INTRODUCTION

1. R3, the Association of Business Recovery Professionals, is the leading professional association for insolvency, business recovery and turnaround specialists in the UK. It promotes best practice for professionals working with financially troubled individuals and businesses. It has UK-wide representation and debates key issues facing the profession. Most insolvency practitioners (IPs) operating in Scotland are members.

2. The Association’s Scottish Technical Committee (“STC”) welcomes the opportunity to offer comments on the Public Services Reform (Insolvency) (Scotland) Order 2016 (PSRO). The Order introduces amendments to the Insolvency Act 1986 (the “Act”) and the Small Business, Enterprise and Employment Act 2015 in order to modernise certain devolved areas of corporate insolvency in Scotland in line with amendments made to legislation in England and Wales in 2010 and introduced in 2015.

EXECUTIVE SUMMARY

3. The STC thanks the Scottish Government for the steps it is taking to address the areas of variance between legislation covering the devolved areas of Corporate Insolvency in Scotland and that for England and Wales.

4. In general the STC welcomes and agrees with the amendments in the PSRO. However as we have suggested previously to the Accountant in Bankruptcy (AiB) there are additional amendments we would like to see which would assist with the practical aspects of complying with the legislation thereby resulting in additional savings for creditors.

5. One amendment of particular import which is required is that relating to the Act’s application to Limited Liability Partnerships (LLPs). It is unclear whether the amendments in the PSRO would apply as they should to LLPs. If that is the case when the Insolvency (Scotland) Rules are amended the Rules will apply to LLPs but not to the primary legislation on which they are based.

6. It is essential that there is clarity that the amendments to the relevant legislation should apply to LLPs as well as companies. Full details of the issue have been raised with the AiB as a matter of urgency.

7. It is our understanding that the PSRO timetable is driven by the terms of the Scottish Parliament. Given the commitment of the Scottish Government to Scottish Corporate Insolvency we call for a subsequent PSRO to be laid at the beginning of the next Parliament to include those suggested amendments which due to time constraints have not been included by the AiB in this present PSRO.
RECOMMENDATIONS

8. Articles 3 to 15 should apply to procedures irrespective of when they commenced. (*Article 4 should apply to existing cases going forward*)

These amendments simplify the procedures in various ways and help reduce expense. Requiring the IP and creditors to adopt different procedures according to the commencement date creates unnecessary additional complexity and therefore expense to both the process and the creditors. There would be no prejudice to creditors and other interested parties in making the amended procedures available in all cases. Safeguards are already in place in each case.

9. *Article 17(1)* – the reference to article 3 should apply to old receiverships

10. *Article 17(3)* – delete

11. *Article 17(4)* – delete

12. *Article 17(5)* – delete

13. *Article 17(6)* – delete

14. We urge the Committee to clarify that the modifications introduced by the PSRO will apply to LLPs.

KEY MESSAGES

15. Rules should not be different unless necessary due to legislative differences

16. Procedures should not be different unless processes differ

17. Rules should be readily accessible and understandable to creditors and stakeholders

18. Office holder will not have to spend time addressing variances in legislation

19. Creditors will benefit from cost reductions

R3 Scottish Technical Committee
November 2015