

# *Statement of Insolvency Practice 12*

## *Scotland*



### **RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS**

This Statement of Insolvency Practice (SIP) is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals, and has been approved by the JIC and adopted by each of the regulatory authorities.

Members are advised that a Court of Law may, when considering the adequacy of the work of an insolvency practitioner, take into account any pronouncements or publications which it thinks may be indicative of good practice. Statements of Insolvency Practice are likely to be so regarded. Members are also reminded that, by virtue of the ICAEW Bye-laws, 'in determining whether or not a formal complaint has been proved, the Disciplinary Committee may have regard to any code of practice, ethical or technical, and to any regulations affecting member firms'.

#### **1 Introduction**

- 1.1 This statement of Insolvency Practice is to be read in conjunction with the Explanatory Foreword.
- 1.2 This statement of insolvency practice concerns the keeping of records of meetings of creditors, committees of creditors, and members or contributories of companies in formal insolvency proceedings. The statement is in two parts. The first summarises the statutory provisions regarding the keeping of such records in the various types of insolvency appointment. The second sets out the minimum standards which should be observed with regard to such records in all cases as a matter of best practice.
- 1.3 The statement applies to Scotland only. References to the Insolvency Act are to the Insolvency Act 1986, references to the Bankruptcy Act are to the Bankruptcy (Scotland) Act 1985 and references to the Rules are to the Insolvency (Scotland) Rules 1986.

#### **2 The statutory provisions**

##### **2.1 Meetings of creditors – all corporate insolvencies**

Chapter 1 of Part 7 of the Rules apply to all meetings held in corporate insolvency proceedings, other than creditor committees in liquidations, receiverships or administrations (Rule 7.1) and the comments in paragraph 2.2 to 2.8 apply only to corporate insolvency procedures.

##### **2.2 Report of Meetings – All Insolvencies**

The chairman at any meeting shall cause a report to be made of the proceedings at the meeting which shall be signed by him. The report shall include:

- a) a list of the creditors or contributories who attended the meeting, either in person or by proxy;
- b) a copy of every resolution passed; and
- c) if the meeting established a creditors' committee or a liquidation committee, a list of the names and addresses of those elected to be members of the committee.

The chairman shall keep a copy of the report of the meeting as part of the sederunt book in the insolvency proceedings. (Rule 7.13)

### **2.3 Chairman of meetings**

Rule 7.5 states that the Chairman of any meeting of creditors or contributories in insolvency proceedings other than at a meeting of creditors summoned under Section 98 shall be the responsible insolvency practitioner, or, except at a meeting of creditors summoned under Section 95, a person nominated by him in writing who must either be a qualified insolvency practitioner or an experienced employee of the responsible insolvency practitioner.

### **2.4 Meeting of creditors – administrations**

In addition to the requirements in 2.2 above the administrator is required to annex to the report of the meeting details of the proposals which were considered by the meeting and of any revisions and modifications which were also considered. (Rule 2.13)

### **2.5 Meeting of creditors – creditors voluntary liquidation**

The chairman of the meeting summoned under Section 98 shall be one of the directors of the company. (Section 99(1)) Insolvency Act.

### **2.6 Meeting of creditors – court liquidation**

At the first meeting of creditors or contributories in a court liquidation, the interim liquidator shall be the chairman except that, where a resolution is proposed to appoint the interim liquidator to be the liquidator, another person may be elected to act as chairman for the purpose of choosing the liquidator.

### **2.7 Meeting of creditors and members – company voluntary arrangement**

In addition to the requirement of 2.2 above the report of the meetings summoned under Section 3 of the Insolvency Act shall state:

- a) whether the proposal for a voluntary arrangement was approved or rejected and, if approved, with what (if any) modifications;
- b) set out the resolutions which were taken at each meeting, and the decision on each one;
- c) list the creditors and members of the company (with their respective values) who were present or represented at the meeting, and how they voted on each resolution; and
- d) include such further information (if any) as the chairman thinks it appropriate to make known to the court. Rule 1.17.

## 2.8 Report as evidence of proceedings at meetings

A report of proceedings at a meeting of the company or of the company's creditors or contributories in any insolvency proceedings, which is signed by a person describing himself as the chairman of that meeting, shall be deemed, unless the contrary is shown, to be sufficient evidence of the matters contained in that report (Rule 7.25).

## 2.9 Meeting of creditors – sequestrations

The provisions of the insolvency rules do not extend to sequestrations. The only requirement laid out in Section 23 of the Bankruptcy Act is for the chairman to arrange for a record to be made of the proceedings at the meeting.

It is suggested that this should include similar information to that prescribed for corporate insolvency proceedings.

## 2.10 Meeting of creditors – trust deeds

There is no statutory requirement for a meeting to be held in a Trust Deed, but if one is held then the comments in 2.9 above should be applied.

# 3 Best practice

3.1 Records should be kept of all meetings of creditors, committees of creditors, or members or contributories of companies, held in any insolvency proceedings. The record should include, as a minimum, the following information:

- The title of the proceedings
- The date, time and venue of the meeting
- The name and description of the chairman and any other person involved in the conduct of the meeting
- A list, either incorporated into the report or appended to it, of the creditors, members or contributories attending or represented at the meeting
- The name of any officer or former officer of the company attending the meeting if not attending in one of the above capacities
- The exercise of any discretion by the chairman in relation to the admissibility or value of any claim for voting purposes
- The resolutions taken and the decision on each one and, in the event of a poll being taken, the value or number (as appropriate) of votes for and against each resolution
- Where a committee is established, the names and addresses of the members
- Such other matters as are required by the statutory provisions applicable to the relevant insolvency procedure as set out in section 2 above or, in the case of a voluntary arrangement, by the terms of the proposal.

Where a meeting has been asked to approve an office holder's remuneration, the information provided to the meeting in support of that request should form part of, or be retained with, the record of the proceedings.

3.2 The record should be signed by the chairman and be inserted into the sederunt book.

In the case of committee meetings a copy of the record should be sent to every person who attended, or was entitled to attend, the meeting.

3.3 Forms of proxy retained under Rule 7.17 should be inserted in the sederunt book.

- 3.4 Where a member is the office holder or is appointed office holder as a result of the proceedings at the meeting and has not himself acted as chairman of the meeting, he should endeavour to ensure that the record is signed by the chairman and complies with the above principles. If the member is not satisfied that the record signed by the chairman is an accurate record of the proceedings, he should either prepare his own record for his files or prepare a note for his files explaining in what respects he disagrees with the chairman's records.

**Effective Date: 1 May 1997**