



## **INSOLVENCY GUIDANCE PAPER – RETENTION OF TITLE**

### **INTRODUCTION TO INSOLVENCY GUIDANCE PAPERS**

Insolvency Guidance Papers (IGPs) are issued to insolvency practitioners to provide guidance on matters that may require consideration in the conduct of insolvency work or in an Insolvency Practitioner’s practice. Unlike Statements of Insolvency Practice, which set out required practice, IGPs are purely guidance and practitioners may develop different approaches to the areas covered by the IGPs. IGPs are developed and approved by the Joint Insolvency Committee, and adopted by each of the insolvency authorising bodies.

#### **Authorising bodies**

##### **Recognised professional bodies**

The Association of Chartered Certified Accountants

Insolvency Practitioners Association

The Institute of Chartered Accountants in England and Wales

Chartered Accountants Regulatory Board for the Institute of Chartered Accountants in Ireland

The Institute of Chartered Accountants of Scotland

Solicitors Regulation Authority for the Law Society

The Law Society of Northern Ireland

The Law Society of Scotland

##### **Competent authorities**

The Insolvency Service (for the Secretary of State for Business, Innovation and Skills)

Department of Enterprise, Trade and Investment (for Northern Ireland)

#### **Retention of Title (“ROT”) Claims**

This guidance can be applied to all ROT claims within any insolvency procedure.

#### **Pre-appointment**

At this stage, a formal appointment will not have been made. However, it remains the IP’s responsibility to advise their clients or potential clients appropriately with regard to ROT. If there are the possibility of ROT claims in future, the responsible IP will have procedures in place to document their strategy for dealing with them if appointed.

If a sale of the business or its assets is envisaged post-appointment, the IP should consider making reference in the contract of sale to the way in which goods potentially subject to ROT are to be treated. Where appropriate, the IP should also agree in advance with any purchaser how any ROT claims might be dealt with.

### **Post-appointment**

The IP should contact creditors at the earliest opportunity if the IP believes that there may be ROT claims. The IP should deal with such claims promptly and take any reasonable steps to allow or facilitate the identification by the claimant of any such goods.

The IP should secure any items that may be subject to any such claims if it is reasonable to do so.

### **General**

The IP should be prepared to communicate and cooperate within reason with any ROT claimant so long as it does not cause the IP to turn aside from the general conduct of the insolvency procedure.

Any claimant must be prepared to communicate expeditiously and cooperate within reason with the IP, make known its claim and provide sufficient evidence of the validity of any such claim and be able to demonstrate that the goods subject to the claim can be identified. Any claimant that fails to do so should not be surprised that its claim is dismissed.

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