Consultation on changes to SIP 2 – Questions

- Statement of Insolvency Practice 2 - Investigations by Office Holders in administrations and insolvent liquidations and the submission of conduct reports by Office Holders

1.Name of individual providing a response:

Michelle Butler

2.Firm name (if applicable):

Resources for IPs LLP

3.Do you think the revised SIP identifies all relevant principles and key compliance standards?

Yes

No

Generally it does, but my answers below explain where I think it falls short.

Comment (if required)

4.Is adding analysis to the SIP's title and content a useful improvement to the Standard?

Yes

No

Comment (if required)

Adding "analysis" to the title is futile without adequate explanation of the RPBs' expectations (see my answer below).

5.Does the SIP clearly reflect the intended purpose described below, or is further specificity needed?

The headline amendment to SIP2 is the introduction of specific reference to a requirement for 'Analysis' within in the title and the body of the SIP. The intention behind the introduction was to ensure that it was explicit, when deemed necessary (i.e., when proportionate, economic etc.) that the SIP required an interrogation of information/data (analysis) rather than instead a gathering in, and non-interrogation, of that data.

Furthermore, the inclusion of analysis within the SIP to be introduced in a non-specific/non-instructive manner. This approach has been favoured here both to ensure that the SIP is not quickly outdated in the face of the continuing developments in investigative and analytical tools available to the sector (AI etc.) and to ensure that the analysis requirements remain ones which are ultimately dependent on the specifics of the individual cases (proportionality, economic viability etc.).

The intended purpose is clear.

Further specificity is required.

As drafted (and as your intended purpose is written), no analysis appears to be required as part of the initial assessment. I find this odd, given that it seems to be common practice for IPs to routinely analyse company bank statements (whether manually or with the assistance of automated analysis tools coupled with a human overview) as well as analysing certain company accounts. Inserting "analysis" in para 10 as something that an office holder should consider following their initial assessment may result in IPs deciding to change their processes so that they no longer routinely analyse bank statements or company accounts at the initial stage. I am not sure this is what is intended, is it?

Making the point that analysis should be done "when deemed necessary" does not help IPs understand when the *RPBs* consider it likely to be necessary. IPs of course will analyse data when *they themselves* consider it necessary, so I do not see how including the references to analysis help.

Please provide details of what further specificity you would like to see within the SIP.

6.Does the continued reference to "books and records (in whatever form)" within SIP2 adequately encompass the full range of a company's records, including wider operational and business information such as electronic communications (including emails and messaging applications), contractual documentation, and other non-financial records?

Yes

No

7.If you believe that it does not continue to be the appropriate wording please confirm;

(i) the reasoning behind your having reached that conclusion, and

(ii) your thoughts on a more adequate wording to cover the full range of a company's records.

I do not believe that many IPs consider emails and non-financial records etc. to be the company's books and records. I think that many consider "books and records" to be only those that a business is required to retain under statute or other regulations. As a consequence, I believe that few IPs take steps to secure other docs, including emails and some non-financial records, unless they are already aware of investigation areas that would be assisted by exploring emails and where they expect it to be in creditors' interests to do this.

If the SIP were to state explicitly that office holders are required to secure access to emails and non-financial records etc., then I think this would require a large majority of IPs to make significant changes to their processes and it would add substantial expenses, e.g. in continuing to pay for the company's cloud storage, the transportation of servers, or the transfer of enormous amounts of data to the IP's control.

If the RPBs expect *all* emails and non-financial records etc. to be secured, then I think they will need to provide guidance on how this fits in with the data protection principle that personal data should only be kept for as long as it is required, as I do not think that "because SIP2 says so"

would be a responsible answer (and in any event the SIP does not state how long such docs need to be retained for). This also seems an odd approach given that businesses can destroy records that are not required to be retained by regulations (e.g. most financial records over 6 years' old), so it could lead to a company purging its records before an office holder's appointment simply to reduce the costs to the estate.

8.Does the proposed amended SIP sufficiently address any concerns held relating to the key areas of the SIP including investigation, analysis and reporting?

Yes

No

Comment (if required)

Please see my attached mark-up.

9.We would welcome any feedback on the draft and revisions generally

10.It may be useful to contact you to discuss your comments. Would you be willing to be contacted?

Yes

No

11.Please provide contact number.

07704 887325

12.Please provide a contact email address

insolvencyoracle@pobox.com

Thank you for sharing your views.

IPA