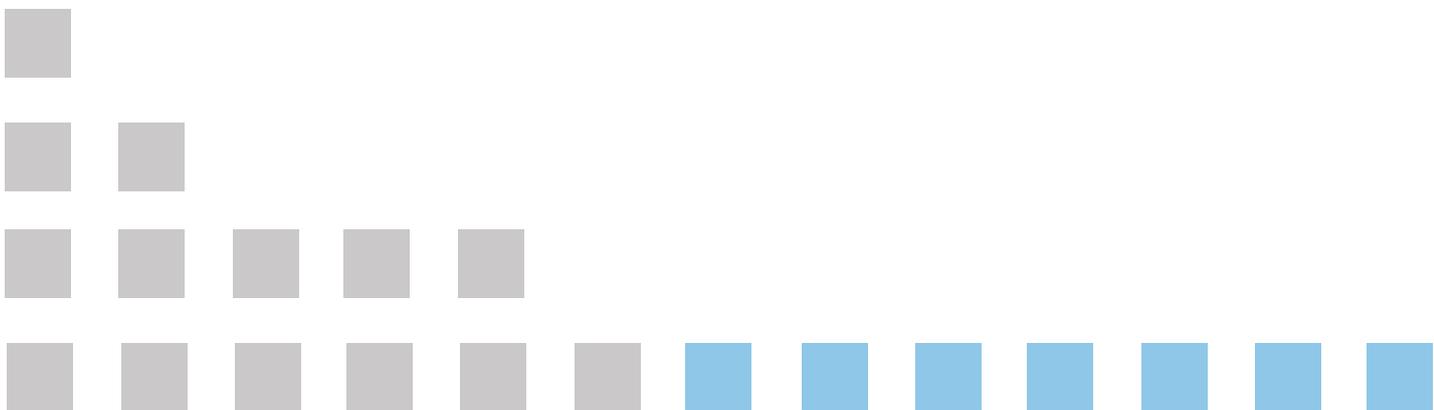


Insolvency Monitoring

Initial Assessment Findings



This newsletter outlines the main issues arising out of the initial stages of insolvency monitoring process carried out by the GFSC during November 2016 and March 2017.

The Initial Assessment programme was the first stage of implementing a comprehensive system of monitoring insolvency practitioners (IPs) licensed in Gibraltar.

The purpose of the Initial Assessment programme was to find out more about the risks within each insolvency practice and to make a preliminary assessment of the IP's approach to ensure insolvency compliance.

The results of the Initial Assessment programme were used as a basis for planning full review visits. The full review visits check how IPs and practices have implemented their policies and procedures and assess insolvency compliance quality through file reviews.

Based on the initial assessment meetings carried out, some of the immediate issues identified were as follows:

AML and ethical considerations

Documentation was a key factor with respect of AML and ethical consideration of insolvency appointments.

In many cases the firm had checklists for take-on for audit appointments, but these were not always applied for insolvency appointments.

In some cases, an AML risk assessment was not always completed or linked to the client due diligence carried out.

All IPs told us that they consider any potential conflicts and their ability to carry out the work before accepting an engagement, although this is not often recorded.

In all the responses, the IPs confirmed that their firm's procedures were followed or would be followed. This area would be covered as part of the full review visits.

Case Progression

In some of our visits we observed a number of older cases where there had not been sufficient progression. Whilst most of these older cases do not fall under the current Insolvency Act there can be "fitness and propriety" considerations if these cases are not dealt in the correct manner. IPs should consider setting some formal deadlines to carry out the relevant procedures to ensure that closure on older cases is progressed in a timely manner.

External joint appointments

Where cases are administered by IPs from differing firms, there is a concern that either IP is not fully aware of the work carried out by the other practitioner. In these types of appointments, we would recommend that the IPs agree the split of duties and record this in writing, so it is clear who is dealing with each aspect of the case. We would also recommend a regular dialogue to ensure both IPs are fulfilling their duties.

Internal joint appointments

In cases which may either be lengthy or complex, firms with multiple IPs may wish to have both a lead IP and non-lead IP. This would provide continuity for case progression during periods of absence.

Continuing Professional Development (CPD)

One of the areas observed was the shortage of insolvency training available in Gibraltar. With most of the training either coming from the firm's network or related to the Act and Rules in England and Wales.

We note that courses are training continue to develop in respect of Gibraltar Insolvency and welcome and encourage this.

Cashiering

There was a belief with a few IPs that all funds received on an insolvent case had to be banked in the Post Office liquidation account.

There is no longer any requirement to bank funds in the Post Office liquidation account, and this seems to be generally understood, however, in certain cases it would appear that this is the best option due to interest and charges.

Time recording

At some firms we suggested the IPs record the time they spend on each case. We found that IPs don't necessarily do so when they are dealing with fixed fee solvent liquidations, where they are comfortable that the costs will be in line with those they expect to incur. The IPs responses indicated that they would record their time if unexpected issues arise. We also recommended including a narrative description of the work carried out when recording time spent.

These are not statutory compliance issues but suggestions for improvement.

Checklists

Following the initial assessment, we were able to review some of the checklists used by IPs to assist their work. Most of these related to solvent liquidations.

The following areas were either commonly omitted from the checklists, or the prompts could have been expanded upon, for clarity.

- The need for the declaration of solvency to be filed with the registrar within 15 days of the winding up resolution
- That the declaration of solvency should be made within the five weeks immediately preceding the date of the passing of the resolution.
- Notice periods for the General Meetings and the ability to hold these at short notice, subject to receiving sufficient consent.
- The requirements to give the GFSC (where the entity is an Authorised person) and any floating charge holder at least five business days' notice of the resolution to wind up.
- The requirement to notify the GFSC of the appointment if the entity is, or has been, an authorised person.

- The actions that need to be taken if the liquidator forms the opinion that the company won't be able to pay its debts in full, with interest, in the timeframe specified in the Declaration of Solvency.
- The need for submission of the preliminary report to the Official Receiver where further enquires as to the conduct of the company are required or there are possible claims under Part 10.
- The notice requirements and process for calling an initial creditors' meeting and the grounds on which this can be dispensed with.
- The annual reporting obligations that apply should the case continue beyond a year.
- Distribution procedures and the payment of statutory interest on creditors' claims.
- The timeframe for filing the final account of the liquidation.
- Advertising requirements and deadlines.
- Routes to appointment, who can apply and the wider procedures.
- Other case progression steps.

In a number of cases the checklists noted the timeframe for filing the resolution for winding up with the Registrar as 15 days. While the Act specifically defines this period for the notice of appointment, it doesn't appear to extend to the resolution to wind up and therefore the standard period of 30 days for any resolution to be filed seems to apply. We would not want to discourage filing to earlier timeframes as straying from this could lead to the risk of late filing. We therefore suggest as a matter of best practice that IPs should continue to apply a 15-day timeframe for all documents relating to the appointment.

Whilst there may have been some omissions in their checklists the IPs seemed to be aware of the procedures; the reason for some exclusions was simply that the case types they have dealt with don't seem to be affected by these provisions, e.g. the firm has a policy not to deal with Authorised Firms or none of their solvent liquidations have need to be converted to insolvent liquidations.

All the IPs confirmed that they would update their checklists where relevant. We would assess these during the full review visits.

Published by:

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www.gfsc.gi

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