

ANNEX B

CONSULTATION QUESTIONNAIRE

Protected Trust Deeds – Improving the Process

Part 7: Proposals to improve the trust deed process

Question 1: From your perspective, will the AiB Protected Trust Deed Guidance drive the desired changes as set out above?

Yes No

Question 2: Do you agree that the AiB Protected Trust Deed Guidance strikes the right balance between debtors and creditors?

Yes No

Question 3: Do you support the application of the AiB Protected Trust Deed Guidance to PTDs generally?

Yes No

Question 4: If you are an insolvency practitioner, would you envisage that all of the PTDs you administer in future would be in line with the AiB Protected Trust Deed Guidance?

Yes No

Question 5: If not, what percentage of the PTDs you administer in future would you estimate would struggle to be compliant with all aspects of the AiB Protected Trust Deed Guidance?

Answer _____

Question 6: If not all your cases would be in line with the AiB Protected Trust Deed Guidance, what aspects of the Guidance would you struggle to meet and why?

Answer _____

Question 7: Do you think that the AiB Protected Trust Deed Guidance goes far enough? Should there be a wholly legislative approach to trust deeds, not reliant on the voluntary agreement of those involved?

Goes far enough Legislative approach

Question 8: Do you agree that trustees should have some limited discretion in accepting the value of a claim?

Yes No

Question 9: Do you agree that trustees should seek to make payments to creditors no later than month 18 and at 6 monthly intervals thereafter subject to sufficient funds being ingathered?

Yes No

Question 10: From your perspective do the limited controls on fees as set out in the AiB Protected Trust Deed Guidance go far enough, or should AiB have increased powers over the fees that can be claimed in a PTD?

Controls go far enough Increased powers for AiB

Question 11: Do you agree with the introduction of a PTD Review Board?

Yes No

Question 12: Do you agree the proposed membership of the PTD Review Board as stated in the AiB Protected Trust Deed Guidance document?

Yes No

Question 13: If not, what changes would you make?

Answer: An organisation representing commercial creditors such as the Institute of Credit Management would represent trade creditors.

Question 14: Do you agree that trust deeds should be advertised in the Register of Insolvencies rather than the Edinburgh Gazette?

Yes No

Question 15: Would it be useful to have the accessible information regarding trust deeds on the ROI extended to include, for example, the current status of the trust deed and any change to the predicted dividend?

Yes No

Question 16: Do you agree that a standard front sheet should be introduced for use throughout the industry?

Yes No

Question 17: If so, do you agree with a – d at **para 17.6** as to what it should include?

Yes No

Question 18: Would it be useful to you for any further information to be captured on the front sheet?

Yes No

Comment With reference to Para 7.6 (c), there should be more guidance given on the type of fee that should be allowable and the maximum amount claimable against the costs of the PTD.

Question 19: Do you agree that the equity in a property should be frozen at the date the trust deed is granted?

Yes No

Question 20: Do you agree that, where it becomes necessary that the property is sold, the freeze on equity is lifted?

Yes No

Question 21: Do you agree that legislation should be introduced to formalise these proposals regarding the freezing of equity?

Yes No

Question 22: Do you agree that the trustee should realise any available equity at the beginning of the trust deed administration?

Yes No

Additional comment: It would make sense for each case to be considered on its merits, rather than being prescriptive on the timing of treatment of equity. For some PTDs, the make-up of creditors (particularly if commercial/trade creditors) would benefit from certainty and the early release of equity, whereas consumer creditors (particularly banks) may be prepared to wait longer. Each individual case should be assessed by the Trustee to ensure its handling delivers the best return to creditors, with no detriment to the debtor. On balance, delivering certainty and a dividend to creditors, releasing the equity at the beginning of a PTD is preferable.

Question 23: Do you agree that equity realisation plans should be signed by the debtor and trustee then sent to the AiB as part of the documents which would allow AiB to register the trust deed as protected?

Yes No

Question 24: Should a single mechanism be employed as industry standard to calculate a debtor's income and expenditure, for example CFS?

Yes No

Question 25: If yes, should it be the Common Financial Statement (CFS) figures that are adopted as industry standard?

Yes No

Question 26: If you do not agree that the CFS should be used, should some other figures be used, for example CCCS?

Answer _____

Question 27: Where a decision is made to use a consistent method of calculating excess income, what percentage of a debtor's excess income should be paid to the trustee after the calculation is complete?

100% 80% 75% Other Please state _____

Question 28: Do you agree that the Form 4 Statement of Status of the PTD should be provided to creditors on an annual basis?

Yes No

Question 29: Should the capacity be developed to have the Form 4 displayed electronically on the ROI, and this form part of the PTD information held on the ROI?

Yes No

Question 30: Do you agree that a timescale should be fixed for the submission of claims in a trust deed by creditors?

Yes No

Question 31: If so, do you think that 120 days is the correct timescale?

Yes No

Question 32: If you do not agree, what do you think is a realistic timescale?

Answer

Question 33: Should the trustee be able to reject claims where they are submitted late?

Yes No

Question 34: Should the creditor have the right of appeal where a claim is rejected?

Yes No

Part 8: Proposals that will need legislative change

Question 35: Do you agree that there should be an the extension of the provision for sequestrations in the Debtor (Scotland) Act 1987 to provide that as of the date when a trust deed becomes protected an earnings arrestment stops automatically

Yes No

Question 36: Do you consider that recourse over and above the option to sequestrate the debtor or deny discharge from the PTD should be available to the trustee?

Yes No

Question 37: Should consideration be given to the introduction of Income Payment Orders (IPOs) to PTDs for debtors who fail to comply with the agreed contribution payments?

Yes No

Question 38: Do you agree that there should be a different product for some specific straightforward cases which would reduce costs and possibly make the process available to a wider group?

Yes No

Question 39: Under what circumstances would you envisage this product could be used, for example no heritable property, no assets, low number of creditors?

Answer There is a general concern there are too many options available for debt relief which inadequately protect creditors.

Question 40: What do you consider a realistic charge for such a product would be?

Comment N/A

Question 41: Were such a product to be introduced, should there be any extra responsibilities placed on a debtor prior to agreeing to this product, such as an Income Payment Agreement?

Yes No

Question 42: Were such a product to be introduced, should this be administered by IPs only, AiB only, or should both IPs and AiB be able to administer such products?

IPs only AiB only IPs and AiB

Part 9: Other Proposed Changes

Question 43: Do you agree that, a debtor's name and date of birth, along with a former address, should be enough information to correctly identify the debtor?

Yes No

Question 44: Do you agree that, in cases where a risk to the debtor can be shown, the debtor's current address should be omitted from the ROI?

Yes No

Question 45: Do you agree that no contribution should be taken from Social Security benefits where these are a debtor's only income?

Yes No

Additional comment: It is unlikely that a person receiving Social Security benefits would be able to construct a viable Trust Deed with their Insolvency Practitioner; however, if the debtor was willing and capable to make a contribution from benefit payments, and the Insolvency Practitioner supported the proposal, they should not be excluded from the PTD process.

Question 46: If the AiB Protected Trust Deed Guidance is agreed, do you consider that this is a sufficient safeguard for the debtor with regard to Social Security benefits?

Yes No

Question 47: If not, do you think that legislation should be introduced to prohibit trustees from accepting contributions from a debtor's Social Security benefits?

Yes No

Question 48: Do you believe it is appropriate for an agent's fact finding fees, that are incurred prior to the granting of the trust deed, to be treated as an outlay of the trust deed?

Yes No

Question 49: Do you believe it is appropriate that a further charge to the trust deed should be allowed to verify information gathered by a third party agent?

Yes No

Question 50: Do you agree that the PTD Forms contained in the Protected Trust Deeds (Scotland) Regulations 2008 should be reviewed?

Yes No

Question 51: Are there any particular changes to PTD Forms that you feel would benefit you?

Yes No

Comment _____

ANNEX C

Protected Trust Deeds – Improving The Process



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

Institute of Credit Management

Title Mr Ms Mrs Miss Dr Please tick as appropriate

Surname

King

Forename

Philip

2. Postal Address

The Water Mill, Station Road,

South Luffenham,

Oakham,

Leicestershire

Postcode LE15 8NB

Phone 01780 722912

Email
governance@icm.org.uk

3. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No