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INSOLVENCY SERVICE

The Institute of Chartered Accountants in Ireland

CARB Monitoring Report

December 2015

Insolvency Service, DETI	
Authorising Body	The Institute of Chartered Accountants in Ireland
Title	CARB Monitoring Report 2015
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PART 1 – EXECUTIVE SUMMARY

Background

1.1. Chartered Accountants Ireland is a Recognised Professional Body (RPB) which authorises and regulates insolvency practitioners.¹ In 2007 the Institute established the Chartered Accountants Regulatory Board (CARB) to regulate members of the Institute, independently, openly and in the public interest in accordance with the provisions of the Institute's Bye-Laws. Throughout the Report we refer to CARB acting on behalf of Chartered Accountants Ireland. At 1 January 2015, Chartered Accountants Ireland licensed 46 practitioners of which 41 were authorised to take insolvency appointments.

1.2. The monitoring visit was carried out jointly by the Department of Enterprise Trade and Investment (DETI) and the Insolvency Service. The last monitoring visit to CARB was in 2012.

1.3. The standards expected of the RPBs are set out in a Memorandum of Understanding (MoU) which covers matters such as the granting and maintenance of practitioner authorisations, handling of complaints, ethics and professional standards, security and caution, and the exchange and disclosure of information to both DETI and the Secretary of State.² A separate document, the Principles for Monitoring Insolvency Practitioners (PfM), sets out the matters to be considered by the Bodies when monitoring their insolvency practitioners. CARB has undertaken to abide by the standards and principles in both of those documents when exercising its authorisation and regulatory functions.

1.4. This report outlines the findings of the monitoring visit and makes some recommendations aimed at improving the effectiveness of regulatory procedures. An overall risk rating is provided for each key area reflecting the findings and significance of the recommendations made. An explanation of the risk ratings is provided in Annex 1.

Summary Findings

1.5. We found that CARB has strong controls in place across most of its processes. There are some weaknesses to address in relation to bonding and the publicity of disciplinary sanctions.

¹ As defined under Section 391(1) of the Insolvency Act 1986 and Article 350(1) of the Insolvency (Northern Ireland) Order 1989.

² A similarly worded agreement applies in relation to Great Britain.

1.6. New Disciplinary Bye laws and Disciplinary Regulations came into effect on 5 October 2015 and all complaints and disciplinary matters will be handled in accordance with the new rules. A review of the new complaints procedures will be carried out in approximately 12 months.

PART 2 – MONITORING PROCESS

2.1. Prior to the visit, the Inspection Team requested detailed information about the insolvency practitioners authorised by Chartered Accountants Ireland, monitoring activities, complaint handling processes, regulatory outcomes and the resourcing of functions.

2.2. The following areas were examined during the monitoring visit to ensure compliance with the MoU and PfM:

- Granting of authorisations.
- Maintenance of authorisations (monitoring).
- Ethics and professional standards.
- Handling of complaints.
- Enabling Bonds and Cover Schedules.
- Disclosures and Exchanges of information.
- Retention of records.
- Reporting to the Department of Enterprise, Trade & Investment and Secretary of State.

2.3. This report summarises the findings under 5 key headings – authorisations, monitoring, complaints' handling, disciplinary outcomes and bonding arrangements.

PART 3 – DETAILED FINDINGS AND RECOMMENDATIONS

Authorisation of insolvency practitioners

Rating:

 **Strong control environment**

Findings	Recommendations	Response
All applications for insolvency licences are dealt with by the Insolvency Licensing Committee (ILC). The ILC has authority to deal with all matters relating to insolvency regulation as provided within the Insolvency Licensing Regulations and Guidance (IRLG) 2009.	N/A	
The application for the renewal of a licence takes place as part of the Individual Annual Return (IAR) process.	N/A	
The IAR is completed online. When the IAR is completed a risk report can be generated. Risk reports are reviewed by the Head of Professional Authorisations who will assess what action is to be taken in relation to the timing of the monitoring cycle. It was found that the Risk Reports sampled were not dated.	The Risk Reports should be dated so that it can be easily seen what period the risks relate to.	Noted. CARB has updated its procedures to include the date on Risk Reports.
The ILC considers and approves all insolvency licence renewals	N/A	
It was found in two cases that CARB had not followed up outstanding licence fees from insolvency practitioners in accordance with their regulations.	CARB should follow up outstanding licence fees in accordance with the Insolvency Licensing Regulations and Guidance 2009.	Noted. This was an isolated case. CARB has introduced further controls to ensure such administrative delay does not occur in the future.
Where new licence applications are received, CARB carries out appropriate regulator to regulator checks.	N/A	

Monitoring of insolvency practitioners

Rating:

 **Strong control environment**

Findings	Recommendations	Response
<p>Monitoring cycle</p> <p>The monitoring of insolvency practitioners is undertaken by an independent agent on behalf of CARB.</p> <p>CARB operates a 3-year cycle of rolling monitoring visits to its insolvency practitioners. The nature and timing of visits is determined annually on a risk-assessment basis.</p> <p>CARB use information from the desktop monitoring process and cyclical visit information to prepare an insolvency monitoring schedule for the year.</p> <p>The case activity of new insolvency practitioners is monitored through the submission of monthly cover schedules. A full monitoring visit is arranged within 12 months of the practitioner's first appointment.</p> <p>All monitoring visits are subject to a grading system.</p> <p>All monitoring reports are referred to the Insolvency Licensing Committee (ILC).</p> <p>The timing and scope of follow-up visits is determined by the ILC.</p>	<p>N/A</p>	

Findings	Recommendations	Response
<p>Monitoring process</p> <p>We have assessed the process carried out by the independent agent and are satisfied with the procedures in place. CARB have an agreement with the independent agent to review the process annually.</p> <p>A risk-based planning document determines the appropriate monitoring strategy.</p> <p>The independent agent sends all monitoring reports to CARB.</p> <p>The monitoring report, including the insolvency practitioner's response, is then considered by the Insolvency Licensing Committee.</p>	<p>N/A</p>	
<p>Observed monitoring visit</p> <p>The visit was carried out robustly and professionally and in accordance with the PfM.</p> <p>Thorough checks were carried out on the practitioner's procedures for complying with the Code of Ethics, and anti money laundering requirements.</p> <p>Where queries arose, these were sent to the practitioner and a response was requested before the end of the visit.</p>	<p>N/A</p>	

Handling of complaints

Rating:

 Strong control environment

Findings	Recommendations	Response
<p>There is a robust process for investigating complaints. Following an initial assessment, preliminary enquiries are made of both the complainant and the insolvency practitioner as appropriate. Those enquiries determine whether or not a complaint file is opened.</p> <p>The Head of Professional Conduct may attempt to resolve the matter, close the investigation or refer the complaint to the Complaints Committee.</p> <p>Once the investigation by the Head of Professional Conduct is complete, provided the matter has not been resolved or closed, the complaint will be conveyed to the Complaints Committee.</p> <p>The Complaints Committee consider matters of misconduct. The Committee can, where it determines a prima facie case exists, offer a Consent Order to the member or in more serious cases refer the matter to the Disciplinary Panel.</p> <p>In the event that the Complaints Committee finds no prima facie case against the member, the Complainant may, within three months of being notified of the decision of the Committee, seek to have the matter reviewed by an Independent Reviewer.</p>	N/A	

Findings	Recommendations	Response
<p>In one case reviewed an acknowledgement letter was sent to the complainant outside the 10 working days timescale as specified in the MoU.</p>	<p>CARB are reminded of the requirement to acknowledge complaints within ten working days as specified in the MOU.</p>	<p>Noted. All complaints are now acknowledged within ten working days.</p>
<p>In one complaint sampled there was a significant period of over one year without any communication with the insolvency practitioner.</p>	<p>CARB should ensure that both complainants and insolvency practitioners are kept updated on the progress of a complaint, for example on a quarterly basis.</p>	<p>Noted. In this case the insolvency practitioner was advised that it was CARB's intention to await the outcome of parallel proceedings which were relevant to the complaint. It was not deemed necessary to correspond with the insolvency practitioner in the intervening period as the practitioner was aware of the progress of the parallel proceedings.</p>
<p>In one complaint sampled there was a delay of five months in notifying the insolvency practitioner of a complaint received.</p>	<p>CARB should ensure that insolvency practitioners are notified within 21 days that a complaint has been received.</p>	<p>Noted. Insolvency practitioners are now notified within 21 days that a complaint has been received.</p>
<p>In one complaint sampled there was evidence of non co-operation from an insolvency practitioner.</p>	<p>CARB should ensure that an insolvency practitioner is made aware of any consequences from non co-operation regarding a complaint in accordance with the disciplinary bye laws.</p>	<p>Noted. Case managers have been reminded of this requirement.</p>
<p>New Disciplinary Bye laws and Disciplinary Regulations came into effect on 5 October 2015 and all complaints and disciplinary matters will be handled in accordance with the new rules.</p>	<p>N/A</p>	<p>The disciplinary process set out in the Findings and that relating to the isolated cases referenced above is per the Disciplinary Bye-Laws effective December 2012. These Bye-Laws have now been replaced with the Disciplinary Bye-Laws</p>

Findings	Recommendations	Response
		and Regulations effective 5 October 2015. One of the primary purposes of the new and significantly amended disciplinary processes is to ensure that cases are investigated more efficiently.

Disciplinary outcomes

Rating:

 **Some weaknesses in control environment**

Findings	Recommendations	Response
<p>CARB has robust controls in place in determining disciplinary outcomes. It was evident from observation of the Insolvency Licensing Committee (ILC) that committee members discuss areas of concern and determine any regulatory action as appropriate however the ILC minutes did not include the reasons and outcome for considering regulatory penalties</p> <p>The minutes also do not include a breakdown where there is more than one issue of concern.</p> <p>In August 2015, CARB issued a regulatory penalty to an insolvency practitioner for €10,300 for various breaches of rules and regulations identified on a monitoring visit. Whilst this order was published by CARB, it did not contain the name of the insolvency practitioner, which risks undermining the transparency of the disciplinary process.</p>	<p>CARB should ensure that the ILC minutes refer separately to the issues of concern that gave rise to the consideration of a regulatory penalty, and document reasons for any decision made.</p> <p>CARB should ensure that any formal regulatory or disciplinary action ordered by any of their Committees is published, including details of the insolvency practitioner's name in the interests of transparency in the disciplinary and regulatory process.</p>	<p>Noted. As acknowledged by the Insolvency Service detailed discussions do take place at these meetings and CARB will ensure that the Minutes refer separately to the issues of concern that give rise to the consideration of a regulatory penalty, and the decision made.</p> <p>Noted. CARB will update the Publication Policy to clarify that all formal sanctions (both regulatory and disciplinary) involving GB/NI Insolvency Practitioners are published with the name of the Insolvency Practitioner on the Insolvency Service's website.</p>

Enabling bonds and cover schedules

Rating:

 **Some weaknesses in control environment**

Findings	Recommendations	Response
<p><u>Enabling Bonds</u> CARB issue new licences to insolvency practitioners and the insolvency practitioners are then required to provide an enabling bond before they take any appointments.</p> <p>Enabling bonds were in place on all cases sampled.</p>	<p>N/A</p>	
<p><u>Cover schedules</u> It was noted that CARB are not following up late cover schedules until the start of each month.</p> <p>In the cases sampled 10 instances of cover schedules being submitted late during 2015 were noted. Only 2 out of 10 instances of late cover schedules were reported to the ILC.</p>	<p>CARB should ensure procedures are in place to ensure that cover schedules are provided within the statutory timescale of the 20th of each month and follow up any outstanding returns on 21st or the next working day of each month.</p> <p>CARB should ensure consistency of approach in relation to submission of late cover schedules and report breaches to the ILC in line with CARB's procedures.</p>	<p>Noted. CARB has updated its procedures to run a report two business days after 20th of each month, and then issue reminders to any remaining IPs with outstanding cover schedules. CARB has already sent an email to all IPs reminding them of their statutory responsibilities in relation to cover schedules.</p> <p>Noted. CARB has updated its procedures to include a standard email for the first late cover schedule stating that the IP will be referred to the ILC for possible regulatory action should there be a repeat breach.</p>

ANNEX 1: RISK RATINGS

Serious weaknesses in control environment

There are serious weaknesses in the risk and control environment that pose a high residual risk to effective and efficient delivery unless urgent corrective action is taken.

Some weaknesses in control environment

There are some weaknesses in the risk and control environment that pose a residual risk to effective and efficient delivery unless corrective action is taken.

Strong control environment

A strong risk and control environment is in place with low residual risk to effective and efficient delivery.