

PREPARATION OF INSOLVENCY OFFICE HOLDERS' RECEIPTS AND PAYMENTS ACCOUNTS

1. INTRODUCTION

- 1.1 This statement of insolvency practice is one of a series issued by the Council of the Society with a view to harmonising the approach of members to questions of insolvency practice. It should be read in conjunction with the Explanatory Forward to the Statements of Insolvency Practice and Insolvency Technical Reminders issued in June 1996. Members are reminded that SPI Statements of Insolvency Practice are for the purpose of guidance only and may not be relied on as definitive statements. No liability attaches to the Council or anyone involved in the preparation or publication of Statements of Insolvency Practice.
- 1.2 The purpose of this statement of insolvency practice is to:
- set out best practice with regard to the presentation of accounts prescribed in the insolvency legislation;
 - set out best practice with regard to the presentation of financial information to creditors and other interested parties in a manner which is useful to the reader.
- 1.3 Members are reminded that they are responsible for the submission of returns using the prescribed forms (or in similar format approved by the agency to which the returns are required to be submitted) within the times specified in the legislation. They should not await reminders or default notices.

2. STATUTORY RETURNS AND OTHER RECEIPTS AND PAYMENTS ACCOUNTS

2.1 Statutory Returns required

The statutory requirements for the filing of returns of receipts and payments are laid down in the Insolvency Act 1986 and rules and regulations made thereunder, and reference should be made to the relevant provisions for full details of those requirements. The following is a summary of the types of return required:

- Receipts and payments accounts on an itemised basis are required in statutory format in:

Liquidations - members and creditors voluntary

- Statements of account in final returns are required in statutory format in:

Liquidations - members and creditors voluntary only

- Statements of account (no statutory format) are required in:

Compulsory liquidations

Bankruptcies

only when required by the Secretary of State, a creditor or, in the case of a company, any contributory or director. Where the liquidator or trustee vacates office prior to the holding of the final meeting he is required to send to the Secretary of State an account of his receipts and payments covering any period for which a return has not previously been provided.

- Final statements of account (no statutory format) are required in:

Compulsory liquidations

Bankruptcies

- Abstracts of receipts and payments are required in statutory format in:
 - Administrations
 - Administrative receiverships
 - Other receiverships (companies only)
- Abstracts of receipts and payments are required, (no statutory format) in:
 - Company voluntary arrangements
 - Individual voluntary arrangements

2.2 Other Receipts and Payments Accounts

Reports to members, creditors, committees and other interested parties should include in the body of the report or by way of annexure to that report details of receipts and payments. This will normally be in the form of a summary account.

3. RECEIPTS AND PAYMENTS ACCOUNTS: PRESENTATION

- Where the statutory requirement is to provide a receipts and payments account on an itemised basis -
 - the names of the persons from whom monies have been received and to whom monies have been paid and the nature of the receipts or payments should be stated.
 - any amounts received net of deductions for costs of realisation before payment into an office holder's account may be shown by grossing up the receipts and showing the amounts deducted as payments.

4. LIQUIDATORS' FINAL RETURNS: PRESENTATION

- The summary of receipts and payments in the statement of account in a liquidator's final return should be prepared using the headings contained in the statutory form. The form makes provision for the insertion of categories additional to those printed in the statutory form for use where appropriate.

5. ABSTRACTS: PRESENTATION

- Where abstracts are required they should be prepared as far as possible on the basis of the guidance set out in sections 7 to 11 of this statement:
- Members are reminded that in voluntary arrangements abstracts should only include monies coming into the hands of the supervisor and the payments made out of those monies and that in the case of a company, accounts should be prepared on a normal basis covering its financial transactions.

6. OTHER RECEIPTS AND PAYMENTS ACCOUNTS: PRESENTATION

Information regarding receipts and payments in reports to members, creditors, committees and other interested parties will normally be in the form of a summary account which should be prepared adopting the principles set out below and in sections 7 to 11 of this Statement.

Information provided should follow any legal requirements contained in the Insolvency Act 1986 and related subordinate legislation. Subject to such requirements the information provided should be in a form which enables the reader to understand the financial outcome to the date of the account and relate it to information provided at the inception of the proceedings.

Receipts and payment accounts should, as far as possible, show categories of items using the same headings as the Statements of Affairs with the 'estimated to realise' figures on the Statement

of Affairs shown so that these latter figures can be compared with actual realisations to date. Where this is not appropriate (due, for example, to there having been material changes in the composition of the assets between the date to which the Statement of Affairs figures were made up and the date of the insolvency) other categories may be used. In some cases it may also be necessary, in order to facilitate comparison between estimated and actual realisations, to reclassify or analyse Statement of Affairs figures.

Receipts and payments accounts should reflect all transactions to date on a cumulative basis as well as the figures since any previous accounts (if any) were provided.

In the case of reports to secured creditors the account may be in a specific format agreed with the chargeholder but should so far as possible adopt the provisions of this statement.

Where separate bank accounts have been opened for specific purposes (for example for fixed charge realisations) the transactions in such accounts should be incorporated in the receipts and payments account. There is no need to report that separate accounts have been operated, or transfers made between them (although accounts prepared for chargeholders may do so).

Information which is to be provided in accordance with this Statement may be provided in a separate document issued with the receipts and payments account or by way of note.

7. DETAILED PRESENTATIONAL MATTERS

In the preparation of abstracts and other receipts and payments accounts referred to in sections 5 and 6 above respectively, the following principles should be followed:

7.1 Assets

Asset realisations accounted for by persons acting on behalf of the office holder should be shown gross (i.e. before the deduction of costs of realisation). The costs of realisation should be shown separately as payments.

When assets subject to charges are sold by the office holder (or on his instructions) the gross realisations should be shown as receipts and related costs and the amounts accounted for to the chargeholder shown as payments. In the interests of clarity, and particularly where there are several assets charged to the same creditor, items relating to charged assets should be shown separately from other items.

When assets subject to charges are sold by the chargeholder or other person with a legal right to do so (for example an execution creditor), or on any such person's instructions, the net amount, if any, received should be shown in the account with the gross realisation(s), costs of realisation and the amount retained shown separately either by way of narration or in a note to the account. When assets are realised in these circumstances and no monies are received by the office holder the gross realisations and related costs should be shown either in the narrative column or by way of a note and a 'nil' realisation included in the account.

7.2 Liabilities

Payments to creditors should be stated by category distinguishing payments made under duress, in settlement of reservation of title claims, to secured creditors, to preferential creditors and to unsecured creditors. The dates of payments to creditors ranking in the insolvency and the amount (pence in the £) should be stated.

7.3 Trading under office holder's control

Amounts received and paid in the course of trading should be distinguished from the other realisations of assets and the related costs. The preparation of a separate trading receipts and payments account should be considered where this will assist the reader in understanding the financial implications of the office holder's actions. Care should be taken to ensure that when assets in existence at the commencement of the office holder's duties (for example stock and work-in-progress) are used in trading this is made clear by way of note.

Similarly where such classes of assets are sold at or after the cessation of trading and are shown in the main body of the account and the proceeds include amounts arising from assets created in the course of trading this fact should also be stated by way of note. When a separate trading receipts and payments account is prepared the balance of that account should be shown as a single item in the main receipts and payments account.

Note should be taken of the fact that a trading account on a cash basis without regard to debts not collected and liabilities not settled will not provide a full account of trading and this should be made clear by way of note to the account.

The guidance in this section does not apply when the office holder is not responsible for trading but only receives the surplus on trading or part of that surplus (for example, in the case of a voluntary arrangement where the company/debtor carries on the business under the terms of the arrangement).

7.4 Hive-downs

The proceeds received from a hive-down company as consideration for the sale of the business and/or assets to it should be shown in the office holder's account classified according to the categories of assets transferred and apportioned as provided for in the hive-down agreement. This applies both to the proceeds of the sale of assets transferred to the hive-down company and proceeds of sale of the shares in the hive-down company when these have been issued in consideration for the sale of the assets. Funds received from the hive-down company should not be shown simply as the proceeds of sale of the hive-down company.

A trading account for a hive-down company should be prepared adopting the same principles as set out above for a trading account when no hive-down is undertaken and this should be annexed to the main account.

If separate fees have been charged to the insolvent estate for the management of the hive-down company these should be separately disclosed. If such fees have been charged to the hive-down company they should be shown by way of note to the office holder's account and also disclosed in any accounts of the hive-down company which are prepared.

7.5 Value Added Tax (VAT)

Where a company or individual is or was registered for VAT and receipts and payments included VAT which is to be accounted for or reclaimed by the office holder as arising after the commencement of the insolvency proceedings the receipts and payments may either be shown net of VAT with the amount due to/from HM Customs & Excise at the date of the account included in the account separately or may be stated gross. The treatment adopted should be made clear either in the narrative to the account or by way of note.

If the insolvent entity has not been registered for VAT payments should be shown inclusive of VAT and the fact that VAT is not recoverable stated by way of note.

7.6 Third Party Funds

Any amounts received which are not part of the estate should be shown as receipts with the subsequent payments to the true owner shown as a deduction from the receipts with any agreed fee charged to the person entitled to the monies also being disclosed.

8. PROFESSIONAL FEES

- 8.1 All sums paid to the practitioner and his firm should be clearly identified as such. The practitioner's fees should be stated separately with subheadings (where applicable) for remuneration, out of pocket expenses, other disbursements, management fees (including those related to the management of hive-down companies) and fees for preparing statutory accounts and taxation matters, etc. Sums paid to any sub-contractor for work which would normally be carried out by office holders themselves should be identified as such and shown separately.

- 8.2 Payments to outside parties in which the office holder or his firm or any associate of his (as defined in the Insolvency Act section 435) has an interest should be treated as payments to the office holder or his firm and disclosed separately.
- 8.3 Where charges are made to recover the cost of facilities provided by the office holder's firm (or any associate of his) the amounts should be separately stated.
- 8.4 Where the office holder's fees and disbursements have (in whole or in part) been paid otherwise than from the realisation of the assets (for example by directors of a company or a creditor) details of the amounts received by the office holder, the source of those funds and the nature of the payments (for example remuneration) should be given by way of a note.
- 8.5 Details of the basis on which the office holder's fees shown in the accounts have been calculated and the authority on which they have been drawn should be provided.
- 8.6 The cost of professional and other advisers' services to the office holder should be shown using appropriate categories (for example, legal fees and valuation fees).

9. EMPLOYMENT RIGHTS ACT FUNDS

Amounts received and disbursed under the Employment Rights Act (under arrangements, now superseded for new cases, which involved the office holder as Employer's Representative making payments on behalf of the Secretary of State) do not form part of the insolvent's estate. They should be dealt with through a separate bank account. The receipts and payments should not be recorded in the office holder's account except where loans to employees have been made under the Loan Scheme.

The employees' representative's fees do not form part of the remuneration from the estate and do not need to be disclosed in the receipts and payments account.

10. STATEMENT OF FUNDS HELD

If the composition of the balances held is not disclosed on the face of the account, there should be included by way of appendix to the account a statement showing where the balance of the funds shown in the account is held, distinguishing between funds held on non-interest bearing account(s) and interest bearing accounts in the office holder's or the insolvent estate's name, amounts held in the Insolvency Services Account and in Treasury Bills.

Where any monies are held which do not form part of the estate and are due to be paid to third parties, the amount so held should be stated.

The operation of the Cheques Act 1992 may necessitate clearance of payment instruments otherwise than through accounts designated for the purpose of the insolvent estate (for example the office holder's firm's client account). Any amounts so held should be shown separately.

11. GENERAL

The requirement to show how any amount in an account (or by way of a note to that account or in any report to which the account is annexed) has been arrived at does not necessitate the repetition of that information in subsequent accounts issued to the same recipient(s) where that amount is shown either separately or as part of a cumulative total.

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