | | | |
| Date: | | | | |
| Comments: | | | | |