STATEMENT OF INSOLVENCY PRACTICE 3.2

SCOTLAND

COMPANY VOLUNTARY ARRANGEMENTS

Introduction

1. A Company Voluntary Arrangement (CVA) is a statutory contract between a company and its creditors under which an insolvency practitioner will have powers and duties. An insolvency practitioner will be central to the preparation and agreement of the proposal, and the implementation of the arrangement, whether acting as adviser, nominee or supervisor. The particular nature of an insolvency practitioner's position renders transparency and fairness in all dealings of primary importance. The company's directors, shareholders and creditors should be confident that an insolvency practitioner will act professionally and with objectivity in each role associated with the arrangement. Failure to do so may prejudice the interests of both the company and creditors, and is likely to bring the practitioner and the profession into disrepute.

2. An insolvency practitioner may be asked to assist a company's directors when a CVA may be the solution to the company's financial difficulties; or an insolvency practitioner may propose a CVA as administrator or liquidator. Where the principles and key compliance standards in this statement of insolvency practice are relevant only to a CVA proposed by a company's directors these are identified as such.

Principles

3. An insolvency practitioner should differentiate clearly between the stages and roles that are associated with a CVA (these being, the provision of initial advice, assisting in the preparation of the proposal, acting as the nominee, and acting as the supervisor) and ensure that they are explained to the company's directors (where they are making the proposal), shareholders and creditors.

4. (*Directors' proposal*) An insolvency practitioner should ensure that information and explanations about all the options available are provided to the directors, so that they can make an informed judgement as to whether a CVA is an appropriate solution for the company.

5. An insolvency practitioner should explain to the directors, their responsibilities and role, and the consequences of a CVA.

6. Where a CVA is to be proposed, an insolvency practitioner should be satisfied that it is achievable and that a fair balance is struck between the interests of the company and the creditors.

7. An insolvency practitioner's reports should provide sufficient information to enable the company's shareholders and creditors to make informed decisions in relation to the proposal and the CVA, and report accurately in a manner that aims to be clear and useful.

Key compliance standards

8. Certain key compliance standards are of general application, but others will depend on whether the insolvency practitioner is acting as adviser, nominee, supervisor, administrator or liquidator.

Standards of general application

Advice (directors' proposal)

9. The insolvency practitioner should have procedures in place to ensure that the information and explanations provided to the company and/or the directors at each stage of the process, as appropriate (that is, assessing the options available, and then preparing and implementing a CVA), are designed to set out clearly:

    a) the advantages and disadvantages of each available option;

    b) the key stages and the roles of the adviser, the nominee and the supervisor; any potential delays or complications; and the likely duration of the CVA;

    c) what is required of the company and its directors;

    d) the consequences of proposing and entering into a CVA, including the rights of challenge to the CVA and the potential consequences of those challenges; and

    e) what may happen if the CVA is not approved or not successfully completed.

Meeting the directors (directors' proposal)

10. In view of the complex nature of CVAs the initial meeting with the directors should always be face to face.

Assessment

11. The insolvency practitioner needs to be satisfied, at each stage of the process, that there are procedures in place to ensure that an assessment is made of:

    a) the solutions available and their viability;

    b) (*Directors' proposal*) whether the directors are being sufficiently cooperative;

    c) where the directors' compliance is required for the implementation of the CVA, the directors' understanding of the process, and commitment to it;

    d) the likely attitude of any key creditors and the general body of creditors, in particular as to the fairness and balance of the proposals;

    e) whether a CVA would have a reasonable prospect of being approved and implemented; and

    f) whether a moratorium is required or available

Documentation

12. The insolvency practitioner should be able to demonstrate that proper steps have been taken at all stages of the CVA, by maintaining records of:

    a) (*Directors' proposal)* discussions with the directors, including the information and explanations provided, the options outlined, and the advantages and disadvantages of each. All advice provided to the directors should be confirmed in writing;

    b) (*Directors' proposal*) comments made by the directors, and their preferred option;

    c) any discussions with creditors (or their representatives) and the company's shareholders;

    d) where the proposal is made by an administrator or liquidator, a detailed note of the strategy, outlining the advantages and disadvantages of each option.

Standards of specific application

Preparing for a CVA

13. When preparing for a CVA, the insolvency practitioner should have procedures in place to ensure, taking account of the company's circumstances and the nature of the company's finances, that:

    a) (*Directors' proposal*) The directors have had, or receive, the appropriate advice in relation to a CVA; this should be confirmed in writing if the insolvency practitioner or their firm has not done so before;

    b) Sufficient information is obtained to make an assessment of a CVA as a solution, and to enable a nominee to prepare a report, including;

        (i) the measures taken by the directors or others to avoid recurrence of the company's financial difficulties, if any;

        (ii) the likely expectations of any key creditors;

        (iii) the effect of the CVA on third parties where their view may have an effect on the viability of the CVA; and

        (iv) proportionate investigations into, and verification of, income and expenditure and assets and liabilities.

The proposal

14. Whether the insolvency practitioner has been asked to assist the directors to prepare a proposal or a proposal is being prepared by an administrator or liquidator, the insolvency practitioner should have procedures in place to ensure that the proposal contains the following:

    a) sufficient information for creditors to understand the company's financial and trading history, including:

    b) the roles of the directors and key employees and their future involvement in the company;

        (i) the background and financial history of the directors where relevant;

        (ii) if the company has become, or is about to become, insolvent, why it has become insolvent; and,

(iii) any other attempts that have been made to solve the company's financial difficulties, if there are any such difficulties;

c) a comparison of the estimated outcomes of the CVA and the outcome if the CVA is not approved, including disclosure of the estimated costs of the CVA and the bases for those estimates;

d) the identity of the source of any referral of the company, the relationship or connection of the referrer to the company and, where any payment has been made or is proposed to the referrer, the amount and reason for that payment;

e) details of the amounts and source of any payments made, or proposed to be made, to the nominee and the supervisor or their firms in connection, or otherwise, with the proposed CVA, directly or indirectly and the reason(s) for the payment(s); and

f) where relevant, sufficient information to support any profit and cash projections, subject to any commercial sensitivity.

The nominee

15. Where the nominee is not the administrator or liquidator, it is the responsibility of the nominee to report in relation to the proposed CVA. When acting as nominee, the insolvency practitioner should have procedures in place to ensure that:

a) The nominee is able to report whether or not, in the nominee's judgement:

(i) the company's financial position is materially different from that contained in the proposal, explaining the extent to which the information has been verified;

(ii) the CVA is manifestly unfair;

(iii) the CVA has a reasonable prospect of being approved and implemented;

b) The proposer's consent is sought on any modifications to the proposal put forward by creditors, and the proposer understands the impact of the modifications on the implementation of the CVA and its viability.

c) Where a modification is adopted, the insolvency practitioner must ensure that consent is obtained from the proposer of the CVA and, if appropriate, the creditors. In the absence of consent, the CVA cannot proceed. The proposer's consent must be recorded.

16. Where the nominee is the administrator, and the directors' compliance will be required, their consent is sought.

The supervisor

17. When acting as supervisor, the insolvency practitioner should have procedures in place to ensure that:

a) where a proposal is modified, creditors have been made aware of the final form of the accepted CVA;

b) the CVA is supervised in accordance with its terms;

c) the progress of the CVA is monitored;

d) any departures from the terms of the CVA are identified at an early stage and appropriate action is taken promptly by the supervisor;

e) any discretions conferred on the supervisor are exercised where necessary, on a timely basis and that exercise is reported at the next available opportunity;

f) any variation to the terms of the CVA has been appropriately approved before it is implemented;

g) enquiries by creditors and shareholders are dealt with promptly;

h) full disclosure is made of the costs of the CVA and of any other sources of income of the insolvency practitioner or the practice, in relation to the case, in reports;

i) if the costs of the CVA have increased beyond previously reported estimates, this increase should be reported at the next available opportunity; and

j) the CVA is closed promptly on completion or termination.

Effective date: This SIP applies to all cases where the nominee is appointed on or after **1 July 2014**