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## DEAR INSOLVENCY PRACTITIONER Issue 148 – July 2022

Dear Reader

Please find enclosed the latest articles from HMRC and the FCA.

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### **43) HMRC voting on voluntary arrangements**

HMRC has not always exercised its right as a creditor to vote on some voluntary arrangement proposals. This has sometimes resulted in creditors with lower value involvement influencing the outcome of these proposals. This has led to some proposals being rejected – which results in HMRC not receiving the best return that could be achieved. This has frustrated Insolvency Practitioners who are trying to restructure businesses, sometimes causing businesses to fail when there was an opportunity to rescue them.

In the current financial landscape, where it is beneficial to try and support business restructuring to help them recover from the effects of the past two years, and HMRC's increased creditor status following the introduction of secondary preference in some taxes, HMRC will be more proactive in the use of its voting rights and will vote on proposals.

This should ensure the best return for HMRC as a creditor – provided the best possible proposal is submitted. It will secure a return for the Exchequer now, and secure future revenue if the proposal is agreed and the business is able to trade out of current difficulties and return to a more stable on-going trading position. This approach also aligns with the BEIS Minister's commitment to the R3 Chair that HMRC will take a more commercial approach to restructuring proposals.

Please note when HMRC uses its voting rights, it should not be assumed that HMRC will always vote positively. It is important for all parties involved, the business, HMRC and the Insolvency Practitioner, that the best possible proposal is submitted. HMRC often sees 'exploratory' proposals rejected, sometimes resulting in improved offers, and on other occasions resulting in the restructuring not being progressed. HMRC will vote against any proposals, as is its right as a creditor, that it considers could or should be better. To avoid delays, additional work and the risk of business failure, please ensure the best offer is proposed at the first approach.

If you have any questions about this article, please contact R3 or your authorising body who will take them forward with HMRC.

#### **44) HMRC Dropbox**

HMRC apologises for the loss of some correspondence that was sent to HMRC via Dropbox. The reason for this has been identified as a necessary and important security policy that means whilst Dropbox has considerable storage capacity, data **must not** be stored in Dropbox. HMRC therefore uses Dropbox only for **data transfer** with several timing limitations that must therefore be adhered to.

This means that Dropbox request links are set automatically to expire after a set time.

Some R3 members have indicated that they tended to build up correspondence items during the day, submitting them to HMRC at the end of each day. These may be the types of items that are being lost due to HMRC's security requirements.

HMRC would therefore request that Insolvency Practitioners avoid sending correspondence via Dropbox and the close of business each day. Instead, Insolvency Practitioners should hold them overnight and submit them first thing the next day to ensure HMRC teams have the most time during the working day to extract these items before the close of business.

If you have any questions about this article, please contact R3 or your authorising body who will take them forward with HMRC.

## **116) FCA approach to compromises for regulated firms**

The FCA has issued guidance on its approach to schemes of arrangement and other compromises for regulated firms ([FG22/4](#)).

The guidance clarifies how the FCA approaches compromises in line with its statutory objectives to protect consumers and the integrity of markets. The new guidance aims to help regulated firms and their advisers understand the FCA's role, the information firms need to provide to the FCA and the factors the FCA will consider when assessing compromises and deciding if and what actions to take.

The guidance is targeted at firms that are solely regulated by the FCA, and firms that are dual regulated by the FCA and PRA from the perspective of conduct regulation. It is also relevant to advisers of regulated firms considering compromises (including insolvency practitioners and professional advisers, trade associations, consumers and consumer protection organisations).

The guidance took effect from 5 July 2022 and can be accessed via the link below:

<https://www.fca.org.uk/publications/finalised-guidance/fg22-4-fcas-approach-compromises-regulated-firms>

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