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STATEMENT OF INSOLVENCY PRACTICE PROXIES - REPUBLIC OF IRELAND

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**Revised February 2005
Updated 30 November 2015**

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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 basic principles and essential procedures with which insolvency practitioners are expected 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 supplemental 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.
4. The nature and extent of the work involved in each assignment will differ, but, generally, will include compliance with the standards outlined below.

SCOPE

5. This Statement deals with proxies in the context of creditors' meetings convened in insolvency proceedings, save for examinership.

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PRINCIPLES

6. This Statement has been prepared taking account of the following principle:

The insolvency practitioner should determine his or her role and fulfill it in an appropriate manner.

COMPLIANCE STANDARDS

General

7. A practitioner who distributes proxy forms should ensure that no part of the form is pre-completed with the name or description of any person.
8. In circumstances where a practitioner is advising on the distribution of proxy forms he or she is required to take all reasonable steps to ensure that no part of the form is pre-completed with the name or description of any person.
9. Neither the practitioner, nor a person acting on his or her behalf, should solicit proxies. The High Court may order that no remuneration be allowed to the person by whom, or on whose behalf, the solicitation is made.
10. If the practitioner was appointed liquidator by the shareholders in general meeting and seeks to retain office following the creditors' meeting, or intends to seek appointment as liquidator at the creditors' meeting, he or she should not provide advice to the chairman of the creditors' meeting on the validity of the proxies received.

UPDATED

11. This Statement was updated on 30 November 2015.

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APPENDIX 1

PRACTICAL GUIDANCE

General

- A.1 A creditor is entitled to attend the meeting in person or by proxy.
- A.2 The proxy format shall comply, as far as possible, with the format set out in Section 184, Companies Act, 2014, or with Form 21 or Form 22, Appendix M, Rules of the Superior Courts, 1986 to 2015, depending on the nature of the insolvency.
- A.3 No proxy form should be circulated with the name or description of any person inserted on it.
- A.4 The proxy form will incorporate the company name and date of the meeting. The location of the meeting and the delivery requirements for completed proxies will be specified in the notice of the meeting.
- A.5 The person appointed as proxy does not have to be a creditor of the company.
- A.6 A minor cannot be appointed as proxy.
- A.7 A proxy is invalid if:
 - 1. It is not completed correctly;
 - 2. It is not lodged by the time stated and to the place specified in the notice of the meeting;
 - 3. It is not signed; or
 - 4. It is signed by an authorised person, but does not state the nature of that authority.

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- A.8 Should one or more of the circumstances listed in A.7 arise, the chairman has the power to decide on the validity of a proxy.
- A.9 Proxies which are deemed to be invalid do not have to be returned to the relevant creditors.

Company representative

- A.10 In circumstances where the validity of the representative's authority is challenged, the chairman of the initial creditors' meeting needs to satisfy himself or herself that the person completing and signing the proxy form has the required authority and, if need be, can confirm that they are authorised in accordance with Section 185, Companies Act, 2014, and can produce to the chairman a copy of the relevant authorising resolution. The resolution copy must bear the company seal or be certified to be a true copy of the resolution by the company secretary or a director of that company.
- A.11 The same requirements apply to subsequent creditors' meetings which will be chaired by the liquidator.

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APPENDIX 2

STATUTORY FORMS

Rules of the Superior Courts, 1986 to 2015

Appendix: M (extract)

Winding up of companies

No. 21.

O. 74, r. 75.

GENERAL PROXY.

[Title as in Form No. 1].

I/We, of a creditor [or contributory] hereby appoint (1) to be my/our general proxy to vote at the meeting of creditors [or contributories] to be held in the above matter on the ... day of , 19 or at any adjournment thereof.

Dated

(Signed) (2)

NOTES:

(1) The person appointed general proxy may, in a winding up by the Court be the Official Liquidator or such other person as the creditor [or contributory] may appoint and in a voluntary winding up may be the Liquidator or if there is no Liquidator, the chairman of the meeting or such other persons as the creditor [or contributory] may appoint. The proxy form should be altered accordingly.

(2) If a firm, sign the firms trading name and add "by A.B. a partner in the said firm." If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf and the fact that the officer is so authorised must be so stated.

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(3) The proxy form when signed must be lodged by the time and at the address stated for that purpose in the notice convening the meeting at which it is to be used.

No. 22.

O. 74, r. 75.

SPECIAL PROXY.

[Title as in Form No. 1].

I/We, of a creditor [or contributory] hereby appoint (1) as my/our proxy at the meeting of creditors [or contributories] to be held on the day of , 19... or at any adjournment thereof to vote (a) the resolution No. (b) in the notice convening the said meeting.

(a) Here insert the word "for" or the word "against" as the case may require. (b) Specify the particular resolution.

Dated

(Signed) (2)

NOTES:

(1) The person appointed special proxy may, in a winding up by the Court be the Official Liquidator or such other person as the creditor [or contributory] may appoint and in a voluntary winding up may be the Liquidator or if there is no Liquidator, the chairman of the meeting or such other persons as the creditor [or contributory] may appoint. The proxy form should be altered accordingly. A creditor or contributory can give a special proxy to any person to vote at a specified meeting or adjournment thereof on all or any of the following matters:

(a) for or against the appointment or continuance in office of a specified person as Official Liquidator or as a member of the committee of inspection; and

(b) on all questions relating to any matter, other than those referred to above, arising at a specified meeting or adjournment thereof.

(2) If a firm, sign the firms trading name and add "by A.B. a partner in the said firm." If the appointor is a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf and the fact that the officer is so authorised must be so stated.

(3) The proxy form when signed must be lodged by the time and at the address stated for that purpose

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in the notice convening the meeting at which it is to be used..... (1)

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Section 184, Companies Act, 2014

An instrument appointing a proxy shall be in the following form or a form as near to it as circumstances permit –

[name of company] (“the Company”)

[name of member] (“the Member”) of [address of member] being a member of the Company hereby appoint/s [name and address of proxy] or failing him or her

[name and address of alternative proxy] as the proxy of the Member at the (annual or extraordinary, as the case may be) general meeting of the Company to be held on the [date of meeting] and at any adjournment of the meeting.

The proxy is to vote as follows:

Voting Instructions to Proxy (choice to be marked with an ‘x’)			
Number or description of resolution:	In Favour	Abstain	Against
1			
2			
3			
Unless otherwise instructed the proxy will vote as he or she thinks fit.			
Signature of member			
Dated: [date]			