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STATEMENT OF INSOLVENCY PRACTICE DEALING WITH EMPLOYEE CLAIMS – REPUBLIC OF IRELAND

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STATEMENT OF INSOLVENCY PRACTICE

DEALING WITH EMPLOYEE CLAIMS – REPUBLIC OF IRELAND

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.
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. Departure from the standards set out in the Statements of Insolvency Practice is a matter, which may be considered by the Institute for the purposes of possible disciplinary or regulatory action.
3. The nature and extent of the work involved in each assignment will differ, but, generally, will include compliance with the standards outlined below.
4. There are significant pieces of legislation involved when dealing with employees, some of which are referred to in this Statement. It is recommended that the insolvency practitioner obtain legal advice as appropriate to ensure the relevant legislation is complied with.

SCOPE

5. The Statement addresses the insolvency practitioner's responsibility in dealing with employees, when appointed as a liquidator or receiver to an insolvent company.

PRINCIPLES

6. The Statement has been prepared taking account of the following principles:
 - (a) Practitioners have legal obligations to deal with employees when acting as receiver/liquidator.
 - (b) Practitioners must maintain proper records and account for how they have discharged their obligations in accordance with the law.
 - (c) Practitioners need to recognise their obligations in dealing with employees in an efficient and timely manner.

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LEGISLATIVE REQUIREMENTS

7. The rights of employees are covered under numerous pieces of legislation – some of the main legislation is noted in Appendix 1. An insolvency practitioner may consider it necessary to obtain legal advice when dealing with employees' claims.

PREFERENTIAL PAYMENT STATUS TO EMPLOYEES IN A WINDING UP

8. Section 621, Companies Act, 2014, requires certain payments to employees be classified as preferential payments in a winding up, including, for example, all wages and salaries, accrued holiday remuneration, contributions payable under the Social Welfare Acts, costs or liability to damages in connection with an accident, payments for absenteeism due to ill health, superannuation benefits.
9. Section 621(4), Companies Act, 2014 states that the sum to which priority is to be given in respect of wages and salaries shall not exceed €10,000 for any one claimant, with the exception of a farm labourer.
10. It should be noted that the directors and secretary of the company would normally not fall within section 621, Companies Act, 2014. However, if they are also employees their position should none the less be considered.
11. Details of the relevant criteria and limitations together with the appropriate statutory references are set out in Appendix 2.

EMPLOYEES' STATUTORY ENTITLEMENTS

Statutory Redundancy Payments

12. Statutory redundancy is covered under The Redundancy Payments Act, 1967 to 2014 (RPA 1967) and The Protection of Employment Acts 1977 to 2014 (PEA 1977).
13. The RPA 1967 imposes a statutory obligation on employers to pay compensation to employees dismissed for reasons of redundancy. This arises where an employee's job ceases to exist and they will not be replaced for such reasons as the financial position of the employer, because there is not enough work, the business ceases, or because of a reorganisation.
14. An employee will generally be entitled to a redundancy payment where the employee was employed for a period of 104 weeks of continuous employment from the age of 16.
15. Employees being made redundant are entitled to two weeks' notice under RPA 1967 and in the case of collective redundancies, consultation with employees' representatives should take place at the earliest opportunity and at least 30 days before the first notice of dismissal is issued under PEA 1977.
16. However, all contracts, including contracts of employment, automatically cease where a liquidator is appointed by the Court to an insolvent company. Where a provisional liquidator is appointed, such contracts may also cease, as contained within the order of appointment of the provisional liquidator.
17. The insolvency practitioner should issue a redundancy certificate as required under the RPA 1967 and Form P45 to each employee being made redundant.
18. It may be advisable that the insolvency practitioner circulate a questionnaire to all employees in order to determine the rights and entitlements of each employee under the various statutory

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provisions.

19. An insolvent company is unlikely to be able to pay out the statutory redundancy entitlement. In such cases, the insolvency practitioner should assist the employee by completing and signing Form RP50. Where the Department of Employment Affairs and Social Protection approves the submission, it will pay the redundancy amount directly to the employee from the Social Insurance Fund.
20. The Form RP50 should be signed by the employee and accompanied with a letter from the insolvency practitioner explaining that the company is unable to pay the redundancy monies due and accepts 100% of the liability, which is repayable by the company to the Department of Employment Affairs and Social Protection. The insolvency practitioner may be required to provide documentary evidence. The Department is classified as a preferential creditor under the Companies Act 2014.

Insolvency Payments Scheme

21. The Protection of Employees (Employers' Insolvency) Act, 1984 to 2012 affords protection to certain outstanding entitlements of employees in the event of their employer becoming insolvent. Where the employer is a company, within the meaning of Section 2, Companies Act, 2014, the date on which it is regarded as having become insolvent is:
 - (a) where either a receiver is appointed on behalf of a holder of any debenture secured by a floating charge, or possession is taken by or on behalf of such a debenture holder of any property of the company comprised in or subject to the charge, the relevant date will be the date of the appointment of the receiver or of possession being taken as aforesaid or;
 - (b) in any other case, the relevant date is as determined by Section 621, Companies Act, 2014.

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22. Where an employer is insolvent, the employees may make a claim for certain payments (subject to limits prescribed in legislation) due to them through the **Insolvency Payments Scheme**. The purpose of the Insolvency Payments Scheme is to protect pay- related entitlements owed to employees who lose their employment because of the insolvency of their employer. The Scheme applies to employees employed in Ireland in employment that is fully insurable for social insurance purposes. The payments to the employee under the scheme, include:
- (a) arrears of wages, holiday pay, or sick pay;
 - (b) statutory minimum notice entitlement;
 - (c) payment contributions under occupational pension schemes (payments are made into the assets of the scheme);
 - (d) awards of compensation under the Unfair Dismissals Acts, 1977 to 2015;
 - (e) awards of compensation under the employment equality legislation (including but not limited to – Maternity Protection Acts, 1994 to 2004, Parental Leave Act 1998 and 2006, Carer's Leave Act 2001, Employment Equality Act 1998 to 2015);
 - (f) any amount an employer is required to pay by virtue of an employment regulation order made under the Industrial Relations Acts, 1946 to 2015;
 - (g) any amount an employer is required to pay by virtue of a decision by an Adjudication Officer or a determination by the Workplace Relations Commission as required by legislation;
 - (h) any amount an employer is required to pay by virtue of a decision of the Labour Court as required by legislation.
23. There are statutory limits on the amounts of payments and the periods to which they apply. Payments under the scheme are made from the Social Insurance Fund.
24. The Insolvency Payments Section of the Department of Employment Affairs and Social Protection is the statutory body which deals with payments from the Social Insurance Fund.
25. All application forms for entitlements must be submitted online by the insolvency practitioner. A guide 'Employer Representative Guide to the Insolvency Payments Scheme' is available at www.welfare.ie.
26. An application for wages, sick pay, holiday pay and minimum notice entitlement should be made on Form IP1, any other entitlement under the scheme (apart from Pension Scheme Contributions) on Form IP2 and payment of outstanding pension/PRSA contributions should be made on Form 1P3. Form 1P3 should include IP3 Employee Schedule.

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27. The insolvency practitioner should examine the claims made on Forms IP1 and IP2 and certify the amount owed to the employee in accordance with the company records. The form, once submitted, should be printed, signed and forwarded to the Insolvency Payments Section for processing. The form should also be accompanied with a Notice of Appointment of liquidator/receiver and a copy of the Statement of Affairs where available.
28. Forms 1P3 and IP3 should be completed by a person competent to act in respect of the pension scheme/PRSA. An Actuarial Certificate is required for Defined Benefit Pension Schemes. The form, once submitted, including the schedule IP3, should be printed, signed and forwarded to the Insolvency Payments Section for processing. The application should be accompanied with a Notice of Appointment of liquidator/receiver, Statement of Affairs and Trust Deed and Deed of Adherence.
29. All documentation accompanying an application should contain the Employer PAYE number.
30. An application is not completed until the printed, signed forms, along with the supporting documentation has been received by the Insolvency Payments Section.
31. The insolvency practitioner, referred to as the relevant officer, is required to make a declaration to the Minister of Employment Affairs and Social Protection in prescribed format, that he or she has accepted the entitlements of the employees on the basis of information made available to him or her. The declaration also incorporates consent for enquiries to be made of other Government departments in order to verify the employee's claim. The insolvency practitioner is also required to formally declare that the company is insolvent and that there are no funds available to enable entitlements to be paid by the insolvent company.
32. Payments to the employees from the Social Insurance Fund are made through the insolvency practitioner. The insolvency practitioner therefore holds these payments in trust and should hold these funds in a separate bank account.
33. The insolvency practitioner makes the relevant statutory deductions and pays the net amount to the employee. A supplementary P45 with each payment should also be issued. The insolvency practitioner is required to notify the Insolvency Payments Section when the payments to the employees have been made. The statutory deductions should be remitted to the Liquidation Section, Office of the Collector General.
34. Payments made by the Insolvency Payments Section become subrogated preferential creditors against the relevant company in liquidation or receivership (refer to Appendix 2).

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THE EMPLOYMENT APPEALS TRIBUNAL

35. The Employment Appeals Tribunal was established under the Redundancy Payments Act, 1967 for the adjudication of disputes on employment rights under numerous pieces of legislation that came within the scope of the Tribunal. The Workplace Relations Act 2015 (which establishes the Workplace Relations Commission) abolished the function of the Tribunal save for legacy cases.
36. From 1 October 2015, the Tribunal no longer accepts direct claims or appeals from the Rights Commissioners' recommendations/decisions following the establishment of the Workplace Relations Commission. Nor does it accept applications to seek implementation/enforcement (Form T1D) of a recommendation/decision of a Rights Commissioner and remains in place only to deal with legacy complaints and appeals.
37. The Tribunal's current remit is to deal with all claims (direct, appeals and implementations) lodged prior to 1 October 2015 and implementations lodged after 1 October 2015. The Tribunal will be dissolved once all claims are completed.

WORKPLACE RELATIONS COMMISSION (WRC) AND THE LABOUR COURT

38. In accordance with the Workplace Relations Act 2015, all complaints and disputes under employment, equality and equal status legislation presented after 30 September 2015 are dealt with by the WRC and all appeals presented after 30 September 2015 are dealt with by the Labour Court.
39. Employees of an insolvent company are entitled to make an application to the WRC under various statutory provisions. In an insolvent situation applications are more typically in respect of claims made under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, where the amount of the claim is in dispute.
40. Employees referring a claim to the WRC are asked to complete the WRC Complaint Form online ("Complaint Form"). The effect of submitting the Complaint Form is to have the complaint considered by an Adjudication Officer ("AO"), who is an officer of the WRC who is appointed by the Minister.
41. Employees of an insolvent company can make an application directly to the Insolvency Payments Section and, in so doing, choose not to make an application to the WRC. The Insolvency Payments Section is empowered since 6 April 2004 to make payments on such direct applications where the facts are not in dispute.
42. Before the AO can decide on any facts put forward under the Acts it must establish that the facts, as set out in the Complaint Form, are correct. A standard form of accountant's report was prepared and agreed between the Consultative Committee of Accountancy Bodies-Ireland ("CCAB-I") and the former Employment Appeals Tribunal for completion by the insolvency practitioner in respect of the claim, where the facts

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are not in dispute. An example of this report is contained in Appendix 3. In respect of claims where the facts are in dispute the insolvency practitioner should indicate the matters of fact which are not agreed.

43. The WRC will furnish the practitioner with a copy of the Complaint Form. Where the claim is disputed, the insolvency practitioner is required to submit within 21 days thereafter his statement/submission and supporting documents.
44. When an award is made by the AO the insolvency practitioner will be provided with a copy of the decision of the AO and will be given an opportunity to appeal against the decision.
45. Following the making of the award the insolvency practitioner can make an application to the Insolvency Payments Section of the Department of Employment Affairs and Social Protection on Form IP2, attaching a copy of the decision of the AO.
46. Payment of awards granted by the WRC are generally paid without deduction of tax.

ADDITIONAL EMPLOYEE CLAIMS

47. In many cases employees will have claims in respect of additional amounts due which are in excess of the statutory ceiling. Payments made by the Insolvency Payments Section are subject to a statutory ceiling which is currently €600 per week in respect of each separate statutory entitlement claim. The limit is revised periodically.
48. Some claims will continue to have preferential status while others will be dealt with as unsecured claims against the company.
49. Where any such additional claim is preferential it can only be paid to employees after the insolvency practitioner has repaid in full amounts paid by the Insolvency Payments Section.
50. The status of employee preferential entitlements is set out in Appendix 2.
51. Claims by an employee for compensation in lieu of notice, which is in excess of the statutory minimum entitlement, are unsecured claims against the company.

ADVANCES TO EMPLOYEES

52. There are no circumstances in which advances to employees made by the insolvency practitioner can be deducted from payments due to the employees received from the Insolvency Payments Section. Funds received from the Insolvency Payments Section should be disbursed to the employees and/or the Collector General, as appropriate, without deduction. Advances, loans, etc., to employees from insolvency practitioners are not accepted by the Department as forming part of the employees' preferential entitlements under the Acts.

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SOCIAL WELFARE STATUS

53. Where there is a doubt as to an individual's social insurance status as an employee his/her eligibility may be determined by whether and at what rate PRSI contributions were paid in respect of the individual. In many instances the Insolvency Payments Section will refer the matter to the Scope Section of the Department of Employment Affairs and Social Protection. An Inspector will consider the facts of each case before making a decision. The insolvency practitioner may be invited to complete a questionnaire by the Inspector. There is an appeal procedure available to employees who are dissatisfied with a decision by an Inspector.

EMPLOYEES BASED OUTSIDE THE REPUBLIC OF IRELAND

54. Following revisions on 1 October 2015 to the Protection of Employees (Employers Insolvency) Act 1984, (implementing EU Directive 2008/94/EC), in circumstances where there are employees of a company in another Member State, the statutory body responsible for paying the statutory redundancy and related entitlements of those employees is the authority in the Member State in whose territory the employees concerned work or habitually work (returns for tax, PRSI, etc. may be a factor assisting in determining location of employment).

UPDATED

55. This Statement was updated on 1 March 2018.

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APPENDIX 1 - Main Legislative Provisions Governing Employee Statutory Entitlements

- Companies Act, 2014
- Redundancy Payments Acts, 1967 to 2014
- Minimum Notice and Terms of Employment Acts, 1973 to 2005
- Unfair Dismissals Acts, 1977 to 2015
- Protection of Employees (Employers' Insolvency) Acts, 1984 to 2012
- Social Welfare Acts
- Payment of Wages Act, 1991
- Terms of Employment (Information) Act, 1994 to 2014
- Protection of Young Persons (Employment) Act, 1996
- Organisation of Working Time Act, 1997
- Protections for Persons Reporting Child Abuse Act, 1998
- Protection of Employees (Part-Time Work) Act, 2001
- Protection of Employees (Fixed-Time Work) Act, 2003
- Competition Act, 2002 to 2017
- Industrial Relations Act, 1946 to 2015
- Industrial Relations (Miscellaneous Provisions) Act, 2004
- European Communities (Protection of Employment) Regulations 2000
- European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003
- Protection of Employees (Temporary Agency Work) Act, 2012
- Criminal Justice Act, 2011
- Property Services (Regulation) Act, 2011
- Central Bank (Supervision and Enforcement) Act, 2013
- Protected Disclosures Act, 2014
- Workplace Relations Act, 2015

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APPENDIX 2 - Employee Preferential Statutory Entitlements

		Description	Reference
1.	Wages and salaries	All wages or salary whether or not earned wholly or in part by way of commission, or whether payable for time or piece-work of any employee in respect of services rendered to the company during the period of four months before the relevant date subject to a maximum of €10,000 per claimant.	S621(2)(b), Companies Act, 2014 S621(4), Companies act 2014
2.	Holiday pay	All accrued holiday remuneration becoming payable to any employee (or, in the case of the person's death, to any other person in his or her right) on the termination of the employee's employment before or by the effect of the winding up order or resolution.	S621(2)(c), Companies Act, 2014 Organisation of Working Time Act 1997
3.	Pay in lieu of notice	Any compensation awarded by the Workplace Relations Commission following a submission on behalf of the employee.	S49, Workplace Relations, Act 2015
4.	Redundancy	Statutory redundancy lump sums.	S42, Redundancy Payments Act, 1967 to 2014
5.	Unfair dismissal	Compensation awarded by Workplace Relations Commission under Unfair Dismissals Act, 1977, following application by employee.	S12, Unfair Dismissals Act, 1977 to 2015
6.	Sick pay	All sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he or she is absent from employment due to ill health.	S621(2)(f), Companies Act, 2014
7.	Superannuation contributions	Any payments due at any time by the company pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the company whether such payments are due (i) in respect of the company's contribution to that scheme or under that arrangement or (ii) in respect of such	S621(2)(g), Companies Act, 2014

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contributions payable by the employees to the company under that scheme or arrangement which have been deducted from the wages and salaries of employees.

[This matter is very complex and great care should be exercised before admitting claims.]

- | | | | |
|----|----------------------------|--|--|
| 8. | Compensation for accidents | All amounts due from the company in respect of damages and costs or liability for damages and costs, payable to a person employed by it in connection with an accident, being an accident occurring (i) before the relevant date, and (ii) in the course of the person's employment with the company, save to the extent that the company is not effectively indemnified by insurers against such damages and costs. | S621(2)(e),
Companies Act, 2014 |
| | | | |
| 9. | Subrogated claims | Subject to limitations, money advanced to pay wages, salaries, holiday pay, sick pay or superannuation contributions by a bank or third party

Payments from the Employers' Insolvency Fund in respect of claims which would rank as preferential. The Fund is entitled to be repaid in priority to any other unsatisfied claim of the employee. | S621(6), Companies Act, 2014

Protection of Employees (Employers' Insolvency) Act 1984 to 2012 |

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APPENDIX 3 - Accountant's Report

The attached Forms, which I have initialed for the purposes of identification only, are in accordance with the books and records of the company to which I have had access and the information contained in those forms is consistent with the information and explanations provided by those members of management with whom I have had discussion.

A N Other Receiver/Liquidator

XYZ Ltd (In Receivership / In Liquidation)