

SIP 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
Organisation : The Compliance Alliance
RPB (if applicable): IPA (ordinary member only)

SIP 9

The revisions to SIP 9 (Scotland) and SIP 9 (Northern Ireland) follow the drafting of SIP 9 (England and Wales) except where there are legislative differences. The questions below first ask about the detailed drafting changes to all variants of SIP 9. Additional questions relevant to each jurisdiction then follow.

- 1 Do you believe that SIP 9 should apply to members' voluntary liquidations?** No
Please explain your answer below.

Comments

Where the estate is to pay MVL fees and costs, major shareholders are immensely engaged in the MVL process and so IPs are required to explain and justify their fees and costs to these shareholders' satisfaction. The SIP9 compliance standards translate poorly to MVLs and thus create a layer of information that is superfluous to shareholders' needs. If SIP9 is to apply to MVLs, it would help if it were far better drafted for MVLs - perhaps with a specific section for MVL disclosure - than the current draft. The SIP has been amended to refer to "insolvency proceedings", but as R1.1(2) includes MVLs in this term, it is still not clear to me whether the revised SIP includes MVLs or not.

- 2 Do you agree with the change of approach to payments to associates?** Yes
Please explain your answer below.

Comments

I am pleased to see the old para 27 - now para 9 - retained. In my view, requiring disclosure and approval of "payments that could reasonably be perceived as presenting a threat to the office holder's objectivity [or independence] by virtue of a professional or personal relationship [including to an associate]" should achieve the SIP9 objectives. However, I struggle with para 8, which prohibits parties with whom the office holder has a professional or personal relationship from approving payments: might not a secured creditor who regularly appoints an IP be considered as having a relationship, thus apparently prohibiting them from approving payments? And if a solicitor or accountant is working on a case but also has a claim as a creditor, is the office holder to ignore their vote? And does this similarly exclude any votes from those who appointed the IP, e.g. director/shareholders?

- 3 Do you believe that the revised version of SIP 9 identifies all appropriate principles?** Yes

Comments

4 If “no”, what additions do you believe should be made to the principles contained in the SIP?

5 Do you believe that the revised version of SIP 9 identifies the key compliance standards? Yes

Comments

While it identifies them, in my view it does not successfully address them. I have flagged my concerns on the attached draft revised SIP9.

6 If “no”, what additions do you believe should be made to the key compliance standards contained in the SIP?

7 Do you agree with the changes made to the section on expenses and disbursements? No

Please explain your answer below.

Comments

See attached mark-up. Fundamentally, I think it is wrong to say that Category 1 (or 2) "expenses... are payments". Changing this whole section to focus on the "payment", rather than the "charge", I think, is unsuccessful and makes the section confusing. Also, because of the significant changes in terminology, presumably the plan is that the revised SIP9 will only apply to new appointments.

8 Do you believe it is helpful for the SIP to distinguish between disbursements and other expenses? Yes

Please explain your answer below.

Comments

But it needs to be clearer - see mark-up. Again, emphasising to whom the "payment" of an expense is made confuses Cat 1s and Cat 2s, as it fails to address disbursements paid by an IP/firm to an unconnected party and then reimbursed by the estate - the current wording suggests that these are all Cat 2s.

9 The SIP as drafted explains what is a disbursement. Should the SIP explain what is meant by disbursements (in the context of SIP 9)? Yes

Please explain your answer below.

Comments

But it needs to be clearer - see mark-up. Surely the whole point of introducing the concept of a disbursement is to explain which must be pre-approved and which need not be. The explanation of disbursements in para 28 just falls away and becomes no longer relevant to the rest of the SIP.

10 The SIP as drafted does not define what is an overhead. Should the SIP explain what is meant by overheads (in the context of SIP 9)? Yes

Please explain your answer below.

Comments

If the RPBs are going to enforce para 18 by instructing IPs to reverse any recoveries that they believe are of overheads, IPs deserve an explanation that they can rely on. This has been a contentious issue for far too long.

11 Should any other changes be made to SIP 9?

Yes

Please explain the reasons for your answer below and set out the additional changes you wish to be made to the SIP.

Comments

Please see attached.

SIP 9 (Scotland)

Please only answer these questions if you have comments which relate specifically to SIP 9 (Scotland) and not to any other jurisdiction.

1 Do you agree that the changes made to SIP 9 (Scotland) are appropriate?

Please explain the reason for your answer below.

Comments

2 Should any other changes be made to SIP 9 (Scotland)?

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

Comments:

SIP 9 (Northern Ireland)

Please only answer these questions if you have comments which relate specifically to SIP 9 (Northern Ireland) and not to any other jurisdiction.

1 Do you agree that the changes made to SIP (Northern Ireland) are appropriate?

Please explain the reason for your answer below.

Comments

2 Should any other changes be made to SIP 9 (Northern Ireland) ?

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

Comments:

SIP 7 (all jurisdictions)

No

1. Do you agree that the changes made to SIP 7 are appropriate?

Please explain the reason for your answer below.

Comments

Please see attached. In particular, I would urge you to reconsider requiring IPs to include in reports a statement that the accounts have been reconciled, as this would require all IPs' report templates (of which there are usually quite a number!) to be amended for, in my view, absolutely no benefit: I am not aware that creditors' understanding is impaired by any such absence and the SIP requires the accounts to be reconciled, so surely this is enough for RPBs' purposes.

2. Should any other changes be made to SIP 7?

Yes

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

Comments:

Please see attached.

SIP 3.2 (all jurisdictions)

1. Do you believe that the revised version of SIP 3.2 identifies all appropriate principles?

Yes

Comments

2. If “no”, what additions do you believe should be made to the principles contained in the SIP?

Comments

3. Do you believe that the revised version of SIP 3.2 identifies the key compliance standards?

Yes

Comments

4. If “no”, what additions do you believe should be made to the key compliance standards contained in the SIP?

Comments

5. Should any other changes be made to SIP 3.2?

Yes

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

Comments

Please see attached mark-up.

SIP 3.1 (England and Wales and Northern Ireland)

1. Do you agree that the changes made to SIP 3.1 are appropriate? No

Please explain the reason for your answer below.

Comments

Please see attached mark-up.

2. Should any other changes be made to SIP 3.1? Yes

Please explain the reasons for your answer below and set out the changes you wish to be made to the SIP.

Comments:

Please see attached mark-up.

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

Please email your completed comments to the secretary of the Joint Insolvency Committee (jic_sip_consultation@icaew.com)

Closing Date: 20 July 2020