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STATEMENT OF INSOLVENCY PRACTICE

THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS – REPUBLIC OF IRELAND

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Updated 25 April 2016

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INTRODUCTION

1. This Statement of Insolvency Practice is one of a series issued by the Institute of Certified Public Accountants in Ireland to insolvency practitioners with the aim of maintaining standards by setting out required practice and harmonising members' approach to particular aspects of insolvency practice.
2. The purpose of Statements of Insolvency Practice is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departures from the Standards set out in the Statements of Insolvency Practice are a matter which may be considered by the Institute for the purposes of possible disciplinary or regulatory action.
3. The supplementary practical guidance is intended to assist the insolvency practitioner ("the practitioner") to comply with this Statement. The practitioner is entitled to adopt alternative procedures in the detailed circumstances of a particular assignment where he or she judges that tailored approach to be more appropriate.

SCOPE

4. This Statement sets out required practice on the handling of funds by practitioners in the administration of formal insolvency cases. Personal insolvency cases fall outside the scope of this Statement.

PRINCIPLES

5. This Statement has been prepared taking account of the principle that the practitioner identifies, documents and maintains separately the funds of each case to which he or she is appointed.

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COMPLIANCE STANDARDS

6. Practitioners should identify and record the funds (including any interest earned thereon) of each case to which they are appointed as an insolvency officeholder.
7. The practitioner should hold the funds in a separate bank account/s to ensure they are maintained separately and are not intermingled with funds of another insolvency case, of the practitioner, or of his or her firm.
8. Subject to the rules governing Court liquidations, the separate bank account/s should meet the following criteria:
 - . money standing to the credit of the account/s is held by the office holder as case money and cannot be combined with, or set off against, any other account of the officeholder or of his or her firm;
 - . interest payable on the money held in the account/s must be credited to that account;
 - . the description of the account/s in the bank's records clearly indicates the money therein does not belong to the office holder or to his or her firm.
9. Where funds relating to a case are received by cheque payable to the office holder (or to his or her firm) which cannot be endorsed to the insolvent estate, such cheques may be cleared through an account ("clearance account") in the name of the practitioner or his or her firm. The clearance account should be maintained separately from the practitioner's office accounts and operated on a trust basis. Funds received in the clearance account should be transferred to the relevant bank account of the insolvency case as soon as possible.

UPDATED

10. This Statement was updated on 25 April 2016.

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Appendix

PRACTICAL GUIDANCE

Scope

- A.1 Practitioners appointed by the High Court are obliged to comply with the relevant provisions of the Rules of the Superior Courts, with the terms of the Orders pursuant to which they are appointed and with the practice and directions of the Court.

Compliance Standards

- A.2 Where the practitioner is appointed to several companies within a group, a separate bank account is opened for each of those companies.
- A.3 A bank may provide a practitioner with a “group account” or “umbrella account” whereby receipts and payments are made by the practitioner through a single account. The bank then allocates each transaction to the relevant case specific bank account.
- A.4 The case specific bank account should be clearly designated – for example, “XYZ Limited (in liquidation), A.Brown, liquidator”.
- A.5 Amounts received in the case from the Insolvency Fund for subsequent disbursement to the company’s former employees do not form part of the funds of the insolvent estate and must be dealt with through a separate bank account. They are trust monies held by the insolvency officeholder as the “relevant officer” for the purposes of the Protection of Employees (Employers’ Insolvency) Acts, 1984 to 2006, as amended.