

Statement of Insolvency Practice 7 Scotland



PRESENTATION OF FINANCIAL INFORMATION IN INSOLVENCY PROCEEDINGS

Introduction

1. An office holder is required to report regularly to creditors and other interested parties¹.
2. The particular nature of an insolvency office holder's position renders transparency and fairness of primary importance in all their dealings.
3. The term associate is defined in insolvency legislation. For the purposes of this statement of insolvency practice, office holders should, in addition to the definition in the insolvency legislation, consider the substance or likely perception of any association between the insolvency practitioner, their firm, or an individual within the insolvency practitioner's firm and the recipient of a payment. Where a reasonable and informed third party might consider there would be an association, payments should be treated as if they are being made to an associate, notwithstanding the nature of the association may not meet the definition in the legislation.

Principles

4. Reports should be relevant to the interests of the creditors and other interested parties¹, be clear and informative, be consistent across periods and be sufficient to enable creditors and other interested parties¹ to understand the nature and amounts of the receipts and payments. The office holder should consider what the creditors and other interested parties¹ might reasonably regard as appropriate or significant in the circumstances of each insolvency appointment, whilst being proportionate to the insolvency appointment.
5. Payments made by an office holder should be fair and reasonable and proportionate to the insolvency appointment, and if significant in the context of the insolvency appointment, the office holder should report and explain why the expenditure was incurred.
6. An office holder should report in a way that will assist creditors and other interested parties¹ properly to exercise their rights under the insolvency legislation.

Key compliance standards

Form and general presentation of accounts

7. In addition to any statutory requirement to provide an account in a specified form, receipts and payments accounts should provide figures both for the period under review and on a

¹ "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about the office holders receipts and payments. This may include a creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor

cumulative basis.

8. Information provided in accordance with this statement may be in a separate document issued with the receipts and payments account or given by way of note. Unless there is statutory provision to the contrary, this does not require the repetition of information previously provided.
9. Receipts and payments accounts should show categories of items under headings appropriate for the insolvency appointment, where practicable following headings used in prior statements of affairs or estimated outcome statements. An analysis should be provided to enable comparison with the “estimated to realise” figures in any previously issued document.
10. Certain statutory documents require a “statement of expenses incurred” in the period and should adopt, as far as possible, the principles of this statement but need only provide information for the period under review.

Statement of funds held

11. Accounts should be reconciled to the balances at bank, the case records and to any amounts due to the office holder.
12. Disclosure should be made of where the balance of the funds is held, distinguishing between funds held on non-interest bearing accounts 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, and other forms of investments.
13. An office holder may present multiple receipts and payments accounts in more than one currency where bank accounts are maintained in those currencies (with details of the transfers between each currency), but should explain:
 - a) Why funds have been held in currencies other than sterling;
 - b) The impact of currency holdings on the estate;
 - c) An indication of the sterling value as at the date of the account.

Value added tax (VAT)

14. The treatment of VAT adopted within an account should be consistent and the implications of that treatment made clear.

Payments to insolvency office holders and their associates

15. The following should be disclosed, either separately in the receipts and payments account or by way of note:
 - a) Office holder’s remuneration, showing the amounts paid on each basis;
 - b) Amounts paid to the office holder in respect of the supervision of trading;
 - c) All other amounts required to be approved in the same manner as remuneration;
 - d) Amounts paid to the office holder from the estate in respect of pre-appointment costs;
 - e) Any amounts paid to the office holder or their associates or firm other than out of the estate, giving the amounts paid, the name of payor, their relationship to the insolvent estate and the nature of the payment;
 - f) Amounts paid to sub-contractors for work that would otherwise have to be carried

out by the office holder or their staff.

16. These disclosures should always be made whenever reporting on remuneration and/or expenses, whether incurred, accrued or paid.

Requests for additional information

17. Requests for additional information, including on expenses, should be viewed upon their individual merits and treated by an office holder in a fair and reasonable way. The provision of additional information should be proportionate to the circumstances of the appointment.
18. Creditors and other interested parties¹ may have the statutory right to seek further information about payments made by the office holder. Creditors and other interested parties¹ may also have the right to apply to the court if they consider these costs to be excessive in all the circumstances.
19. Adequate steps should be taken to bring the rights of creditors and other interested parties¹ to their attention. Information on how to access a suitable explanatory note setting out the rights of creditors should be given, when appropriate, in reports that present financial information.
20. When an office holder's appointment is followed by the appointment of another insolvency practitioner, whether or not in the same proceedings, the prior office holder should provide the successor with information in accordance with the principles and standards contained in this statement. This is in addition to any statutory obligations imposed on an office holder to provide information.

Other presentational matters

Receipts

21. Realisations by or on behalf of the office holder should be shown gross, with the costs of realisation shown separately as payments.
22. Realisations by or on behalf of the office holder of assets subject to charges should be shown as above with the amounts accounted for to the chargeholder shown separately as payments.
23. When assets subject to charges are sold by or on the instructions of the chargeholder (or other person with a legal right to do so), the net amount received should be shown in the account (even if "nil") with the gross realisation(s), costs of realisation and the amount retained by the chargeholder shown separately by way of note.

Payments

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

Trading under office holder's control

25. A separate trading receipts and payments account should be provided to the creditors and other interested parties¹ to enable an appropriate understanding of what was done, why it was done and how much it cost, and the balance should be shown as a single item in the main receipts and payments account. The office holder should also provide, by way of note or in the accompanying report, details of:
 - a) The assets in existence upon appointment (e.g. stock and work in progress) that

- have been used in trading.
- b) Any uncollected debts and unpaid liabilities in respect of trading.
 - c) Trading assets (e.g. stock and work in progress) still to be realised.

Alternative approaches to asset realisation

26. From time to time the office holder may adopt an alternative method of asset realisation. Whatever alternative method is adopted, the requirements of this statement still apply; creditors and other interested parties¹ should be provided with sufficient information to enable an appropriate understanding of what was done, why it was done and how much it cost. For example, funds received from a hive-down company as consideration for the sale of the business or its assets should be shown in the account classified according to the categories of assets transferred and apportioned as provided for in the hive-down agreement. The proceeds of sale of the shares in the hive-down company should be shown separately. Funds received in respect of the hive-down company should not be shown simply as the proceeds of sale of the hive-down company.
27. A trading account for a hive-down company should be prepared adopting the same principles as set out above, as should trading accounts for other alternative approaches.

Third party funds

28. Where any monies are held which do not form part of the estate and are due to be paid to third parties, the amount should be disclosed, together with any agreed fee charged to the person entitled to the monies.

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