

# **CRC Energy Efficiency Scheme**

## **Environment Agency Guidance: Insolvency, administration, winding up and cessation of business**

This guidance note sets out:

- (a) how we propose to treat companies which went into administration or receivership, were wound up or ceased trading during the qualification year or prior to registration for the CRC Energy Efficiency Scheme (the Scheme); and
- (b) the responsibilities of administrators and receivers as regards registration for the Scheme of companies over which they exercise control.

Applications for registration for the Scheme must be submitted between 1 April 2010 and 30 September 2010. We would encourage applicants to register as early as possible.

Separate guidance will be published in due course addressing the implications of administration, winding up and cessation of trading for companies/groups once they have become participants in the Scheme.

### **1. Administration/receivership**

#### **1.1 Administration/receivership ongoing at registration**

- (a) Where a single member applicant remains in administration or receivership when it registers for the Scheme, it must register normally if it meets the qualification criteria<sup>1</sup>. In practice, the registration obligations will be fulfilled by the company's administrator or receiver<sup>2</sup> on behalf of the company.

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<sup>1</sup> See our "Am I in?" guidance for an explanation of the qualification criteria.

<sup>2</sup> Note however that the terms of a receiver's appointment vary and, depending on the terms of such appointment, it may in fact remain the responsibility of the company's directors to register the company/group for the Scheme.

- (b) Where one or more members of an applicant group remain(s) in administration or receivership when the group registers for the Scheme, the group must register normally if it meets the qualification criteria. The administrator(s) or receiver(s) of the company/ies in administration should co-operate with the compliance account holder in registering the group. A company in administration or receivership should not be selected as the compliance account holder for a group.

## **1.2 Termination of administration/receivership prior to registration**

- (a) Where a single member applicant entered administration or receivership either during the qualification year (2008) or in the period prior to registration but the administration/receivership has ended prior to registration, such that the company is no longer subject to an insolvency regime, the company must register normally if it meets the qualification criteria. This remains the case even if, as a result of a sale of assets as part of the administration or receivership, the company has little or no assets. Any sale of assets should be documented in the company's evidence pack.
- (b) Where one or more members of an applicant group enter(s) administration or receivership during the qualification year or in the period prior to registration but the administration/receivership has ended prior to registration, such that the relevant group members are no longer subject to an insolvency regime, the group must register normally if it meets the qualification criteria. This remains the case even if, as a result of a sale of assets as part of the administration or receivership, the relevant companies have little or no assets at the time of registration. Any sale of assets should be documented in the group's evidence pack.

Note that since administrator(s) and receiver(s) of a company are **individuals**, there can be no question of a company in administration or receivership needing to be grouped for CRC purposes with the company or firm of which the administrator(s)/receiver(s) are part, despite the fact that the administrator(s)/receiver(s) is/are likely to satisfy the tests set out in the Companies Act 2006 regarding control and exercise of dominant influence.

## 2. Winding up/liquidation

### 2.1 During qualification year

- (a) Where a single member would-be applicant was placed in voluntary liquidation or was wound up<sup>3</sup> during 2008, it has no obligations in the Scheme.
- (b) Where one or more member(s) of an applicant group was placed in voluntary liquidation or was wound up during 2008, the group must register normally if it meets the qualification criteria. The liquidated/wound-up company/ies **must not** be included in the group's structure chart. However, the Environment Agency would be grateful if the group would notify it of any meters through which such companies received qualifying supplies during 2008.

### 2.2 Between qualification date and registration

- (a) Where a single member would-be applicant is placed in voluntary liquidation or is wound up after 31 December 2008 but before registration, it should not register for the Scheme.
- (b) Where one or more member(s) of an applicant group is placed in voluntary liquidation or is wound up after 31 December 2008 but before registration, the group must register normally if it meets the qualification criteria. The company/ies in liquidation **must** be included in the group's structure chart and the identity of the company/ies in liquidation should be notified to the Agency. Qualifying supplies to the company/ies in liquidation **must** be included in the aggregate figure for supplies to the group when the group assesses whether or not it is required to register for the Scheme.

## 3. Cessation of business

Where a company ceases trading but is not placed in liquidation, it will be treated like any other dormant company and should assess its qualifying supplies and register in the usual way.

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<sup>3</sup>

In other words, a winding up order has been made on the basis of a winding up petition.

## 4. Other financial distress scenarios

### 4.1 Enforcement of security over shares

Where a holder of security over a majority shareholding in a company enforces such security and, as a result of doing so, becomes the legal owner of such shares<sup>4</sup>, it should note that the company whose shares it acquires (and any subsidiaries thereof) will become a member of its group for the purposes of the Scheme.

If the security was enforced prior to 31 December 2008, the security holder **must** include the company and any subsidiaries as part of its group structure chart when registering for the Scheme.

If the security was enforced after 31 December 2008 but before registration, the security holder **must not** include the company and any subsidiaries as part of its group structure chart at registration but must notify the Environment Agency of the change to its group structure since the qualification date.

### 4.2 Debt for equity swaps

Where an undertaking takes equity in a troubled company (e.g. in exchange for unpaid debts), it should note that such company may, depending on the stake acquired and the control exercised, become a subsidiary undertaking and may need to be declared as part of the undertaking's group when it registers for the Scheme.

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<sup>4</sup>

Or becomes a parent undertaking in respect of such company in one of the other manners specified in s.1162 Companies Act 2006.