

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, and those reports should be clear and informative. Reports should be produced with the interests of the reader in mind and the office holder should consider what the reader might reasonably regard as appropriate or significant in the circumstances of each case.
2. Because payments made by an office holder should be appropriate and reasonable in all the circumstances of the case, an office holder should report in a way that will assist creditors and other interested parties properly to exercise their rights under the insolvency legislation.

PRINCIPLES

3. This statement has been produced in recognition of the principles that:
 - Information provided by an office holder, including information about receipts and payments, should be presented in a manner which is transparent, consistent and useful to creditors and other interested parties, whilst being proportionate to the circumstances of the case.
 - The information provided within receipts and payments accounts and any accompanying documents should be sufficient to enable creditors and other interested parties to understand the nature and amounts of the receipts and payments.
 - 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 case.

KEY COMPLIANCE STANDARDS

Form and general presentation of accounts

4. 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 cumulative basis.
5. 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.
6. Receipts and payments accounts should show categories of items under headings appropriate for the case, where practicable following headings used in any prior statements of affairs or estimated outcome statement. Alternatively, an analysis should be provided to enable comparison with the “estimated to realise” figures in any prior document.
7. A “statement of expenses incurred” should adopt, as far as possible, the principles of this statement but need only provide information for the period under review.

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 creditors’ committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

Payments to insolvency office holders and their associates

8. 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 out of the estate in respect of pre-appointment costs;
 - c) Sums paid to the office holder in respect of the supervision of trading;
 - d) All other amounts required to be approved in the same manner as remuneration;
 - e) Amounts paid to sub-contractors for work that would otherwise have to be carried out by the office holders or their staff;
 - f) Any remuneration or disbursements paid to the office holder 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.
9. These disclosures should always be made whenever reporting on remuneration and/or expenses, whether incurred, accrued or paid.

Reports to creditors and other interested parties

10. Where expenditure has been incurred that is significant in the context of the case, the office holder should report and explain why the expenditure was incurred.
11. Unless there is statutory provision to the contrary, this SIP does not require the repetition of information previously provided.

Requests for additional information

12. Creditors and other interested parties may have the statutory right to seek further information about payments made by the office holder. Such rights extend to the general expenses of administering the estate as well as the office holder's remuneration and disbursements. They may also have the right to apply to the court if they consider these costs to be excessive in all the circumstances. The office holder should provide creditors and other interested parties with sufficient information to enable them to consider whether to exercise those rights.
13. Adequate steps should be taken to bring the rights of creditors and other interested parties 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.

OTHER PRESENTATIONAL MATTERS

Receipts

14. Realisations by or on behalf of the office holder should be shown gross, with the costs of realisation shown separately as payments.
15. 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.
16. 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

17. 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

18. A separate trading receipts and payments account should be provided, 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.

Hive-downs

19. 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.
20. A trading account for a hive-down company should be prepared adopting the same principles as set out in paragraph 18 above.

Third party funds

21. 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 noted. Any agreed fee charged to the person entitled to the monies should be disclosed.

Statement of funds held

22. 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.
23. 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)

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

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