

**TECH 55/04**

**STATEMENT OF INSOLVENCY PRACTICE 7 (Scotland):**

**PREPARATION OF INSOLVENCY OFFICE HOLDERS'  
RECEIPTS AND PAYMENTS ACCOUNTS**

*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. It comes into force on 1 January 2005.*

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'.

This technical release consists of a version of SIP 7, for use when acting under Scottish law. A copy of the technical release, including the annexes, is available to download from the Institute's web site on <http://www.icaew.co.uk>, selecting "technical releases" from the "take me to" box. Alternatively, a link will be available from the Insolvency home page on <http://www.icaew.co.uk/insolvency>.

## **STATEMENT OF INSOLVENCY PRACTICE 7 (SCOTLAND)**

### **PREPARATION OF INSOLVENCY OFFICE HOLDERS' RECEIPTS AND PAYMENTS ACCOUNTS**

#### **1. INTRODUCTION**

- 1.1 This statement of insolvency practice is to be read in conjunction with the Explanatory Foreword.
- 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 Insolvency practitioners 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, the Bankruptcy (Scotland) Act 1985 (as amended) 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:

- Abstracts of receipts and payments are required in statutory format in:  
Administrations  
Receiverships  
Liquidations
- Abstracts of receipts and payments are required, (no statutory format) in:  
Company voluntary arrangements
- Abstracts of receipts and payments are required in terms of the

Bankruptcy (Scotland) Act 1985 (as amended) in:  
Sequestrations

Suggested formats for the accounts are set out in The Accountant in Bankruptcy Guidance Notes (in particular when The Accountant in Bankruptcy is acting as Trustee and an Agent has been appointed).

- Statements of account in final returns are required in statutory format in:  
Liquidations - members and creditors voluntary only
- Final statements of account (no statutory format) are required in:  
Court liquidations

**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. 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.

**4. ABSTRACTS: PRESENTATION**

Where abstracts are required they should be prepared as far as possible on the basis of the guidance set out in sections 6 to 10 of this statement:

Practitioners 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.

## 5. **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 6 to 10 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, the combined transactions relative to 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.

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.

When presenting information for the benefit of creditors, IP's should modify, as appropriate, the information contained within the statutory accounts to make it more meaningful.

## 6. **DETAILED PRESENTATIONAL MATTERS FOR STATUTORY ACCOUNTS**

In the preparation of abstracts and other receipts and payments accounts referred to in sections 4 and 5 above respectively, the following principles should be followed:

## 6.1 **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, 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.

## 6.2 **Liabilities**

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

## 6.3 **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 carries on the business under the terms of the arrangement).

#### **6.4 Hive-downs**

The proceeds received from the sale of shares in, or from loans to, a hive-down company as consideration for the sale of the business 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. Payments made directly by a hive-down company for such assets should be similarly treated.

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.

#### **6.5 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 should 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.

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.

#### **6.6 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.

## **7. PROFESSIONAL FEES**

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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).

## **8. 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.

## **9. STATEMENT OF FUNDS HELD**

If the composition of the balances held is not disclosed on the face of the account, an analysis should be shown separately.

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.

10. **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.