Topical Issues

5th Round of Monitoring
The 5th Round of monitoring started on 1 January 2009 and practitioners will now be aware that they will receive a monitoring visit every three years if they are accepting insolvency appointments. As in the past, if following a random visit the Insolvency Permit Committee instructs a follow-up visit, the practitioner’s will be required to meet the cost of the additional visit.

New Agency Contract
The six successful firms in the tendering process for the new agency agreement with the Accountant in Bankruptcy have been announced and the new contract commenced on 1 April 2009. Two of the main issues are that the contracts are in the name of the firm and not to a specific insolvency practitioner and the agent’s fees are to be met out of the case funds where possible.

SIPs
A forum organised by the Joint Insolvency Committee was held recently to discuss the future of SIPs and in particular whether they should be principle based or prescriptive. The general consensus was that it should be proposed that the current SIPs should be re-drafted to bring them up to date and to be both principle based and prescriptive. This will be done by setting out the principles to be adhered to and show how these principles can be demonstrated. The re-drafting would be prioritised so that those in most need of up dating would be done first.

Monitoring Issues

Global Bank Accounts
In recent months it has been noticed that there have been problems with global bank accounts. Apart from the new global accounts being offered to practitioners by certain high street banks, insolvency practitioners have traditionally used these types of accounts to negotiate cheques received in the firm’s name etc rather than the case name or for transactions at the beginning of cases where no bank account has yet been opened. However, the recent issues are generally in relation to “high volume” practitioners who are using a general bank account which is not being properly controlled. There have been instances of:-

a. Incomplete records of balances held
b. Significant funds held for significant periods
c. Significant funds not accruing interest
d. Significant interest being retained by firm

These types of issues are not only contrary to SIP 11 and general accountability but they are breaches against the Institute’s Client Money Regulations and such breaches will be referred by the Insolvency Permit Committee of the Institute to the Investigations Department.

Turnkey Limited – IPS Turnkey
A large proportion of practitioners use the software program supplied by Turnkey Limited known as IPS or similar software systems to administer their insolvency
caseload. The main function used by practitioners on the IPS system is the recording of bank transactions but the software has another important function namely case management. However, the case management function is only effective if all relevant information is recorded on the system and this information is kept up to date. Otherwise the management reports are meaningless. It is surprising to note the number of monitoring reports which highlight that the case management function is not fully used or that the information on the system is not up to date. This situation has the obvious result that general compliance in the administration of the caseload cannot be properly controlled and therefore may be unsatisfactory. It is disappointing to note that practitioners still do not appear to put sufficient emphasis on ensuring that they comply with the timescales laid down in the legislation for the filing of the various returns, i.e., receipts and payments, accounts, annual reports, D forms, etc. It would also appear to be more efficient for insolvency practitioners to use the IPS facility to lodge their monthly bordereau rather than preparing it manually.

In addition, it has also been noted that there appears to be a problem with the IPS software in relation to the information that should appear on the IP Case Record. There have been several instances where all the relevant information appears to be on the system but for some reason this information is not being picked up and put on the IP Case Records kept within the system. Practitioners have been encouraged to refer this matter to Turnkey Limited so that it can be resolved for the benefit of all practitioners.

SIP 3A
It is two years since the amended SIP 3A was introduced in April 2007. The main changes in the amended SIP were in relation to advertising and the relaxation regarding payments to third parties for information on the debtors’ financial position in addition to various disclosure requirements to creditors. Generally, compliance with the amended SIP has been satisfactory but there have been a number of instances where practitioners have not been doing what is necessary, e.g.

a. No evidence of consideration of the level of third party fees in relation to financial information provided.
b. Not full disclosure in relation to third party fee

c. No evidence of advice given to debtor and his written confirmation of acceptance
d. Not disclosing the anticipated dividend and trustee’s fee

Practitioners are reminded that full disclosure is required in order that creditors can be fully informed and for the sake of being seen to be transparent.

Bonding
It is surprising to note that monitoring reports still contain concerns that practitioners are still unsure or unwilling to accept the correct basis for fixing the level of the bond for each case. There are still practitioners who refer to the funds on hand when questioned on the level of bonding which clearly is in breach of insolvency legislation and the laws of general insurance which are concerned with the total funds that are at risk. There are also those who do not include interest received or VAT refunds in relation to bonding cases. However, it is only a small proportion of practitioners that do not bond on the correct basis.